

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

THOMAS M. COOLEY LAW SCHOOL,

Plaintiff,

vs. CASE NO: 11-781-CZ

JOHN DOE 1, JOHN DOE 2, JOHN DOE 3, and JOHN DOE4, unknown individuals,

Defendant.

BEFORE THE HONORABLE CLINTON CANADY, III, CIRCUIT JUDGE LANSING, MICHIGAN — WEDNESDAY, SEPTEMBER 8, 2011

MOTION TO QUASH SUBPOENA

APPEARANCES:

FOR THE PLAINTIFF:

MICHAEL P. COAKLEY, JD  
PAUL D. HUDSON, JD  
150 West Jefferson, Ste. 2500  
Detroit, Michigan 48226  
313-963-6420

FOR THE DEFENDANT:

JOHN T. HERMANN, JD  
2684 West Eleven Mile Road  
Berkeley, Michigan 48072  
(248)591-9791

Reported by: Teresa J. Abraham, CSR (517)483-6404  
Ingham County Circuit Court - cc\_abraham@ingham.org

I N D E X

Page

Argument by Mr. Hermann 4  
Argument by Mr. Coakley 14

WITNESSES: PLAINTIFF'S

None.

WITNESSES: DEFENDANT'S

None.

EXHIBITS:

Exhibit # Description Received  
None.

Lansing, Michigan

September 7, 2011

at about 3:55 p.m.

\*\*\*\*\*

THE COURT: That just leaves Cooley Law School versus John Doe.

MR. COAKLEY: Good afternoon, Your Honor.

THE COURT: We are on the record in Thomas Cooley Law School versus John Doe, 1 through 4. Then it has a name on here, John Doe 1 through 4, interested parties, or something.

MR. COAKLEY: There is an amended complaint, Your Honor.

THE COURT: Okay. All right, file number 11-781-CZ. May we have appearances, please?

MR. COAKLEY: Your Honor, Mike Coakley appearing on behalf of Thomas Cooley Law School. With me is Paul Hudson, my colleague.

MR. HERMANN: Your Honor, John Hermann appearing on behalf of John Doe, Number 1, also known as Rockstar05 or [REDACTED]

THE COURT: That's where the name came up, [REDACTED]

MR. HERMANN: [REDACTED]

THE COURT: Was your associate's name, Mr.

Coakley?

MR. HUDSON: Paul Hudson, Your Honor.

THE COURT: Mr — how do you pronounce his last name?

MR. HERMANN: [REDACTED]

THE COURT: What's his ID name?

MR. HERMANN: Rockstar05.

THE COURT: Okay. So we have John Doe, which is now [REDACTED] Rockstar05's motion to quash subpoena?

MR. HERMANN: Yes, Your Honor. If it may please the Court, I would like to proceed with my motion?

THE COURT: Yes.

MR. HERMANN: Your Honor, on August 5th we filed this motion, initially, as a John Doe motion. At that time my client's identity was not known or disclosed. The motion was a motion to quash, or in the alternative, to seek a protective order limiting or restricting use of any information that was acquired through the access or disclosure of information that was via a subpoena that was issued

This action originated on July 14th of 2011.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1 On July 14th, soon thereafter, the  
2 Plaintiffs in this matter issued a subpoena to an  
3 internet web host provider by the name of Weebly,  
4 Incorporated. And Weebly is a California-based  
5 corporation.

6 THE COURT: We Believe?

7 MR. HERMANN: Weebly.

8 THE COURT: I see. W-E-E-B-L-Y, Inc, for  
9 the reporter?

10 MR. HERMANN: Correct.

11 Shortly after the Michigan subpoena was  
12 issued, on August 3rd a California action was  
13 initiated referencing and incorporating the  
14 Michigan subpoena.

15 THE COURT: By Cooley?

16 MR. HERMANN: Yes.

17 THE COURT: Against the same Defendants?

18 MR. HERMANN: Yes. Well, it was to enforce  
19 the Michigan subpoena. The sole purpose of the  
20 California action was an action to enforce the  
21 Michigan subpoena as to John Doe Number 1, also  
22 known as Rockstar05.

23 THE COURT: Okay.

24 MR. HERMANN: Again, at that time the  
25 identity of my client, which was [REDACTED] was

1 appropriate remedial measure would be, and all  
2 that was encompassed in our motion.

3 As soon as we filed our motion, a copy of  
4 the motion was served on Weebly. And attached as  
5 an exhibit was an e-mail correspondence that was  
6 directed to a Richard Ruffaker (op) of Weebly.  
7 And on August 9th Mr. Ruffaker confirmed that he  
8 had received the motion to quash, and that no  
9 further action would be taken, and that the  
10 contents of nothing would be disseminated from  
11 Weebly. I can read the contents of  
12 Mr. Ruffaker's response:

13 "You can consider the subpoena quashed at  
14 this point. I will keep you informed of the  
15 situation. Let me know if you have any  
16 questions."

17 As of August 9th I was under the  
18 assumption, as was my client, that all efforts  
19 that were initiated were moot at that point until  
20 further hearing of the Court. The earliest court  
21 date that we could get in front of Your Honor was  
22 September 7th, the date and time scheduled for  
23 this motion, at which time there would be a  
24 hearing, presumably, to discuss the  
25 appropriateness of the subpoena

1 not known. The purpose of the subpoena, both the  
2 Michigan subpoena and the California subpoena, was  
3 to disclose or obtain information relative to the  
4 owner of the web host account on a particular date  
5 and time that was maintained by the person that  
6 was referenced in Thomas Cooley's original  
7 complaint that was associated with that Rockstar05  
8 (hotmail address linked to that blog host).

9 We filed the motion to quash, or in the  
10 alternative, to seek a protective order limiting  
11 or restricting or prohibiting use of any of that  
12 information.

13 In addition to our motion to quash, we  
14 asserted a number of grounds as to why the  
15 subpoena was improper, premature, and not  
16 appropriate. As an alternative, we were also  
17 seeking to restrict any dissemination use in the  
18 event that the contents of the information was  
19 disclosed.

20 THE COURT: What kind of information did  
21 you suspect or now know to be in it?

22 MR. HERMANN: Whatever was responsive to  
23 the subpoena, we were asking that it be  
24 sequestered or protected until such time that the  
25 Court could conduct a review or determine what the

1 Unbeknownst to the parties, unfortunately,  
2 Weebly inadvertently disclosed the contents of  
3 all the information that was requested, via  
4 subpoena, on August 17th, to Mr. Coakley and  
5 Mr. Coakley's office.

6 THE COURT: So August 9th, you got your  
7 e-mail from Weebly saying they would hold it?  
8 August 17th they responded?

9 MR. HERMANN: Yes. In between that time  
10 there is an interesting development, because by  
11 initiating the California action there is a  
12 special law in California, it's called an  
13 anti-slap statute that Michigan does not have.  
14 But California has a special Consumer Protection  
15 Law that protects the types of disclosures in  
16 which someone is seeking the identity of someone  
17 for a blog or internet type of speech activity.  
18 And it's referenced under California Civil Code  
19 Procedure 1987-2. And any time that a California  
20 action is initiated to seek the identity to  
21 someone on a blog host, site or a website, there  
22 can be immediate action to dismiss the California  
23 action, whether it's a subpoena, complaint or  
24 whatnot. And there is an immediate suspension on  
25 all discovery efforts until there's a ruling on

1 the California action to dismiss. And on August  
2 of 11 of 2011, I instructed Mr. Coakley that I  
3 would be seeking an independent action in  
4 California in order to move to dismiss the  
5 California action based on California Civil Code  
6 of Procedure 1987-2.

7 At that point in time Mr. Coakley was  
8 aware that I was attacking both Michigan subpoena  
9 and the California subpoena, and all efforts to  
0 disseminate the information that was requested of  
1 Weebly. I had written confirmation from Weebly's  
2 representatives, but they were not going to  
3 release the information. And somehow or other  
4 that information got released.

5 THE COURT: What happened in California?

6 MR. HERMANN: I don't know. I have not  
7 received any written correspondence from Weebly as  
8 to why they released the information. I'm at a  
9 complete loss as to why they released the  
0 information.

1 THE COURT: Did you proceed with the  
2 California attack?

3 MR. HERMANN: The attack's moot once the  
4 action or once the information is released.

5 THE COURT: It'd sort of be like over here,

1 the alternate relief that we were seeking to  
2 obtain in our original motion for protective  
3 order that we were claiming that it was  
4 privileged or that we were seeking to obtain  
5 privilege or confidence over that information,  
6 that after being notified, a party must promptly  
7 return, sequester, destroy the specified  
8 information and any copies it has, and may not  
9 use or disclose the information until the claim  
10 is resolved."

11 On August 26th of this year I did  
12 indicate, prior to coming to this Court's  
13 hearing, we requested that of Mr. Coakley's  
14 office that whatever information had been turned  
15 over to Mr. Coakley's office from Weebly had been  
16 inadvertently distributed to his office, and that  
17 it be sequestered, returned. And that MCR  
18 2.302(C)(7) has a remedy in place in which that  
19 they could seek the appropriate relief in order  
20 to use that information. And that was not done.

21 The amended complaint, which listed my  
22 client by specific name and identity, was a  
23 specific result of the information that was  
24 produced to them, inadvertently. And it's my  
25 position that that use of that information was

1 too?

2 MR. HERMANN: With the exception of this  
3 motion as an alternative, a protective order. And  
4 I am also seeking, in addition, I filed a  
5 supplemental brief which talks about what happens  
6 in the event of an inadvertent disclosure

7 And in my supplemental brief, one of the  
8 issues that was raised, which is -- the situation  
9 here is what you do when information is  
0 inadvertently disclosed that shouldn't have been  
1 disclosed.

2 THE COURT: From Weebly to Cooley or Cooley  
3 elsewhere?

4 MR. HERMANN: Or to Cooley's lawyers. And  
5 under MCR 2.302(C)(7) there are a set of rules and  
6 procedures in place where there is a subsection  
7 where a document or piece of evidence is  
8 inadvertently disclosed.

9 THE COURT: What's the reason?

0 MR. HERMANN: MCR 2.302(C)(7). And the  
1 subsection is entitled: Information inadvertently  
2 produced. I'm paraphrasing, but the beginning of  
3 the subsection indicates:

4 "Information subject to a claim of  
5 privilege which we were asserting by virtue of

1 improper under the circumstances in light of the  
2 materials that we were provided, showing that  
3 Weebly was not going to release the information,  
4 in light of my written attempts to Mr. Coakley's  
5 office, seeking that we were going to obtain  
6 relief in California court, in light of my  
7 request for the information to be returned once  
8 it had been inadvertently disclosed. And rather  
9 than seeking relief from the Court, Mr. Coakley  
10 and his client used that information as the basis  
11 for the amended complaint which then identified  
12 my client by name, specifically. And, in other  
13 words, we were trying to put the genie back in  
14 the bottle.

15 There is a procedure to do that. That  
16 would have been under 2.302(C)(7). That wasn't  
17 followed. And, unfortunately, because the rule  
18 wasn't followed, my client is at a loss. My  
19 client's rights are prejudiced. And we are  
20 seeking the appropriate remedy based on the  
21 violation of the 2.302(C)(7) in that they are  
22 not being allowed to use any reference or use of  
23 the information that stemmed from any of the  
24 information that was released to them from  
25 Weebly. In other words, I will use the criminal

1 analogy: Any fruit from the poisonous tree  
2 should not be allowed to be used or utilize based  
3 on the violation of MCR 2.302(C)(7).

4 THE COURT: Other than the name, what other  
5 information was provided?

6 MR. HERMANN: Well, that's how they  
7 identified him so that they could name him in --

8 THE COURT: Right. But suppose I agreed  
9 with you. So we have his name. You want his name  
10 removed? He still would be known as John Doe.

11 MR. HERMANN: John Doe. And what's  
12 interesting --

13 THE COURT: I'm just asking what the  
14 practical effect is. I mean, suppose I agree with  
15 you. But, I mean --

16 MR. HERMANN: They would have no way of  
17 knowing who that individual would --

18 THE COURT: But they know now, so what are  
19 you proposing the relief would be? That we know  
20 who John Doe is now, so how can I put that back in  
21 the kettle?

22 MR. HERMANN: Well, the relief would be  
23 that they would be prohibited from using any of  
24 the information that was disseminated from Weebly.  
25 So, for instance, any of the e-mail addresses that

1 anything.

2 THE COURT: Well, I mean, you --

3 MR. COAKLEY: The motion is still moot,  
4 Your Honor.

5 THE COURT: Well, but you knew -- it's not  
6 really moot. You had the information, so...

7 MR. COAKLEY: Right.

8 THE COURT: As far as his name is moot, I  
9 would sort of agree with that. But why would I  
10 allow you to keep that information if it was  
11 inadvertently disclosed?

12 MR. COAKLEY: Well, that's the problem,  
13 Your Honor. It wasn't inadvertently disclosed

14 THE COURT: He says he had an e-mail from  
15 Weebly saying we weren't going to do it. Then it  
16 gets disclosed. Weebly just does it anyways. So  
17 he had a right to rely on that e-mail, I assume.

18 MR. COAKLEY: We had a right to rely on our  
19 subpoena, Your Honor. We were not provided with  
20 that e-mail. We did not know, for example --

21 THE COURT: But you knew before you filed  
22 the amended complaint that he was asserting, did  
23 you not, that it was an inadvertent disclosure?  
24 So you had the information. At least, in  
25 August 27th, 26th or 27th, I think he said it was,

1 were identified that were cross-referenced --

2 THE COURT: Well, that's why I was asking.  
3 What else could they receive? That was the point  
4 of my question.

5 MR. HERMANN: There were e-mail references  
6 identifying Hotmail accounts

7 THE COURT: For others and himself?

8 MR. HERMANN: For himself that were  
9 cross-referenced among student records. My client  
10 is a former Coakley student. So it's fair to say  
11 that they simply ran those addresses and were able  
12 to determine that those addresses were --

13 THE COURT: You made this request prior to  
14 the amended complaint they filed?

15 MR. HERMANN: On August 25th, yes.

16 THE COURT: Okay. All right. Mr. Coakley?

17 MR. COAKLEY: Thank you, Your Honor.

18 We are satisfied, Your Honor, with the  
19 brief that we filed. So with your permission, I  
20 would like to hit the highlights.

21 THE COURT: Okay.

22 MR. COAKLEY: You know, nothing that I  
23 heard this afternoon, nothing in the argument, and  
24 certainly nothing in the supplemental brief that  
25 the Defendant has submitted has really changed

1 before you filed the amended complaint, you  
2 knew --

3 MR. COAKLEY: We knew that that was his  
4 claim, Your Honor. But that was not an  
5 inadvertent disclosure at all.

6 THE COURT: Why not?

7 MR. COAKLEY: Because it was disclosed  
8 pursuant to -- it was a valid subpoena by the  
9 person that we had subpoenaed at Weebly.

10 THE COURT: But he had responded and filed  
11 his request that it be quashed, although we  
12 couldn't hear it until the 7th. He had  
13 information from Weebly saying they weren't going  
14 to disclose it. And then you got it anyways.

15 MR. COAKLEY: And he told us none of that,  
16 Your Honor.

17 THE COURT: He told you before you filed  
18 your amended complaint?

19 MR. COAKLEY: It wasn't inadvertent because  
20 Weebly voluntarily produced it without any  
21 involvement on our part. We didn't know it was  
22 coming when it came.

23 THE COURT: What's it say about  
24 inadvertent?

25 MR. COAKLEY: And, Your Honor, the --

1 THE COURT: "If information is subject to a  
2 claim of privilege or protection."

3 He had filed his request already asking  
4 for protection before you got it. He had he  
5 served it upon Weebly. Weebly got it and said,  
6 Okay, we will hold up. And they gave it out  
7 anyway. So it could have been inadvertent (in  
8 Weebly. I'm not saying that you encouraged him  
9 or enticed him to do anything about it. But it  
0 seems that he had already filed his request for  
1 protection, that Weebly already knew about the  
2 request for protection, had responded and told  
3 him that they weren't going to send it out and  
4 sent it out anyways.

5 MR. COAKLEY: But, Your Honor, the person  
6 that responded to our subpoena at Weebly is not  
7 the same person that he contacted

8 THE COURT: Well, we know the agent  
9 argument, Mr. Coakley, it could be John Doe or it  
0 could be Billie Jones. I'm not saying that Cooley  
1 had anything to do with it, or that they were  
2 trying to circumvent the process. But I am  
3 leaning toward that it was an inadvertent  
4 disclosure on the part of Weebly. They already  
5 told him that they haven't, weren't going to do

1 order, the motion to quash, the only thing that he  
2 asked for, and I heard Mr. Hermann get up here and  
3 say that his original motion asked for limiting  
4 access and restriction on use. What's the motion?  
5 That's not --

6 THE COURT: He asked to quash it. So I  
7 mean --

8 MR. HERMANN: He asked to prevent the  
9 protective order part of the motion, asked to  
10 prevent Weebly from disclosing the identity of  
11 John Doe Number 1. They have done that.

12 THE COURT: Well, I've already said that  
13 portion is moot. But I don't think Cooley should  
14 hold all his e-mail addresses and be able to go  
15 around and look and see what he has talked to the  
16 other people without coming to the Court. I think  
17 that's clearly an invasion of his privacy, in my  
18 opinion. I don't think anybody would want that.

19 So, yes, you have a claim for defamation.  
20 But I think that has to be subject to an  
21 in-camera review by the Court. I don't think you  
22 can hold it and then go on out and launch a  
23 discovery, forcing all these people in and invade  
24 his privacy. I really don't.

25 MR. COAKLEY: Well, and, Your Honor, that

1 it. They already had notice of the fact that  
2 under the Court Rule he was claiming protection.

3 MR. COAKLEY: But this information is not  
4 privileged, it's not --

5 THE COURT: He was claiming protection. I  
6 think he has a legitimate claim. Why should  
7 Cooley have all his e-mail contacts and all the  
8 people he contacted and what he did, other than  
9 what he may have communicated to Cooley? I mean,  
10 I think that's --

11 MR. COAKLEY: Because his client defamed my  
12 client, that's why. And he is a central figure in  
13 the claim. We will be defenseless to this kind of  
14 defamation if he is allowed to sequester that kind  
15 of information.

16 THE COURT: Well, I think he could ask for  
17 a protective order that it would come into me.  
18 And I could have looked at it, and made a  
19 determination. But I think to allow you to  
20 continue to hold it while we're waiting to see  
21 what, in fact, is going to be permissible, is kind  
22 of tight.

23 MR. COAKLEY: Well, Your Honor, the other  
24 issues here, I wish you would focus on a little  
25 bit, is the fact that this motion for protective

1 is based on a wrong notion of what the First  
2 Amendment Protections are.

3 THE COURT: I'm not saying that you -- we  
4 aren't even getting to that. All I'm saying, I  
5 believe that it should be subject to an in camera  
6 review for us to make a determination. I'm not  
7 saying anything about anybody's First Amendment  
8 protection of rights. I'm talking about his right  
9 to privacy and a right to have the Court look at  
10 this under the facts of this case. And in this  
11 case he did file a request for a protective order.  
12 He did serve it on a person you sent the subpoena  
13 to. And Weebly said we will honor it. Somebody  
14 didn't do it.

15 So I'm not saying that you or your office  
16 or Cooley went around to try to get the guy to do  
17 anything. Inadvertently Weebly sends it out to  
18 you anyways. And you have everything, including  
19 John Doe's name. And you want to hold on to it.  
20 And I think that under this, the remedy is that  
21 you have to turn it over to the Court, and then  
22 copies -- keep a copy. I don't know how we would  
23 do that. Let me see. I guess we will have to  
24 turn it over to the Court. And then you have to  
25 let me know what you want. Then we can have a

hearing on that to determine if you're entitled, to see where that leads you. Otherwise, I think it's cart blanche. You go in, invade this person's life, go into all the other emails, Cooley related or non-Cooley related, or talking to his girlfriend or whatever, that has nothing to do with this claim against or defamation against Cooley.

So that's my thoughts on it.

MR. COAKLEY: Well, I guess where we disagree, Your Honor, I guess we will have to leave it at that. I don't think there was any inadvertent disclosure on the part of Weebly. They were obligated to respond to the California subpoena. The only place where that could be challenged is in California. And the Defendant recognized that.

THE COURT: Well, I think the Defendant had a right to rely on the e-mail from Weebly. I really do. I practiced a long time. So, you know, I think the inadvertent came from Weebly. It falls right under the rule. Information is subject to a claim of protection, which it was. It's produced in discovery. The party making the claim may notify that the party that received the

information of the claim on the basis and the basis for it. He has done that. You acknowledged you got that letter August 26th, and 27th.

MR. COAKLEY: I do.

THE COURT: "After being notified the party must promptly return, sequester or destroy the specified information, and any copies it has, and it may not use or disclose the information until the claim is resolved."

"The receiving party may promptly present the information to the Court under seal — and that's what I am going to order — for determination of the claim."

"If the receiving party disclosed the information before being notified, it must take reasonable efforts to retrieve it."

I'm going to order that you take reasonable efforts to retrieve any information that you distributed

"And that you must preserve the information until the claim is resolved."

So I am going to find that it was an inadvertent disclosure on the part of Weebly. I'm not saying it was any fault of Cooley or Muller Confeld. But that seems to be the facts

1 are undisputed that Plaintiff — excuse me —  
2 Defendant, John Doe I had asked for a quash,  
3 which I am going to treat as a protection order.  
4 He did serve that upon Weebly, who is the subject  
5 of your subpoena. Weebly did respond and say  
6 they weren't going to do it, I believe, on  
7 August 3rd. Weebly apparently sent it out on  
8 August 17th. You got your letter from him  
9 pursuant to the Court Rule about August 26th and  
10 27th. And then you filed an amended complaint  
11 based on the information you got as a result of  
12 the subpoena.

13 MR. COAKLEY: And we also told Mr —

14 THE COURT: That's a little thin in my  
15 mind. I mean, even if we are going to take that,  
16 why would you rush to the court, file this, name  
17 this guy, if you knew it was likely that I would  
18 rule that it was an inadvertent disclosure? It's  
19 thin. I understand your argument, but I'm just  
20 telling you from a practical standpoint, in my  
21 mind, it's thin.

22 MR. COAKLEY: It never crossed my mind —

23 THE COURT: Of course not.

24 MR. COAKLEY: — that you would deem that  
25 an inadvertent disclosure.

1 THE COURT: Well, yes. You rushed in, you  
2 got the guy's name out there.

3 MR. COAKLEY: No. No. As soon as we got  
4 the information, we gave it over to Mr. Hermon.  
5 We told him — we asked him to withdraw the  
6 motion. We told him that we were going to file an  
7 amended complaint. What we got in response was a  
8 refusal to withdraw the motion, which was a motion  
9 to quash to prevent the identity. Nothing else.  
10 That was the full extent of the motion that we  
11 were facing. There was no request to prevent  
12 disclosure, or to prevent use. That was the  
13 last-minute thing that he filed.

14 THE COURT: Today it's moot now, I agree.  
15 But anyway this is what I am going to do, as I  
16 stated. I am going to rule that it was an  
17 inadvertent disclosure on the part of Weebly. I  
18 am going to ask that, Mr. Coakley, you turn over  
19 all the information to me, under seal. And then  
20 we can look at it and go from there. I assure  
21 your staff has had an opportunity to look at it.  
22 So I'm going to indicate there should not be any  
23 additional discovery request generated from this  
24 until after the specific order on that. Not to  
25 contact anybody else's e-mail address. Not to

1 follow-up to see what other texts or messages,  
2 whatever it was, without prior permission of the  
3 Court.

4 MR. HERMANN: Your Honor, if I may. The  
5 amended complaint lists my client by specific name  
6 as well as my appearance. I would ask, would the  
7 Court consider either striking the amended  
8 complaint and leaving the original complaint with  
9 a John Doe?

10 THE COURT: Is that the only difference?

11 MR. HERMANN: That's the only difference.

12 THE COURT: That is the only difference?

13 MR. COAKLEY: That's the only difference.

14 THE COURT: Strike his name under the  
15 pleadings.

16 MR. HERMANN: As well as my appearance,  
17 also?

18 THE COURT: As well as your appearance, for  
19 the time being, subject to review.

20 MR. HERMANN: Obviously, Your Honor.

21 THE COURT: Once we get the documents, we  
22 can review them. I mean, I'm pretty liberal on  
23 discovery, I can just tell you. But I don't think  
24 they need to go into all his private life. I will  
25 tell you that.

1 Honor, that we had some subpoenas in process. I  
2 don't know whether they had been issued or not.

3 THE COURT: If they haven't been issued, we  
4 will quash them or remove them. If they have  
5 been, anything that comes directly under seal  
6 comes to the Court. No copies made, or anything,  
7 comes to the Court, we would look at them and see.

8 MR. HERMANN: Would Your Honor care to  
9 schedule a time for the evidentiary hearing?

10 THE COURT: I think we can schedule a time  
11 with my assistant in the back. Probably have to  
12 be on some day other than Wednesday, so she would  
13 have to have the schedule based on how much time  
14 you think it would be.

15 MR. COAKLEY: Will Mr. Hermann's client be  
16 in attendance at that hearing, Your Honor?

17 THE COURT: Be interesting, won't it? We  
18 will see if he is here.

19 MR. COAKLEY: Little difficult to  
20 cross-examine John Doe.

21 THE COURT: I think he'll probably have to  
22 appear. I agree with you on that.

23 MR. COAKLEY: Thank you. We will prepare  
24 an order.

25 THE COURT: Okay.

1 MR. HERMANN: Fair enough.

2 THE COURT: I know Miller Confield is  
3 thorough.

4 MR. COAKLEY: We are that, Your Honor.

5 THE COURT: You are thorough. I have been  
6 up against you. So you are thorough.

7 MR. COAKLEY: I hope you aren't going to  
8 hold that against me. Mr. Hudson pointed out to  
9 me all of the information that we had from Weebly  
10 is attached to our response as Exhibit B.

11 THE COURT: I'm going to enter an order  
12 that that portion be removed from the Court file,  
13 from the pleadings. It shouldn't be in the  
14 pleadings. So that should be removed. And enter  
15 an order to that effect, Ms. Sadoff. Can you do  
16 that? We will be removing that exhibit from the  
17 information. The original information should be  
18 turned over to me under seal. I guess as an  
19 officer of the Court, if you're saying you're not  
20 going to take any discovery actions, Mr. Coakley,  
21 since copies have been distributed, at all, that  
22 would seem to be -- would you agree with that?

23 MR. HERMANN: That's fair enough, Your  
24 Honor.

1 (Proceedings concluded at 4:25 p.m.)  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

STATE OF MICHIGAN )  
COUNTY OF INGHAM )

I, TERESA J. ABRAM, Certified  
Shorthand Reporter and Notary Public in and for the  
County of Ingham, State of Michigan, Thirtieth Judicial  
Circuit Court, do hereby certify that the facts stated in  
the foregoing pages are true and correct, and comprise  
a complete, true and correct transcript of the  
proceedings taken in this matter on this the  
7th day of September, 2010

\_\_\_\_\_  
Teresa J. Abraham, CSR-3445

Date: September 8th, 2010