

Joseph Pilchesky,

Plaintiff,

v.

Judy Gatelli, as President of Scranton City Council; as Councilwoman; and, in her Individual capacity,

Defendant,

v.

Joanne Pilchesky, John Doe, a/k/a 1 Musketeer, John Doe, a/k/a 3blindrats, John Doe, a/k/a 666, John Doe, a/k/a 1935, John Doe, a/k/a A man named Jed, Jane Doe, a/k/a abbey, John Doe, a/k/a Adam, John Doe, a/k/a Anti oppression, John Doe, a/k/a Antisystemicmovements, John Doe, a/k/a aquamg, John Doe, a/k/a atty skeletor, John Doe, a/k/a baron, John Doe, a/k/a bigdaddy, John Doe, a/k/a Black helicopters, John Doe, a/k/a Black Lung, John Doe, a/k/a BoobyMcGoof, Jane Doe, a/k/a bo peep, John Doe, a/k/a Brainwashed, John Doe, a/k/a Chris, John Doe, a/k/a City Haul, John Doe, a/k/a clarks summit luv nest, John Doe, a/k/a commoner, John Doe, a/k/a Council rat, John Doe, a/k/a Crazy Otto, John Doe, a/k/a Crony watcher, John Doe, a/k/a cyberlion, John Doe, a/k/a DarthArt, John Doe, a/k/a DeerParkerLumber, John Doe, a/k/a Deleware, John Doe, a/k/a Dice Rolling 101, John Doe, a/k/a Don't fear government, John Doe, a/k/a Eye for an Eye, John Doe, a/k/a ezeddie, John Doe, a/k/a flower child, John Doe, a/k/a Freedom is not free, John Doe, a/k/a FRICKELLMOIE, Jane Doe., a/k/a Gatellis blue dress, John Doe, a/k/a Gimme a break, Jane Doe, Granma, John Doe, a/k/a Hammer, John Doe, a/k/a Hitlers downfall, John Doe, a/k/a History writer, John Doe, a/k/a Intelligent thinker, John Doe, a/k/a insider, John Doe, a/k/a Irish Eyes are not Shining, John Doe, a/k/a Isnt that lovely, John Doe, a/k/a jimbu15, Jane Doe, a/k/a Judy, Jane Doe, a/k/a June Cleaver, John Doe, a/k/a JustTheFacts, Jane Doe, a/k/a Katie, John Doe, a/k/a Liberty is expensive,

: IN THE COURT OF COMMON
: PLEAS OF LACKAWANNA
: COUNTY, PA

: CIVIL ACTION
: No. 2007-CV-1838

2007 JUN 15 11 2 12
JUDICIAL CENTER
SCRANTON PA

Jane Doe, a/k/a Lipstick and lashes, John Doe, a/k/a :
 Lobby cyst, John Doe, a/k/a methinks4myself, :
 John Doe, a/k/a Milo Ferlicker, John Doe, a/k/a :
 MistyMtTop, John Doe, a/k/a Money stalks, :
 John Doe, a/k/a Moving Forward, John Doe, a/k/a :
 Newsroom, Jane Doe, a/k/a newgirl, John Doe, a/k/a :
 Nobody, John Doe, a/k/a NoRepresentation, :
 Jane Doe, a/k/a NotADumbBlonde, Jane Doe, a/k/a :
 Once upon a secretary, John Doe, a/k/a Paul, :
 John Doe, a/k/a peewee, John Doe, a/k/a phoenix, :
 John Doe, a/k/a Pilcheskytics, John Doe, a/k/a :
 Logic, John Doe, a/k/a Political sex, John Doe, a/k/a :
 powertothepeople, John Doe, a/k/a Sacred Heart of :
 Elvis, Jane Doe, a/k/a Scranton Girl, Jane Doe, a/k/a :
 Stacy, John Doe, a/k/a The Judge, John Doe, a/k/a :
 The Mole, Jane Doe, a/k/a themom, John Doe, a/k/a :
 The next generation, John Doe, a/k/a Traditional :
 apathy, John Doe, a/k/a TwistedBrother, John Doe, :
 a/k/a Unionman, John Doe, a/k/a watch and ward, :
 John Doe, a/k/a/ Waterfalls, John Doe, a/k/a We are :
 so screwed, John Doe, a/k/a wildabeast, John Doe, :
 a/k/a Wolf pack, Jane Doe, a/k/a Working woman, :
 John Doe, a/k/a XraYspX, John Doe One, John Doe :
 Two, John Doe Three, John Doe Four, John Doe :
 Five, John Doe Six, John Doe Seven, John Doe :
 Eight, John Doe Nine, and John Doe Ten, :

Additional Defendants. :

MARY FERRELL CENTER
 2007 APR 10 10 21 AM '07

BRIEF IN SUPPORT OF PETITIONER JUDY GATELLI'S PETITION TO COMPEL DISCLOSURE OF THE IDENTITY OF ADDITIONAL DEFENDANTS

Petitioner, Judy Gatelli ("Gatelli"), by her undersigned counsel, hereby files this Brief in Support of her Petition to Compel Disclosure of the Identity of Additional Defendants and in support thereof, states as follows:

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Plaintiff Joseph Pilchesky ("Pilchesky") operates and maintains a website and message board known as www.Dohertydeceit.com ("Dohertydeceit.com"). Additional Defendant Joanne Pilchesky assists Pilchesky in the operation of Dohertydeceit.com. Initially, Pilchesky operated

Dohertydeceit.com to oppose the Administration of Scranton Mayor Christopher Doherty. Since then, Pilchesky and his followers, including the Additional Defendants, have expanded their efforts by attacking numerous other public and private persons, including Gatelli, the President of the Scranton City Council. Pilchesky, a convicted felon, and his wife, Additional Defendant Joanne Pilchesky, operate Dohertydeciet.com to further a political agenda based, in large part, on mean-spirited, reckless and, often, knowingly false personal attacks against public officials. They do so in a contrived effort to substitute their will and personal agenda for that of the duly elected officials in the City of Scranton and the County of Lackawanna. In that regard, and for that purpose, Pilchesky and Additional Defendants have used the Dohertydeceit.com website and message board to, inter alia, publish, with malice, scandalous, impertinent and often defamatory allegations against Gatelli.

While the Complaint and Joinder Complaint set forth with particularity the defamatory and otherwise actionable Posts against Gatelli, a representative sampling of those Posts must be set forth herein to place the legal challenges at issue in the appropriate context. For illustrative purposes, those Posts are as follows:

- Gatelli is destined to be the most despised and hated woman ever elected to public office, bar none. Doherty is using her like an old condom, and she's game (12/8/06);
- You foul mouthed lying sack of Doobie Scum... You and Sherry spending time sharing the kneepads these days or did you get your own pair when you began kneeling before the King? Another lie from your Doobie Princess Sellout... G-F-Y (12/19/06);
- I'm in the business of trying to kill political careers here, but only those deserving of it, as well as recover from corrupt actions, to any degree (12/19/06);
- Judy the Doobie Hitler Butch (1/8/07);

- She's a betrayer like we've never seen before and should be confronted. She's near the edge now, and I don't think she's good for a lot more (1/10/07);
- I have some words for those two whores, but they can't be said on TV (1/10/07);
- Hear that noise? Its your political career dying. I hope you all go to jail you crooked backdoor spineless followers. Especially you Judy you lying bitch. I believed you when you ran... I know "YOU LIED" same way you lied to Janet about being council president. **** YOU AND YOU TAX PAYER SIPHONING FAMILY (2/5/07);
- That ****Gatelli better get the hell out of town if one-hundreth of the people who get their bills feel like I do, that Hitler SS pig. Who the hell does that crony-rotted dog think she is to pull this crap and think the sun is going to shine tomorrow (2/6/07);
- I'd like to send Mrs. SS Gatelli a piece of my mind. Anyone have an address for this Nazi dyke (2/6/07);
- Called her a Doherty blowjob (2/6/07);
- Gatelli is the lowest of the lowest scum in this city (2/7/07);
- JUDY IS AN IGNORANT BIMBO! She needs a good boot in the a\$\$\$. All she proved tonight is that she is stupid. I do not use that word (stupid) lightly. She shows no education. She certainly shows she has no class (2/9/07);
- She has no class. We all know she is far short of possessing any trace of honesty where the working class is concerned. She was for sale and she has been bought and paid for (2/9/07);
- Judy is calling in all her favors to try to pull this off, including, from what I've heard, that she's barely able to continue on council and if hubby wins, she's outta there. How's that for a new twist? Vote one flee onto the dog and I'll jump off. Nice if you can pull it off, except Judy forgets something, the name Gatelli is the name Hitler in Scranton (2/10/07);

- Gatelli's word isn't worth the paper it's written on. Watching last night's council I just wish I could fast forward to the next election to get that ugly bimbo out of there. The exchange with Fay Franus was unbelievable, with Gatelli looking like a bigger horse's ass than she already is (2/11/07);
- It sucks because after Gatelli will be another person waiting their turn to be Doherty's next bitch. He'll never run out of bitches to buy (2/11/07);
- Butch thought she was going to clean up City Council the same way she has been cleansing South Side and the same way she 'cleaned up' Scranton when she was STEALING and land-grabbing for Connors. But she along with Sherry have become the one of city's biggest embarrassments (note, for instance, how Butch lashed out about her family being threatened and Bill couldn't prevent himself from laughing). Judy has gone through, coining the concept "belief to disbelief". Judy, no doubt, was always the ruthless and 2 faced bitch she has proven to be to the City of Scranton. Being the mayor's rubber stamper (2/11/07);
- NEVER AGAIN FOR JUDY THE TWO FACED LIAR! (2/12/07);
- The only way "Nazi" Gatelli {Sieg Hiel} is giving up her Council seat is when her fat, Nazi, A\$\$ doesn't fit in it anymore!!! Hey Ursula, why don't you shove another Cannoli down your fat pie-hole and decide whose rights you're gonna violate this week!!! (2/13/07);
- And the name Gatelli will be burned into the mind of every voter as the name that stands for greed, selfishness, corruption and lies. **THAT'S A PROMISE** (2/15/07);
- Judy Gatelli is a lying scumbag. She is a pig (2/21/07);
- Oh that's right her and fanny have qualifications for council, thick knee pads (3/22/07);
- She's screwed for lying last week and it's on tape what she lied about (3/22/07);
- Judy is a liar. Judy is a cheat. Judy sold her soul to the d.d. (devil do) Judy got corny jobs for members of her family. Judy did favors to get those crony jobs. Judy abuses her position as council president. Judy has no clue how to run a meeting. Judy is the

chief reason there is disruption at council meetings. Judy would not hold this office if recall were allowed in Pa. Judy is amoral. Judy has no ethics. Judy has crushed her hubby's chances of election. Judy has no respect for the taxpayers. Judy has killed her political future (3/22/07);

- Prostitution is the oldest occupation (3/22/07);
- Ursula is a Nazi, plain and simple. (3/23/07);
- Gatelli is now the Nazi villain. (3/24/07);
- That ugly pig deserves whatever she gets from the speakers. (3/26/07);
- How desperate can you get. They are that concerned because of the lies and corruption carried out by these three evil doers? (3/26/07);
- This goes to her grossly unethical conduct and very poor leadership skills. (3/28/07);
- Rattlesnakes like Judy Gatelli have to be made a fool of publicly as often as possible, be shown to be a corrupt thief as often as possible and be exposed as being stupid as often as possible. (3/28/07);
- The only Judy we saw last week was an overmedicated one (& don't say she wasn't, her head was bobbing more than Fanny's) Residents go there w/their concerns & she does NOTHING!!!!!! You can't rob people blind, laugh in their faces & demand respect. It doesn't work that way. (4/1/07);
- Hey Judas tomorrow is a big day for you... wanna kiss my cheek? Lying pig. (4/5/07);
- By those definitions alone, Judy Gatelli is as corrupt as the day is long. (4/7/07);
- Watch, as the politically corrupt run for cover and the likes of Judy Gatelli gets branded for life as a notorious betrayer of the people. The names Gatelli and Doherty are now identified only with deceit and corruption, and they will never survive the well deserved stigma attached by free speech.

- She is the biggest flipper around. Also she shows the Sewer Authority a lot of favors since she had her driveway done by them when Connors was Mayor and also had her house built when there was a hold on issuing permits for new residential construction in the city. (4/19/07);
- You just confirmed what we already knew you filthy liar. (4/19/07);
- Judas as the lying, disgraceful dodo mule she truly is. Judas, you are a hypocrite in practicing your Catholic faith. You are a snake. Why go to church when you have no intentions of practicing your religion outside of St. Francis' doors? (4/20/07);
- Judy's openly racist and hostile attitude doesn't bother me. What really makes me nervous is that the terrible inequities Judy caused during her tenure at City Hall. (4/20/07);
- Judas is a liar. You must believe that. She never spoke with the reps of at least two of the city's unions. What is wrong with this woman? Why would she sit there and lie through her teeth? SHE DID NOT SPEAK WITH THE REPS OF AT LEAST TWO CITY UNIONS and I am not including the DPW. You figure it out. Hey Judas, does LIAR LIAR PANTS ON FIRE feel comfortable? Does the quote feel familiar? YOU ARE A BALD FACE LIAR! You are going to have to answer to that statement. You are digging a great big hole and guess whom you are putting in that hole?! (4/21/07);
- How easily and effortlessly Judas lies. I like adding to the mix her cancellation of the Holly Thursday meeting, too. She takes her Catholic religion seriously? Yet another lie. (4/25/07);
- She's a proven liar and betrayer of the people. (4/26/07);

Pilchesky and the Additional Defendants regularly post or otherwise publish defamatory statements about Gatelli on Dohertydeceit.com, such as those set forth above, to purposefully malign and/or otherwise disparage Gatelli in the eyes of the public ("Posts"). This intentional, malicious and contrived misconduct is designed to force Gatelli from office or have her capitulate and adopt Pilchesky's and the Additional Defendants' skewed political agenda. This campaign of harassment, intimidation and cyberlibel against Gatelli has included threatening

phone messages and profanity-laced emails similar to the vicious and contrived rantings which have been published on Dohertydeceit.com. Gatelli has and continues to feel threatened by said harassment and intimidation, and has publicly voiced her concerns over same.

In an effort to quiet Gatelli's opposition to Pilchesky's campaign of harassment and intimidation, Pilchesky filed a complaint against Gatelli at Civil Action No. 2007 CV 1838 alleging defamation, retaliation and harassment ("Complaint"). In response, Gatelli filed an Answer, New Matter and Counterclaim ("Answer, New Matter and Counterclaim"). Moreover, in an effort to remedy the entire campaign of harassment, intimidation and cyberlibel which has been viciously and maliciously waged against her, Gatelli filed a Joinder Complaint against the Additional Defendants ("Joinder Complaint"). Gatelli, however, has no knowledge or information concerning the identity of the Additional Defendants with the exception of Joanne Pilchesky. Thus, Gatelli was forced to identify the Additional Defendants in her Joinder Complaint by their dohertydeceit.com screen-names. Consequently, Gatelli cannot serve or otherwise identify the culpable defendants in her Joinder Complaint.

In light of the foregoing, Gatelli filed a Petition to Compel Disclosure of the Identity of Additional Defendants and Petition to Prevent Pilchesky and Additional Defendant Joanne Pilchesky from Destroying Information Relevant to this Action ("Petition"). This Court entered a Rule Returnable scheduling a hearing on the aforesaid Petitions and ordering Pilchesky and Additional Defendant Joanne Pilchesky from altering, manipulating, purging, or otherwise destroying information relevant to this action pending further order of Court. Gatelli submits this Brief in support of her Petitions.

ARGUMENT

A.) **The First Amendment Does Not Protect Defamatory Speech.**

The right of free speech is not absolute at all times under all circumstances. Chaplinsky v. State of New Hampshire, 315 U.S. 568, 62 S.Ct. 766 (1942)(citing Schenck v. United States, 249 U.S. 47, 39 S.Ct. 247 (1919); Whitney v. California, 274 U.S. 357, 47 S.Ct. 641 (1927); Near v. Minnesota, 283 U.S. 697, 51 S.Ct. 625 (1931); DeJonge v. Oregon, 299 U.S. 353, 57 S.Ct. 255 (1937); Herndon v. Lowry, 301 U.S. 242, 57 S.Ct. 732 (1937); Cantwell v. Connecticut, 310 U.S. 269, 60 S.Ct. 937 (1940)). Certain classes of speech including defamatory and libelous speech are not entitled to Constitutional protection. Doe v. Cahill, 884 A.2d 451 (De. 2005). See also, Hepps v. Philadelphia Newspapers, Inc., 3 Pa. D.&C. 3d 693 (C.C.P. Chester 1977) (citing Gertz v. Welch, 418 U.S. 323, 94 S.Ct. 2997 (1974)). It is well-established that such utterances are of no essential part of any exposition of ideas, and are of such slight social value that any benefit derived therefrom is clearly outweighed by the social interests in order and morality. Chaplinsky, supra at 572. See also, In re: M.J.M., 858 A.2d 1259 (Pa. Super. 2004).

Similarly, the right to speak anonymously on the internet is not absolute, and is certainly subject to limitation. Polito v. AOL- Time Warner, Inc., 2004 Pa. Dist. & Cnty. Dec LEXIS 340 (2004). See also, Immunomedics, Inc. v. Doe, 775 A.2d 773 (N.J. Super 2001). In fact, defamatory internet statements and/or internet statements that are “defamatory per se” are not entitled to Constitutional protection. Klehr Harrison Harvey Branzburg and Ellers, LLP v. JPA Development, Inc., 2006 Phila. Ct. Com. Pl. LEXIS 1 (2006)(reversed on other grounds at 2006 Pa. Super. LEXIS 1208 (Pa. Super. 2006)). The Posts in the instant matter are defamatory, and, consequently, not protected by the First Amendment.

B.) Pilchesky and Additional Defendants Have No Expectation of Privacy on Dohertydeceit.com.

The Additional Defendants have no expectation of privacy or right to anonymity on Dohertydeceit.com. See, John Doe v. Gerald W. Haddock, 2007 Tex. App. LEXIS 2532 (Tex. App. 2007). Before the Additional Defendants ever posted to the website, they were provided with the following warning: “NOTICE TO ALL POSTERS” (“Notice”) “as a poster here, you can be identified through your IP address. You will not be anonymous.” (Emphasis Added). The Warning further provides that posters can be held responsible for the content of their postings and can be “vulnerable to defamation (libel) and other legal actions if they are not true.”

Based on the foregoing, Additional Defendants knew that they could be identified and/or held legally responsible for any defamatory or otherwise improper Posts on Dohertydeceit.com. See, Haddock, supra. Consequently, Additional Defendants had no reasonable expectation of privacy when they submitted their defamatory and otherwise improper Posts regarding Gatelli. Therefore, Pilchesky and Additional Defendants cannot rely upon any privacy right or anonymity right to justify their withholding of the requested information. In light of the foregoing, there is no compelling reason, First Amendment or otherwise, to withhold the identities of the Additional Defendants. Accordingly, Gatelli is entitled to an order compelling disclosure of the identities of the Additional Defendants.

C.) Pennsylvania Case Law Requires this Court to Order the Disclosure of the Identities of the Additional Defendants.

The courts of this Commonwealth have attempted, in a quartet of cases, to reach an equitable balance between an anonymous defendant’s First Amendment right to speak and a plaintiff’s right to obtain relief for criminal or tortious conduct. Melvin v. Doe, 49 D.&C. 4th 449 (C.C.P. Alleg. 2000), *appeal quashed*, 789 A.2d 696 (Pa. Super. 2001), *vacated and*

remanded, 836 A.2d 42 (Pa. 2003). Polito, *supra*. Klehr Harrison, *supra*. Reunion Industries, Inc. v. Doe, et al., 2007 Pa. Dist. & Cnty. Dec. LEXIS 20 (C.C.P. Alleg. 2007). These decisions, however, were made without the benefit of any Pennsylvania appellate precedent establishing a definitive standard governing a litigant's right to ascertain the identity of an anonymous Internet speaker. Consequently, this Court must analyze each of the standards adopted in the aforementioned Pennsylvania cases as they apply to the facts in this case.¹ As referenced above, this Court must ultimately strike a balance between the First Amendment right to freedom of speech and anonymity and the right to order and morality relating to the claims for defamation, civil conspiracy and intentional infliction of emotional distress advanced by Gatelli herein.

1) Melvin v. Doe:

In Melvin, a Superior Court judge filed a defamation action against anonymous defendants who posted allegedly defamatory statements on a website. Melvin, *supra* at 450. In determining whether the judge could discover the identity of the defendants, the Common Pleas Court of Allegheny County concluded that the plaintiff must first satisfy the threshold requirement that the complaint on its face set for a valid cause of action, and that the plaintiff offer testimony that would permit a jury to award damages. Id. at 462, 463.² The Court ultimately concluded that the plaintiff must also demonstrate that the information requested is: a)

¹ While the standards adopted by the Courts in Melvin, Polito, Klehr Harrison and Reunion are similar, they are not uniform, and appear to be fact specific. Consequently, each of the standards have been accepted, but are distinguishable.

² Significantly, the thresholds are met if a) the plaintiff establishes that the publication appeared on the internet and that the statements if false, support a defamation recovery; and b) the plaintiff testifies that the statements are untrue and the judge experienced emotional distress. Melvin, *supra* at 462, 463.

material, relevant and necessary; b) cannot be obtained by alternative means; and c) is crucial to Plaintiff's case. Id. at 477. Significantly, the Court ordered the defendants in Melvin to reveal their identities.³ Id. at 480, 481.

If this Court were to apply the Melvin standard to the facts in the instant case, it would compel disclosure of the identities of the Additional Defendants.⁴ The identities are certainly material, relevant and necessary for Gatelli to proceed because in order for the action to be commenced, original process to be served and relief obtained, Gatelli must determine the identities of the Additional Defendants. The identities are crucial to Gatelli's case and cannot be obtained by other reasonable means. Moreover, the Complaint, on its face, sets forth viable claims for defamation, civil conspiracy and intentional infliction of emotional distress, and Gatelli is prepared to offer testimony that would permit a jury to award damages based upon said claims. See, Melvin at 462, 463.

2) Polito v. AOL Time Warner, Inc.:

The plaintiff in Polito filed an action against AOL seeking to compel the identities of certain AOL subscribers who forwarded harassing, pornographic communications to her via the internet. Polito, supra at *2. Upon consideration of Plaintiff's discovery requests, the Court of Common Pleas of Lackawanna County analyzed the ruling in Melvin, supra, as well as rulings in other jurisdictions. In doing so, the Court adopted a standard for determining whether or not the First Amendment protects the anonymity of a person who anonymously publishes a defamatory statement on the Internet. More specifically, the Court concluded that Plaintiff was entitled to

³ The defendants appealed the order, and the Superior Court quashed the appeal. The defendants subsequently appealed to the Pennsylvania Supreme Court and that Court remanded the matter to the Superior Court for a determination of whether or not the plaintiff was required to establish economic harm prior to obtaining discovery. The Superior Court did not reach a decision on the merits relating to said requirement.

⁴ Significantly, the defendants in Melvin posted a statement on an Internet webpage that plaintiff engaged in "misconduct." Melvin, supra at 451. The statements were considered defamatory and the Court ordered disclosure of the defendants identities. Id. at 481.

obtain the identities of the AOL subscribers in question if she: a) satisfactorily stated a cognizable claim under Pennsylvania law entitling her to some form of civil or criminal redress for the actionable speech of the unknown declarants; b) demonstrated the identifying information is directly related to her claim and fundamentally necessary to secure relief; c) sought the requested information in good faith and not for some improper purpose; and d) was unable to discover the identity of the anonymous speakers by alternative means. Polito, *supra* at *20, 21.

After applying the aforesaid standard to the facts, the Court determined that the communication supported conceivable claims for harassment or stalking by communication, stalking by communication and intentional infliction of emotional distress, and that prima facie grounds existed for imposing civil liability upon the subscribers. Id. at *31. The Court also determined that the information requested was relevant and necessary for plaintiff to proceed because in order for the action to be commenced, initial process to be served and relief to be obtained, Plaintiff must determine the identities of the subscribers (Emphasis Added). Id. at *32. Finally, the Court considered the request to have been made in good faith because plaintiff's primary motivation was to obtain relief and terminate the unsolicited revilement, not to silence legitimate critics. Id. at *32, 33.

The facts in Polito are analogous to the facts in the instant case in that Gatelli has stated cognizable claims for defamation, civil conspiracy and intentional infliction of emotional distress. Similarly, Additional Defendants' identities are relevant and necessary because Gatelli cannot proceed with this action, serve original process and/or obtain relief without first identifying the Additional Defendants. Once again, Gatelli cannot obtain the identities of the Additional Defendants by other reasonable means. Finally, Gatelli has sought the identities of Additional Defendants in good faith. For these reasons, this Court must compel the disclosure of

the identities of Additional Defendants in accordance with the Polito standard.⁵

3) Klehr Harrison, Harvey Branzburg and Ellers, LLP v. JPA Development, Inc., et al.:

In Klehr Harrison, the plaintiff's law firm filed a complaint against several defendants alleging defamation and civil conspiracy based upon a website which accused the law firm of criminal and fraudulent conduct. Klehr Harrison, supra at *1. In connection with this lawsuit, the plaintiff propounded discovery upon the defendants seeking the identities of the anonymous posters. Id. at *3. In lieu of a response, the defendants moved for a protective order to preclude the production of information on the ground that it violated the posters right to anonymous speech. Id.

The Common Pleas Court of Philadelphia County recognized that "courts have arrived at differing standards for determining whether to allow disclosure of an anonymous internet user's identity when the user is sued for making defamatory statements over the internet." Id. at *4. After reviewing the standards adopted in Melvin and sister jurisdictions, the Court concluded that no new standards were required because Pennsylvania's existing procedural rules adequately protected the First Amendment rights of anonymous internet posters. Id. at *9. The Court further agreed with one commentator's concerns regarding the wave of new standards concerning the discovery of anonymous Internet poster's identities:

Though well intentioned, the rush to apply new standards [to discovery issues related to anonymous posters to the Internet] should be slowed. The threat to core First Amendment free speech rights from too readily identifying anonymous speakers is real, and should be taken seriously by the courts. At the same time, however, the new standards offer little real protection for anonymous speech beyond what the courts can provide under existing rules. In exchange for this limited benefit, however, the

⁵ The plaintiff in Polito received several "offending" e-mails regarding her weight, eating habits, her parents purported economic status, her mental health issues and other extremely sensitive private matters." The Court considered the communications actionable and compelled the disclosure of the defendants' identities.

grafting of new tests onto existing rules threatens to compromise the values protected by other constitutional provisions, including due process, equal protection, and the right to a trial by jury. In particular, application of an out-come determinative heightened discovery standard singled out one class of plaintiffs who are systematically deprived of the litigation procedures, specifically discovery and trial, that are available to other plaintiffs, including plaintiffs with claims that are similar in all regards except that they allege harm by plaintiffs who did not act anonymously.

Id. at *8. See also, Michael S. Vogel, Unmasking “John Doe” Defendants: The Case Against Excessive Hand-Wringing over Legal Standards, 83 Oregon L. Rev. 795 (2004).

Accordingly, the Court declined to apply the standard adopted in Melvin or the standards adopted by sister states and instead analyzed defendant’s motion for a protective order under existing Pennsylvania discovery rules. Klehr, supra at *9. Specifically, the court analyzed the defendant’s motion for a protective order under Pennsylvania Rule of Civil Procedure 4011 which provides that:

No discovery or deposition shall be permitted which:

- a) is sought in bad faith;
- b) would cause unreasonable annoyance, embarrassment, oppression, burden or expense to the deponent or to any party;
- c) is beyond the scope of discovery as set forth in Rules 4003.1 through 4003.6...

Id. at *9. See also, Pa. R. Civ. P. 4011.

In denying the defendant’s motion for a protective order, the court concluded that there was no evidence that the plaintiff sought the identities of the anonymous defendants in bad faith, and that the discovery was calculated to lead to the discovery of relevant information. Id. at *10.

Finally, the court, after acknowledging the “democratizing power of the Internet” and “that the right to speak anonymously is subsumed within the Constitutional right to speak freely,” concluded that the discovery would not unreasonably burden the anonymous defendant’s First Amendment rights. Id. Its conclusion was based on the fact that the United States Supreme Court has explicitly held that defamatory and libelous speech enjoys no Constitutional protection and that many of the statements on the website were defamatory (Emphasis Added). Id.

If this Court were to analyze Gatelli’s Motion to Compel under Pennsylvania Rule of Civil Procedure 4011 and the standard adopted in Klehr, it would undoubtedly compel disclosure of the identities of Additional Defendants. First, the defamatory Posts are not protected by the Constitution, and second, it is abundantly clear that a) Gatelli has sought the identities of Additional Defendants in good faith; b) the discovery would not cause unreasonable annoyance, embarrassment, oppression, burden or expense; and c) the discovery is not beyond the scope of the Pennsylvania Rules of Civil Procedure. Therefore, this Court must, under Klehr, compel the disclosure of Additional Defendants’ identities.

4) Reunion Industries, Inc. v. Doe, et al.:

In Reunion, the most recent Pennsylvania case involving anonymous internet posters, a publicly traded corporation filed a commercial disparagement claim against certain anonymous defendants who had posted offensive allegations against Reunion on the Yahoo! Financial Bulletin Board. To further its claim, Reunion sought an order compelling AOL to identify the defendants. Upon consideration of Plaintiffs’ motion, the Court of Common Pleas of Allegheny County analyzed, inter alia, its earlier decision in Melvin, as well as the decision of the New