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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10

11	PATRICK COLLINS, INC.,)	Case No.: C 11-2766 MEJ
)	
12	Plaintiff,)	MOTION AND NOTICE OF MOTION
)	FOR ORDER QUASHING SUBPOENA,
13	v.)	MEMORANDUM OF POINTS AND
)	AUTHORITIES IN SUPPORT OF
14	JOHN DOES 1 -2,590,)	MOTION, AND DECLARATION OF
)	JENIFER K. GARDELLA IN SUPPORT
15	Defendants.)	OF MOTION
)	
16)	Date: December 8, 2011
)	Time: 10:00 a.m.
17)	Judge: Hon. Maria-Elena James

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19 TO EACH PARTY AND TO HIS OR HER ATTORNEY OF RECORD:

20 PLEASE TAKE NOTICE that on December 8, 2011 at 10:00 a.m. or as soon thereafter
21 as the matter may be heard, in the Courtroom of the Honorable Maria-Elena James of this
22 Court, located at 450 Golden Gate Avenue, San Francisco, California, Courtroom B, 15th Floor,
23 Defendant JOHN DOE 2029 will, and hereby does, move for an Order quashing the subpoena
24 issued and served on Comcast Cable requiring it to deliver to Plaintiff's agent certain personal
25 information of Defendant.

26 The motion will be made on the ground that the subpoena fails to comply with the
27 requirements of California Code of Civil Procedure Sections 1985 and 1985.3, and on the
28 additional ground that no good faith affidavit was served.

1 The motion will be based on this notice of motion, on the Declaration of Jenifer K.
2 Gardella and the memorandum of points and authorities served and filed herewith, on the records
3 and pleadings on file herein, and on such oral and documentary evidence as may be produced at
4 the hearing of the motion.

5 Dated: October 31, 2011.

/s/ Jenifer K. Gardella
JENIFER K. GARDELLA
Attorney for Defendant JOHN DOE 2029

7 **MEMORANDUM OF POINTS AND AUTHORITIES**
8 **IN SUPPORT OF MOTION**

9 **I – STATEMENT OF FACTS**

10 Defendant JOHN DOE 2029 maintains a personal account with the Witness, Comcast
11 Cable. The Witness served a copy of the subpoena on Defendant, without a Affidavit of Good
12 Cause and Notice to Consumer.

13 **II – THE SUBPOENA FAILS TO COMPLY WITH**
14 **CCP §§1985 AND 1985.3**

15 C.C.P. §1985(b) requires Plaintiff to serve an affidavit showing good cause for the
16 productions of the records, “setting forth in full detail the materiality thereof to the issues
17 involved in the case, and stating that the witness has the desired matters or things in his or her
18 possession or under his or her control.” No good faith affidavit was served on Defendant, and
19 Defendant is informed and believes, and on the basis of such information and belief alleges that
20 no good faith affidavit was served on the witness.

21 CCP §1985 further requires Plaintiff to serve on Defendant a Notice to Consumer. The
22 records requested by the subpoena at issue here are “personal records” of a “consumer” as those
23 terms are defined by CCP §§1985.3(a)(1) and (2). CCP §§1985.3(b) which requires Plaintiff to
24 serve on Defendant a copy of the subpoena, of the affidavit supporting the issuance of the
25 subpoena, a Notice to Consumer in the form prescribed by CCP §§1985.3(e), and the proof of
26 service showing that the requirements of this section have been met. The good faith affidavit
27 and Notice to Consumer were not served.

28 Dated: October 31, 2011.

/s/ Jenifer K. Gardella
JENIFER K. GARDELLA
Attorney for Defendant JOHN DOE 2029

**DECLARATION OF JENIFER K. GARDELLA
IN SUPPORT OF MOTION**

I, JENIFER K. GARDELLA, declare:

1. I am an attorney at law, licensed to practice as such by the State of California, and the attorney of record for Defendant JOHN DOE 2029 herein. I have personal knowledge of the matters stated herein and if called as a witness can testify competently thereto.

2. My client delivered to me the envelope received from the witness herein, Comcast Cable, with its contents. The envelope contained a cover page from the witness, a one-page subpoena with proof of service on the witness, an excerpt from the FRCP, one page from Attachment A, and this Court's Order Granting Plaintiff's Ex Parte Application for Leave to Take Limited Expedited Discovery. There was no Notice to Consumer or Affidavit of Good Faith included in the envelope nor does the cover page refer to any such documents as being included in the mailing. My client denied having removed any material from the envelope or having seen any documents entitled "Notice to Consumer" or "Affidavit of Good Faith."

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

EXECUTED ON October 31, 2011 at Redwood City, California.

/s/ Jenifer K. Gardella
JENIFER K. GARDELLA