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LUTHER D. JENNIS, Clerk
By: *[Signature]*
Deputy Clerk

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

EARTHLINK, INC.,)	
)	
Plaintiff,)	
)	
v.)	CASE NO. 1:04-CV-3142 CAP
)	
)	
JOHN DOES 1-25 ("the Mortgage Lead)	
Spammers"); and JOHN DOES 26-50)	
("the Drug Spammers"),)	
)	
Defendants.)	

**UNOPPOSED MOTION FOR LEAVE
TO CONDUCT JOHN DOE DISCOVERY
AND PROPOSED ORDER**

Plaintiff EarthLink, Inc. ("EarthLink") hereby requests, pursuant to Federal Rule of Civil Procedure 26(f), that, prior to the service or appearance of any defendant in this case, this Court give it permission to conduct the discovery necessary to identify the presently-unknown John Doe defendants. Once EarthLink has determined the names and identities of the John Doe defendants, it will amend its complaint to include them and properly go forward in this case.

The John Doe Defendants' Deception

The defendants that EarthLink is seeking to prosecute in this litigation have taken extreme measures to hide or conceal their identities from both EarthLink and the ultimate and

intended recipients and victims of their criminal unsolicited commercial e-mail ("spam"). Among other tactics, the defendants have provided false contact information to the domain name registrars who registered their e-commerce web-sites and have engaged in widespread tampering and alteration of their e-mail messages ("spoofing") to "cover the tracks" that the e-mail messages may have left when they were sent into EarthLink's computer network. Notwithstanding this deception, it is possible to trace and identify both the individuals responsible for sending the illegal e-mail as well as those who have profited from, encouraged, authorized, or otherwise participated in this massive campaign of fraud and property damage.

The federal judiciary has recognized the utility and efficacy of using "John Doe" discovery methods to establish the identities of spammers and other Internet criminals in efforts by the ISPs to defeat their attempts to avoid responsibility for their criminal acts. See Verizon Online Services v. Ralsky, 203 F.Supp.2d 601, 609 n.5 (E.D. Va. 2002).

EarthLink's Present Investigation

Prior to commencing this suit, EarthLink conducted a thorough investigation in an attempt to determine the identities of the John Doe defendants. Through an independent investigator, EarthLink has purchased many of the products and

services advertised by the defendants in their illegal e-mails, and has identified the businesses used by the defendants to process the credit card transactions used to make these purchases.

As a result of this ongoing investigation, EarthLink has identified several third parties who are likely to possess documents and other information that is likely to identify or otherwise lead to the identification of the John Doe defendants. Generally, these third parties are people and entities with whom the John Doe defendants have transacted business during their spree illegal e-mail advertising.

Contemplated Scope of Witnesses and Discovery Devices

At the present time, EarthLink contemplates serving subpoenas upon witnesses pursuant to Federal Rule of Civil Procedure 45 ("Rule 45") which will request that the witnesses produce documents identifying or leading to the identification of the John Doe defendants. At the present stage in EarthLink's investigation, it appears that Rule 45 subpoenas will need to be served on witnesses including, but not limited to:

- Credit card transaction processors (e.g., Websky.com), who accept payments for the services advertised in the defendants' e-mails, and pay the vendors of those services and/or the defendants;

- The vendors of the products or services (i.e., pharmacies filling prescriptions and mortgage brokers) advertised by the defendants in their illegal e-mails;
- Internet service providers ("ISPs") (e.g., America Online), to determine the identity of a particular subscriber or user of an e-mail address and/or the usage logs for a particular account associated with the Defendants' criminal activities;
- Web hosting services, to determine the identity of the customer using or paying for the hosting services associated with a particular web site or domain used by the Defendants to carry out their illegal marketing;
- Domain name registrars (e.g., VeriSign), to determine the actual identity of the person registering or paying for the domain names associated with the Defendants' phisher e-mails;
- Bandwidth providers (e.g., Level3), to determine the identity of the person or company using a particular Internet protocol ("IP") address or addresses on a specified day and time;
- Banks or other financial institutions, to: (1) determine the identity of the persons or entities which own the accounts that were used to pay for the services used to effect the Defendants' illegal phishing schemes; and (2) identify the person or entity paid by the bank as a result of investigative purchases of the services advertised by the defendants;
- Telephone or other telecommunications companies, to determine the subscriber's name, address, and other identifying information for a particular telephone number or numbers used by or associated with the Defendants; and
- Commercial mail box issuers (e.g., The UPS Store or "MailBoxes, Etc." outlet), to determine the identity of the person renting a particular mail box that is used by or associated with the Defendants.

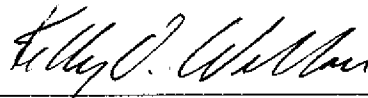
In the absence of such subpoenas, EarthLink will have no means of compelling the provision of the requested information and will be unable to identify the defendants. In that case, the

John Doe defendants will almost certainly continue their criminal acts with impunity.

Accordingly, EarthLink requests that this Court grant it leave to conduct discovery to identify the John Doe defendants and properly name and include them as defendants in this case. A Proposed Order is attached hereto at Exhibit A.

Respectfully submitted this 7th day of December, 2004.

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RULE 7.1 CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 5.1

This is to certify that the foregoing Unopposed Motion was prepared using 12 point Courier New font and accordingly complies with Local Rule 5.1. This certificate is given in compliance with Local Rule 7.1(D).

This 7th day of December, 2004.

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