

1 Gregory A. Broiles (State Bar No. 229384)
2 The Law Office of Gregory A. Broiles
3 1625 The Alameda, Suite 800
4 San Jose, CA 95126
5 (408) 834-8511
6 (408) 907-8900 facsimile

7 Attorney for Defendants Doe 2 and Doe 3

FILED Santa Clara Co
11/23/05 3:54pm
Kiri Torre
Chief Executive Office
By: traney dtclerk
R#200500119772
CK \$592.40
\$592.40
Case: 1-05-CV-050179

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SANTA CLARA

11 EAGLE BROADBAND, INC.,

12 Plaintiff,

13 vs.

14 DOES 1 through 25,

15 Defendants

Case No.: 1-05-CV-050179

NOTICE OF MOTION AND MOTION
TO STRIKE (C.C.P. § 425.16) AND IN
THE ALTERNATIVE, TO QUASH
SUBPOENA DIRECTED TO YAHOO!
INC.

Date: February 28, 2006
Time: 9:00 AM
Dept: 2

18 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

19 PLEASE TAKE NOTICE that on February 28, 2006, at 9:00 A.M. or as
20 soon thereafter as the matter may be heard, before the Honorable William J.
21 Elfving in Department 2 of the above-entitled court, located at 191 N. First
22 Street, San Jose, California, defendants and moving parties Doe 2 aka
23 "team_3339" and Doe 3 aka "upanddown100" ("Moving Parties") will and
24 hereby does move pursuant to Code of Civil Procedure § 425.16 to strike the
25 complaint of plaintiff in this action and to award attorneys' fees to Moving
26 Party, pursuant to § 425.16 of the Code of Civil Procedure, and/or in the
27
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1 alternative quashing the Yahoo! Subpoena as it relates to Moving Party. This
2 motion is made on the following grounds:


3 The complaint is subject to a special motion to strike pursuant to Code of
4 Civil Procedure § 425.16 because the allegations of the complaint arise out of
5 defendant's exercise of his/her right to free speech under the State and Federal
6 Constitutions in a public forum, in connection with an issue of public interest,
7 and it is not probable that plaintiff will prevail on the claim.

8 The Yahoo! Subpoena contravenes Moving Party's right of privacy and
9 right to engage in anonymous speech under California and federal law and
10 therefore must be quashed; and

11 The Yahoo! Subpoena is overbroad and impermissibly invasive and
12 therefore must be quashed.

13 This motion is made based on this Notice, on the Memorandum of Points
14 and Authorities and Declaration of Gregory A. Broiles to be filed subsequently,
15 the complete files and records in this case, all matters that may be judicially
16 noticed, and such further evidence and argument as may be received by the
17 Court at or prior to the hearing on this Motion.

18
19 Dated: November 23, 2005

20
21
22 By:  _____
23 Gregory A. Broiles
24 Attorney for Defendants Doe 2 and Doe 3
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1 **PROOF OF SERVICE**

2 I, Gregory A. Broiles, the undersigned, hereby declare:

3 I am over eighteen years of age and not a party to the above action. My
4 business address is 1625 The Alameda, Suite 800, San Jose, California 95126

5 On November 23, 2005, I personally served a true copy of:

6
7 1. NOTICE OF MOTION AND MOTION TO STRIKE SUBPOENA
8 PROCEEDING PURSUANT TO C.C.P. § 425.16, AND IN THE ALTERNATIVE, TO
9 QUASH SUBPOENA DIRECTED TO YAHOO! INC.

10 on the interested parties named below, addressed as follows:

11 Karineh Khachatourian
12 Gordon & Rees LLP
13 Embarcadero Center West
14 275 Battery St, Suite 2000
15 San Francisco, CA

16 Mark A. Goldowitz
17 California Anti-SLAPP Project
18 2903 Sacramento St.
19 Berkeley, CA 94702

20 Yahoo! Inc.
21 Legal Dept.
22 701 First Ave.
23 Sunnyvale CA 94089

24 by first-class US postal mail by enclosing said copy in a postage-paid envelope
25 and placing it for collection and mailing with the United States Post Office.

26 I declare under penalty of perjury that the foregoing is true and correct.

27 Executed on November 23, 2005, at San Jose, California.

28 

Gregory A. Broiles

FILED
2005 NOV 23 PM 3:55
SUPERIOR COURT / CLERK
TRANG VU
COURT REPORTER