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(ENDORSED)
FILED

MAR 07 2006

KIRI TORRE
Chief Executive Officer/Clerk
Superior Court of CA County of Santa Clara
BY M. HUDUK DEPUTY

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA**

EAGLE BROADBAND, INC.,

Plaintiff,

v.

DOES 1 through 25,

Defendants.

Case No. 1 - 05 - CV050179

Order re: Special Motion to Strike
Complaint, Special Motion to
Strike Complaint, and Motion to
Permit Discovery

The Special Motion to Strike Complaint by DOE 4 a/k/a richwill21 and DOE 5 a/k/a benderanddundat, Special Motion to Strike Complaint by DOE 2 a/k/a team_3339 and DOE 3 a/k/a upanddown 100, and Motion to Permit Discovery by Plaintiff Eagle Broadband, Inc. ("Eagle") came on for hearing before the Honorable William J. Elfving on February 23, 2006 at 9:00 a.m. in Department 2. The matters having been submitted, the Court orders as follows:

I. Evidentiary Matters

A. Eagle's Request for Judicial Notice

Eagle's request for judicial notice is granted.

B. Eagle's Objections

Eagle's objections to the declarations of Gregory A. Broiles are overruled. Eagle's objections to the declaration of Richard Williams are overruled. Eagle's objections to the

Order re: Special Motion to Strike Complaint, et al.

1 declaration of Roy Thomas Mould are overruled. Eagle's objections to the declarations of Paul
2 Clifford are overruled.

3
4 II. Eagle's Motion to Permit Discovery

5 Eagle moves for an order permitting it to conduct discovery to oppose DOES 2 – 5's anti-
6 SLAPP motions. To allow for sufficient time to obtain the discovery and file supplemental
7 briefs, Plaintiff requests the hearing on the anti-SLAPP motions be continued for six months.

8
9 A. Legal Standard

10 The anti-SLAPP statute provides for a stay of all discovery proceedings upon the filing of
11 a notice of motion. The stay remains in effect until notice of entry of the order ruling on the
12 motion. However, the Court, on noticed motion, and for good cause shown, may order that
13 specified discovery be conducted. [See CCP § 425.16(g).] The Legislature intended these
14 provisions to balance the need to protect defendants exercising their freedom of speech from
15 having their personal and financial resources exhausted by SLAPP-ers' discovery demands with
16 the need to permit legitimate plaintiffs to conduct necessary discovery before their suits are
17 subjected to dismissal for failure to establish a prima facie case. [See The Garment Workers
18 Center v. Superior Court (2004) 117 Cal.App.4th 1156, 1161.]

19
20 B. Eagle's Arguments for Discovery

21 1. To Ascertain Applicability of CCP § 425.17(c) Exception

22 Eagle argues that, in order to ascertain the applicability of CCP § 425.17(c), it needs to
23 conduct discovery into the identities and employment of DOES 2 – 5. Specifically, Eagle seeks
24 to determine whether DOES 2 – 5 are competitors, or are employed by or have affiliations with
25 its competitors, and whether they sell securities.

26 In pertinent part, CCP § 425.17(c) states that the anti-SLAPP statute does not apply to
27 any cause of action brought against a person primarily engaged in the business of selling or
28 leasing goods or services (including securities), arising from any statement or conduct by that

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1 person if both of the following conditions exist: (i) the statement or conduct consists of
2 representations of fact about the person's or a business competitor's business operations, goods,
3 or services, that is made for the purpose of obtaining approval for, promoting, or securing sales
4 or leases of, or commercial transactions in, the person's goods or services, or the statement or
5 conduct was made in the course of delivering the person's goods or services; and (ii) the
6 intended audience is an actual or potential buyer or customer, or a person likely to repeat the
7 statement to, or otherwise influence, an actual or potential buyer or customer.

8 The Legislature did not intend to alter the two prong burden shifting procedural
9 requirements in CCP § 425.16(b)(1) or to impose a separate procedural format for evaluating
10 CCP § 425.17(c) issues. Therefore, the parties may rely on both the pleadings and affidavits in
11 litigating the application of CCP § 425.17(c) and this is done in ruling whether the defendant has
12 sustained its burden of proving the operative complaint arises from speech of conduct that is
13 within the provisions of CCP § 425.16(b)(1). [See Brill Media Company, LLC v. TCW Group,
14 Inc. (2005) 132 Cal.App.4th 324, 330 - 331.]

15 The Complaint incorporates a copy of all of the alleged defamatory postings that were
16 posted by DOES 2 – 5. None of the alleged defamatory postings contains any representation of
17 fact that can reasonably be construed as having been made for the purpose of obtaining approval
18 for, promoting, or securing sales or leases of, or commercial transactions in, the goods or
19 services of DOES 2 – 5. Further, none of the alleged defamatory postings can reasonably be
20 construed as having been made in the course of delivering the goods or services of DOES 2 – 5.
21 Further, none of the alleged defamatory postings can reasonably be construed as being intended
22 to influence, an actual or potential buyer or customer. Further, none of the alleged defamatory
23 postings arise out of or within the context of a regulatory approval process, proceeding or
24 investigation. As a result, CCP § 425.17(c) does not apply even if DOES 2 – 5 compete with
25 Plaintiff or sell securities. No amount of discovery can change this result. Accordingly, the
26 Court finds that Eagle has not established good cause to conduct this discovery.

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28
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1 2. To Impeach Statements by DOES 2 – 5

2 Eagle argues that, in order to impeach statements by DOES 2 – 5 that the Yahoo! Finance
3 Message Board for Eagle Broadband (hereinafter the “Eagle MB”) is a public forum, it needs
4 discovery from Yahoo! on the controls it sets in place on the use of the Eagle MB and any
5 complaints and restrictions it has placed on DOES 2 – 5.

6 Eagle’s desire to impeach statements by DOES 2 – 5 does not constitute “good cause”
7 under Section 425.16(g). [See 1-800 Contacts, Inc. v. Steinberg (2003) 107 Cal.App.4th 568,
8 593; Sipple v. Foundation for National Progress (1999) 71 Cal.App.4th 226, 247.] Even if Eagle
9 gathered some evidence that Yahoo! exerted some control over the use of the Eagle MB and that
10 it placed restrictions on DOES 2 – 5 as a result of complaints about their postings, the Eagle MB
11 would still qualify as a public forum. [See Ampex Corporation v. Cargle (2005) 128 Cal.App.4th
12 1569, 1576; Wilbanks v. Wolk (2004) 121 Cal.App.4th 883, 897.] Accordingly, the Court finds
13 that Eagle has not established “good cause” to conduct this discovery.

14
15 3. To Gather Additional Evidence Relating to Merits

16 Eagle argues that, in order to establish a probability of success on the merits, it needs to
17 conduct discovery concerning DOES 2 – 5’s financial and stock trading records.

18 Recently, the Court of Appeal generally agreed that plaintiff’s discovery in a libel suit is
19 of prime import because the defendant will generally be the principal, if not the only, source of
20 evidence concerning such matters as whether the defendant knew the statement published was
21 false, or published the statement in reckless disregard of whether the matter was false and
22 defamatory, or acted negligently in failing to learn whether the matter published was false and
23 defamatory. However, this is not the only factor. The trial court should also consider the
24 plaintiff’s need for discovery in the context of the issues raised in the anti-SLAPP motion. If, for
25 example, the defendant contends the plaintiff cannot establish a probability of success on the
26 merits because its complaint is legally deficient, no amount of discovery will cure that defect. In
27 a libel case, unless it appears on the face of the complaint the plaintiff will be required to
28 establish actual malice, or the defendant makes such a contention in its SLAPP motion, there is

1 no need for the plaintiff to engage in discovery on that issue in order to show a reasonable
2 probability of success on the merits. Even if it looks as if the defendant's actual malice may be
3 an issue in the case, if it appears from the SLAPP motion there are significant issues as to falsity
4 or publication – issues which the plaintiff should be able to establish without discovery – the
5 court should consider resolving those issues before permitting what may otherwise turn out to be
6 unnecessary, expensive and burdensome discovery proceedings. [See The Garment Workers
7 Center, supra, 117 Cal.App.4th at 1161-1162.]

8
9 a. DOE 2

10 Eagle's claims against DOE 2 are grounded upon three posts. On February 15, 2005,
11 DOE 2 posted what purports to be an email exchange between himself and Alltel Corporation's
12 vice president of investor relations, Rob Clancy. Clancy's email to DOE 2 states that Alltel is
13 not working with Eagle. [See Complaint Exhibit B.] Eagle alleges that this purported email
14 exchange never occurred and the statements are false. [Complaint ¶17.]

15 On July 12, 2005, DOE 2 posted a message stating that it was "TOO BAD SO SAD" that
16 "widdle eaglettes" thought OnCommand would buy boxes. DOE 2's post quotes Tad Walden,
17 On Command's SVP of marketing and programming, as saying that OnCommand was working
18 with Samsung to be deliver a "boxless-type solution." [Complaint Exhibit F.] On July 13, 2005,
19 DOE 2 posted a message stating that LodgeNet is working with LG Technologies and
20 OnCommand is working with Samsung to "get rid of those boxes on top and integrate that
21 functionality into the television." [Complaint Exhibit G.] Eagle alleges that these messages
22 gave the false impression that OnCommand and Samsung had announced that they would not
23 purchase Eagle's MediaPro set-top box products, when, in fact, they had not made any such
24 statements. [Complaint ¶ 25.]

25 DOE 2 argues that Eagle's isolated presentation of three messages separated from the
26 context of the other 700,000 messages posted to the Eagle MB is likely to lead to a mistaken
27 impression of those messages. Interpretation of these three messages cannot take place in a
28 vacuum isolated from his/her thousands of other messages posted, or from the freewheeling and

1 contentious context in which those messages have been written. DOE 2 concludes that, in such a
2 context, it is inappropriate to assume malice on his/her part.

3 In these circumstances, there is no significant issue of publication. Although there is an
4 issue as to falsity, Eagle should not need to conduct any discovery to prove that DOE 2's
5 messages can reasonably be construed as containing a false statement of fact. The only
6 significant issue is DOE 2's malice. DOE 2 is the principal, if not the only, source of evidence
7 concerning such matters as whether he/she knew the statement published was false, or published
8 the statement in reckless disregard of the truth. DOE 2 has not filed a declaration explaining the
9 circumstances under which he/she wrote and published the post. DOE 2's financial and stock
10 trading records may uncover circumstantial evidence of malice. Accordingly, the Court finds
11 that Eagle has established good cause to conduct discovery related to the issue of whether DOE 2
12 published the post with malice, i.e., with actual knowledge of the falsity or reckless disregard of
13 the truth regarding the true date on which Cubley filed the SEC Form 144. This discovery may
14 include an inquiry into DOE 2's financial and stock trading records.

15
16 b. DOE 3

17 Eagle's claims against DOE 3 are grounded upon a September 3, 2004 post indicating
18 that, on September 1, 2004, Cubley had filed an SEC Form 144 indicating his intent to sell
19 815,933 shares of Eagle stock. [See Complaint Exhibit I.] Eagle alleges that DOE 3 deliberately
20 posted this false and misleading information to undermine public confidence in Eagle for the
21 purpose of depressing the stock price. [Complaint ¶¶ 29-30.]

22 DOE 3 argues that he merely republished SEC filing information that was made available
23 by a third party, apparently in error. DOE 3 offers evidence that an SEC filing with an identical
24 number of shares, with an identical estimated value, to be sold by the same person, was filed
25 with the SEC on January 22, 2004. The information posted to the Eagle MB was thus in several
26 aspects correct, but was incorrect with respect to the date of the filing. In this context, Plaintiff
27 will have to provide substantial evidence of actual malice to rebut a reasonable inference that the
28 erroneous posting was the result, not of a mistake, but of a desire to mislead or misinform.

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1 In these circumstances, there are no significant issues as to falsity or publication. The
2 only significant issue is DOE 3's malice. DOE 3 is the principal, if not the only, source of
3 evidence concerning such matters as whether he/she knew the statement published was false, or
4 published the statement in reckless disregard of the truth. DOE 3 has not filed a declaration
5 explaining the circumstances under which he/she wrote and published the post. DOE 3's
6 financial and stock trading records may uncover circumstantial evidence of malice. Accordingly,
7 the Court finds that Eagle has established good cause to conduct discovery related to the issue of
8 whether DOE 3 published the post with malice, i.e., with actual knowledge of the falsity or
9 reckless disregard of the truth. This discovery may include an inquiry into DOE 3's financial
10 and stock trading records.

11
12 c. DOE 4

13 Eagle's claims against DOE 4 are grounded upon a June 10, 2005 post purporting to be a
14 press release issued by Eagle announcing its deletion from the Russell 3000 Index due to poor
15 performance and business failures. [See Complaint Exhibit A.] Eagle alleges that DOE 4
16 deliberately posted the fake press release in order to have a negative impact on Eagle's financial
17 success. [See Complaint ¶ 16.]

18 DOE 4 filed a declaration setting forth, in great detail, the complete context and
19 circumstances under which he wrote the press release and posted it on the Eagle MB. [See Dec.
20 of Richard Williams, ¶¶ 9 – 12.] In his reply, DOE 4 argues, at length, that his posting is
21 unquestionably a nonactionable parody. In these circumstances, there is no significant issue as
22 to publication, falsity, or malice. The only significant issue is whether, in the context presented
23 by DOE 4, the Court can conclude that the average reader, as a matter of law, would recognize
24 the post as a parody. [See San Francisco Bay Guardian, Inc. v. Superior Court (1993) 17
25 Cal.App.4th 655, 659.] DOE 4's financial and stock trading records are not relevant to this issue.
26 Accordingly, the Court finds that Eagle has not established good cause to conduct discovery into
27 DOE 4's financial and stock trading records.

1 d. DOE 5

2 Eagle's claims against DOE 5 are grounded upon a January 24, 2005 post announcing
3 that "Change at Eagle is Coming" and that Eagle was suffering from continued financial losses
4 causing the share price to drop and that readers should "share their positions long ... then go short
5 to make some of your money back" [See Complaint Exhibit H.] Eagle alleges that DOE 5
6 deliberately posted this false and misleading information to undermine public confidence in
7 Eagle and depress the price of the stock. On the day the posting was made, Eagle's stock opened
8 at \$0.56 and closed at \$0.51. [See Complaint ¶¶ 27-28.]

9 DOE 5 filed a declaration setting forth, in great detail, the sources upon which he relied
10 when he wrote the post. DOE 5 also offers substantial evidence suggesting that Eagle's share
11 price declined on January 24, 2005 for reasons other than his post. [See Declaration of Roy
12 Thomas Mould, ¶¶ 9 – 20.] In his reply, DOE 5 argues at length that his post does not contain
13 any false statement of fact and Eagle has not shown any damages from his post.

14 In these circumstances, there is no significant issue as to publication. DOE 5 has already
15 provided all of the evidence he relies upon to support his argument that his post does not contain
16 any false statement of fact and that his post did not proximately cause any damages to Eagle.
17 DOE 5's financial and stock trading records are not relevant to either of these issues.
18 Accordingly, the Court finds that Eagle has not established good cause to conduct discovery into
19 DOE 5's financial and stock trading records.

20
21 4. To Provide a Context for DOES 2 – 5's Postings

22 Eagle argues that, in order to provide the Defendants' postings in context, Eagle needs to
23 obtain a complete set of the Eagle MB postings during the relevant time period.

24 Assuming DOES 2 – 5 meet their initial burden, Eagle's burden is simply to establish a
25 prima facie case. In other words, Eagle is not required to provide the complete context of the
26 alleged defamatory postings. DOES 2 – 5 presumably know the context in which they made
27 their postings and would be expected to introduce evidence to support any possible argument that
28 the messages cannot reasonably be construed as defamatory when viewed in the context in which

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1 they were made. Eagle has not presented any competent evidence that any relevant postings are
2 no longer available from public sources. Accordingly, the Court finds that Eagle has not
3 established good cause to conduct this discovery.

4
5 III. Special Motion to Strike By DOE 2 and DOE 3

6 Eagle's motion to conduct discovery is granted. Eagle may conduct discovery on the
7 issue of whether DOE 2 and DOE 3 published their posts with malice, i.e., with actual
8 knowledge of the falsity or reckless disregard of the truth. This discovery may include an
9 inquiry into the financial and stock trading records of DOE 2 and DOE 3. The hearing on the
10 Special Motion to Strike by DOE 2 and DOE 3 is continued to June 15, 2006, at 9:00 am in
11 Department 2. Eagle may file a supplemental opposition on or before June 2, 2006. DOE 2 and
12 DOE 3 may file a supplemental reply on or before June 8, 2006.

13
14 IV. Special Motion to Strike by DOE 4 and DOE 5

15 A. Eagle's Motion to Permit Discovery

16 Eagle's motion to permit discovery is denied.

17
18 B. Initial Burden of DOE 4 and DOE 5

19 As the defendants and moving parties, DOE 4 and DOE 5 have the burden to show that
20 the act or acts of which Eagle complains "arise from" a protected activity, i.e., an "act in
21 furtherance of a person's right of petition or free speech under the United States or California
22 Constitution in connection with a public issue." [See CCP § 425.16(b)(1).] A protected activity
23 includes any written or oral statement or writing made in a public forum in connection with an
24 issue of public interest. [See CCP § 425.16(e)(3).]

25 The Complaint shows that Eagle is a publicly traded company. [See Complaint ¶ 1.]
26 Further, literally hundreds of thousands of messages have been posted on the Eagle MB, which is
27 a public Internet message board controlled by Yahoo!. [See Complaint ¶ 15.] Eagle's claims
28 against DOE 4 and DOE 5 are grounded upon their act of posting messages on the Eagle MB.

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1 [Complaint ¶¶ 16, 27-28.] Frederick Reynolds is Eagle's vice-president of marketing and his
2 responsibilities include reviewing Eagle's SEC filings and public disclosures, preparing and
3 reviewing Eagle's press releases, and responding to investor inquiries. [See Declaration of
4 Frederick Reynolds ¶¶ 2, 4 – 6.] Eagle has issued literally millions of shares of stock. [See
5 Declaration of Paul Clifford ¶ 9, Exhibit H.]

6 The foregoing evidence shows that Eagle's claims against DOE 4 and DOE 5 arise from
7 their act of posting messages concerning on a public forum concerning an issue of public
8 importance. [See Ampex, supra, 128 Cal.App.4th at 1576 – 1577.] Accordingly, DOE 4 and
9 DOE 5 met their initial burden.

10
11 C. Eagle's Burden

12 The burden shifts to Eagle to demonstrate a probability that it will prevail on their claims.
13 In order to establish the necessary probability of prevailing, Eagle must plead claims that are
14 legally sufficient and make a prima facie showing, by admissible evidence, of facts that would
15 merit a favorable judgment on those claims, *assuming its evidence is credited*. This burden is
16 somewhat akin to that required to resist a nonsuit or to move for summary judgment. [See 1-800
17 Contacts, Inc. v. Sternberg (2003) 107 Cal.App.4th 568, 584.]

18 Eagle's UCL claim is not grounded upon any particular securities transactions. Instead, it
19 is grounded upon the alleged damage that Eagle's stock value and business suffered as a result of
20 the defamatory information that DOE 4 and DOE 5 posted on the Eagle MB. [Complaint ¶ 38.]
21 This type of claim is distinguishable from the securities transactions claims raised in Bowen v.
22 Ziasun Technologies, Inc. (2004) 116 Cal.App.4th 777.] The allegation of such a scheme is
23 sufficient to state a cause of action for violation of Bus. & Prof. Code § 17200. Eagle has also
24 sufficiently pleaded a cause of action for defamation.

25
26 1. Probability of Prevailing Against DOE 4

27 The declaration of Richard Williams (DOE 4) contains admissible evidence that, on June
28 10, 2005, DOE 4 read message 621277 on the Eagle MB and interpreted it as indicating the

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1 Eagle was being "deleted" from something. The message included a link to the Russell-Mellon
2 website, specifically to an article where Russell-Mellon provided a preliminary list of companies
3 that it intended to delete from the Russell 3000 Index on June 24, 2005. Williams then visited
4 Eagle's website and located a press release that Eagle issued on June 28, 2004 when it was first
5 listed in the Russell 3000 Index. At 8:31 pm, he posted this press release under the title
6 "Remember this golden oldie?" Using the real June 28, 2004 press release as a template, he
7 wrote a fake press release, which he intended as a parody. At 8:41 pm, he posted the following
8 message under the title "Press release"

9 LEAGUE CITY, Texas – June 10, 2005, Eagle Broadband, Inc. (AMEX: EAG), a leading provider of
10 broadband and communications technology and services, announced today that the company has been deleted
11 from the Russell 3000 Index which measures the performance of the 3000 largest U.S. companies based on
12 total market capitalization.

13 "We are very not very pleased to be deleted from the Russell 3000, which we consider a clear recognition of
14 Eagle Broadband's continued failures in executing our business plan over the last year," stated Dave Micek,
15 Chairman and CEO of Eagle Broadband. "Deletion from the index is a reflection of our continued
16 stagnation, worsening financials and decreased market capitalization. The listing is also an indication of
17 further customer rejection of Eagle's technology and services, the indifference of our employees and our
18 continued focus on eroding shareholder value."

19 At 9:15 pm, DOE 4 posted another message stating "If this is like your other predictions
20 we are supposed to get ready for, I should be fine. By the way if EAG was a responsible
21 company (e.g. updating shareholders on the company) I wouldn't have to alter last year's Russell
22 inclusion PR to reflect our present situation." At 9:49 pm, DOE 4 posted a message stating
23 "Wow, if you thought that was a real press release (with the obvious typo) you really are stupid."

24 The declaration of Frederick Reynolds (Eagle's vice president of marketing) contains
25 admissible evidence that, on June 9, 2005, Eagle published a press release entitled "Eagle
26 Broadband Further Expands Sales Focus with Appointment of Marc Surette as Vice President of
27 Sales, Satellite Communications." Eagle never authorized or issued a press release stating that it
28 had been delisted from the Russell 3000 Index.

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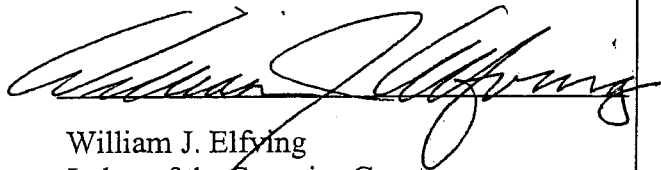
1 The foregoing evidence clearly establishes that, on June 10, 2005, DOE 4 published a
2 fake press release on the Eagle MB that included the false statement of fact that Eagle had
3 already been deleted from the Russell 3000 Index and that its Chairman and CEO was quoted as
4 recognizing the deletion as a reflection of Eagle's continued failures in executing its business
5 plan, as well as its continued stagnation, worsening financials, decreased market capitalization,
6 as well as further customer rejection of its technology, employee indifference, and a focus on
7 eroding shareholder value. Although DOE 4 may have intended the publication to be a parody, it
8 cannot be said that the average reader, as a matter of law, would have recognized it as a parody.
9 The declaration of Deirdre A. Flaherty contains admissible evidence that Eagle's stock value and
10 business suffered from DOE 4's fake press release and other false and misleading messages that
11 were posted on the Eagle MB from January 1, 2005 through October 31, 2005. Eagle has
12 thereby met its burden of establishing a prima facie case against DOE 4. Accordingly, DOE 4's
13 special motion to strike is denied.

14
15 2. Probability of Prevailing Against DOE 5

16 The declaration of Roy Thomas Mould (DOE 5) contains admissible evidence that, on
17 January 24, 2005, he posted message 508992 to the Eagle MB. It also contains admissible
18 evidence concerning the factual basis for his statements that Eagle "must pay Aggregate back the
19 \$10mm" and that Eagle was "out of cash, sales, and time."

20 Eagle does not have any evidence that these factual assertions were untrue *when they*
21 *were made*. Although Frederick Reynolds (Eagle's vice president of marketing) declares that
22 Eagle *presently* is not "out of cash" and does not owe "Aggregate" any amount, \$10 million or
23 otherwise, he does not say anything about Eagle's financial condition and/or its debt to
24 Aggregate on January 24, 2005. Eagle's failure to establish that DOE 5's post contained any
25 false statements of fact is fatal to its claims against DOE 5. Accordingly, DOE 5's special
26 motion to strike is granted.

27 Date: 3/6/06

28 
William J. Elfving
Judge of the Superior Court

Order re: Special Motion to Strike Complaint, et al.

<p align="center">IN THE SUPERIOR COURT OF CALIFORNIA IN AND FOR THE COUNTY OF SANTA CLARA</p>	<p align="center">(ENDORSED) FILED</p> <p align="center">MAR 07 2006</p> <p align="center">KIRI TORRE Chief Executive Officer/Clerk Superior Court of CA County of Santa Clara M. HIJDUK</p> <p>Case Number: _____ DEPUTY 1-05-CV050179</p>
<p>Plaintiff(s): EAGLE BROADBAND, INC.,</p>	
<p>Defendant(s): DOES 1 through 25</p>	
<p>PROOF OF SERVICE BY MAIL OF ORDER RE: SPECIAL MOTION TO STRIKE COMPLAINT, SPECIAL MOTION TO STRIKE COMPLAINT AND MOTION TO PERMIT DISCOVERY</p>	

CLERK'S CERTIFICATE OF SERVICE: I certify that I am not a party to this case and that a true copy of this document was mailed first class, postage fully prepaid, in a sealed envelope addressed as shown below and by Fax the document was mailed at SAN JOSE, CALIFORNIA on : March 7, 2006.

Kiri Torre, Chief Executive Officer/Clerk

BY _____, Deputy
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