

<p><b>District Court, El Paso County, Colorado</b>  Court address: <b>270 S. Tejon</b>  <b>Colorado Springs, CO 80903</b>  Phone Number: <b>(719) 448.7577</b></p> <hr/> <p><b>Plaintiff:</b>  Marlene Bizub,</p> <p>vs.</p> <p><b>Defendant:</b>  Elizabeth S. Paterson,</p> <p>vs.</p> <p><b>Movant:</b>  Colorado Springs Gazette, through its Records Custodian,  Brad Shaw.</p> <hr/> <p>Arthur W. Porter, Esq. Reg. #13011  Arthur W. Porter, Professional Corporation  312 South Weber Street Suite B  Colorado Springs, CO 80903  Phone Number: (719) 577.4447  FAX Number: (719) 227.7255  Email: <a href="mailto:awpesq@comcast.net">awpesq@comcast.net</a>      Date: 5.30.08</p>	<p><b>Court Use Only</b></p> <hr/> <p>Case No. 2007CV1960</p> <p>Division: 2</p>
<p align="center"><b>RESPONSE TO MOTION FOR PROTECTIVE ORDER AND MOTION TO QUASH</b></p>	

Plaintiff, by and through her attorney, Arthur W. Porter, Professional Corporation, in the person of Arthur W. Porter, hereby files this her Response to Motion for Protective Order and Motion to Quash and in support thereof states as follows:

1. Plaintiff cannot afford to litigate with Freedom Newspapers with regard to the question of their Motion for Protective Order and Motion to Quash.
2. The issue presented is not a constitutional question.
3. Freedom Newspapers' reference to the Colorado statute commonly referred to as the Reporter's Shield act is inappropriate.
4. Plaintiff believes that the Defendant and/or her proxies are utilizing the community bulletin board facilitated by *The Gazette* newspaper through its website, gazette.com and through the information management site, pluck.com, to further disparage and defame the Plaintiff herein.

5. If such is the case, Defendant is in violation of the permanent injunction issued by this Court.
6. Examples of the comments made are attached hereto as Exhibit A and by reference incorporated herein.
7. The undersigned believes that Elizabeth Paterson, Maria Sinel, Deborah Stratton Matthews, Kristen Simpson-Hernandez, Dottie Cortez, Kathleen O’Niel and others may be individuals acting for or at the behest of the Defendant in violation of this Court’s permanent injunction.
8. The moving party has IP addresses and email addresses for the individuals who have posted these comments. An example of a confirming email establish Movant’s possession of such information is attached.
9. This information is not “news information” as defined by C.R.S. 24-72.5-102(3) as no newsperson was involved in its gathering.
10. Moreover, defamatory and disparaging statements are not “knowledge, observation, notes, documents, photographs, films, recordings, video tapes, audio tapes, reports or the contents thereof”.
11. Additionally, this Court can order the release of this information pursuant to C.R.S. 24-72.5-104 where, as in this case, the information is directly relevant to a substantial issue in this case, the information cannot be obtained by any other reasonable means, and the Plaintiff’s interest in the information far outweighs the interest of *The Gazette* in protecting the anonymity of its bloggers.
12. Indeed, *The Gazette*’s own User Agreement with the bloggers requires each blogger to affirm that the user content is not unlawful, harmful, threatening, tortious, defamatory, libelous, abusive or disparaging. As well, they must affirm that the information posted does not harass or advocate the harassment of another and it cannot promote information that is known to be false or misleading. As the Court can readily see, the postings made do not satisfy the user agreement entered into between the bloggers and the moving party. (See attached.)
13. Moreover, the Movant’s own Privacy Policy which is a part of the User Agreement permits *The Gazette* to personally use the bloggers’ identity information, share the bloggers’ identity information with affiliates, sell the bloggers’ identity information to others, and requires the bloggers to acknowledge that “in certain instances [*The Gazette*] may disclose this personal information when [*The Gazette*] ha[s] reason to believe that it is necessary to identify, contact or bring legal action against persons or entities who may be causing injury. . .to others.” (See attached.)
14. Thus, even the moving party acknowledges that release of the identifying information would be necessary and permitted under circumstances such as this.

15. Plaintiff's counsel has discussed all of the foregoing for the moving party and was advised that the moving party routinely files these motions for protective order and to quash subpoenas and that the moving party was unpersuaded by whether there was a compelling argument requiring the information's disclosure. The filing of this motion was his "marching orders".
16. Plaintiff requests an award of attorney's fees and an order of this Court compelling disclosure of the information requested forthwith.

Respectfully submitted,

***Arthur W. Porter, P.C.***

s/Arthur W. Porter \_\_\_\_\_

Arthur W. Porter, #13011

Pursuant to Rule 121, § 1-26 a duly signed original is available at the law firm of Arthur W. Porter, Professional Corporation.

### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served this date in the manner indicated below and addressed as follows:

F. Maria Sinel, Esq.  
223 N. Wahsatch Ave., Suite 201  
Colorado Springs, CO 80903

Ashley I. Kissinger, Esq.  
Levine Sullivan Koch & Schulz, L.L.P.  
1888 Sherman Street, Suite 370  
Denver, CO 80203

- Fax
- U.S. Mail
- United Parcel Service
- Hand-Delivery
- Lexis/Nexis File and Serve

s/Linda M.L. Harvey \_\_\_\_\_

Pursuant to Rule 121, § 1-26 a duly signed original is available at the law firm of Arthur W. Porter, Professional Corporation.