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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

Realty Executives International  
Incorporated, an Arizona corporation,

Plaintiff,

vs.

John Doe and Jane Doe, husband and wife,  
et al.,

Defendants.

No. CV11-1318-PHX-DGC

**ORDER**

The Court has received a motion to quash Plaintiff’s subpoena, filed by an anonymous person identified in the motion simply as “Account Holder.” Doc. 10. The motion is fully briefed (Docs. 11, 12) and no party has requested oral argument. For reasons that follow, the motion will be denied.

Account Holder, who appears to be identified in the reply memorandum as Olga Rincon (Doc. 12 at 4), argues that the subpoena exceeds the scope of the Court’s July 13, 2011 order permitting limited discovery to identify the true defendants in this case (Doc. 8). Although it is true that Plaintiff has obtained the name of Oscar Rincon as the registrant of the domain name associated with the wrongful acts alleged in the complaint (realtyexecutivesbankruptcy.com), Plaintiff has also provided sufficient reason to question whether this is the true identity of the person who registered the domain name and mailed 6,000 postcards to persons in Maricopa County falsely suggesting that Plaintiff had filed for bankruptcy protection. These reasons include the fact that the

1 information obtained from the initial subpoenas in this case suggests that Oscar Rincon  
2 lives in Cali, Columbia and has no apparent connection to Plaintiff or its business. The  
3 Court concludes that Plaintiff's subpoena to Wells Fargo to identify the owner of the  
4 credit card used to purchase the domain name falls reasonably within the scope of the  
5 Court's order – it is calculated more accurately to identify the person or persons behind  
6 the wrongdoing alleged in the complaint.<sup>1</sup>

7 In the reply memorandum, Account Holder makes a new argument: that Plaintiff  
8 has not made the showing necessary to conduct discovery designed to identify an  
9 unknown defendant. In addition to the fact that the Court generally will not consider  
10 arguments made for the first time in a reply memorandum, the Court finds Account  
11 Holder's new argument unpersuasive.

12 At least some of the cases cited by Account Holder concerned efforts to identify  
13 persons who had engaged in anonymous Internet speech protected by the First  
14 Amendment. The *Dendrite International* decision by the New Jersey Supreme Court is  
15 such a case. See Doc. 12-3. Here, however, Plaintiff has not sued the Doe Defendants  
16 for anonymous Internet speech.

17 Other cases cited by Account Holder (Docs. 12-2, 12-3) describe the good cause  
18 showing required to conduct discovery before the Rule 26(f) conference. See Fed. R.  
19 Civ. P. 26(d). The Court concludes that the showing has been made in this case. Plaintiff  
20 identified the Doe Defendants with as much specificity as possible given their use of an  
21 anonymously registered domain name, explained why it was unable to obtain their true  
22 identity through traditional means such as a "Whois" lookup, and presented a reasonable  
23 likelihood of making the identification through the proposed subpoenas. In addition, the

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25 <sup>1</sup> On November 2, 2011, Account Holder filed an unsigned declaration purportedly  
26 on behalf of Oscar Rincon in Columbia, asserting that he used Olga Rincon's credit card  
27 to register the domain name. He provides no explanation why, and does not address the  
28 other alleged acts identified in Plaintiff's complaint. Doc. 17. The Court cannot rely on  
an unsigned declaration in acting upon Plaintiff's motion, and even if the declaration was  
signed it does not provide enough information for the Court to conclude that the  
subpoena should be quashed.

1 complaint pleads wrongful action that likely would survive a motion to dismiss.

2 Account Holder argues that Plaintiff has obtained sufficient information and  
3 should be required to name Oscar Rincon as a Defendant and proceed with the litigation,  
4 but Account Holder herself concedes that the Court may have not jurisdiction over him.  
5 To the extent the Wells Fargo subpoena seeks to identify other Doe Defendants within  
6 the Court's jurisdiction, it clearly falls within the scope and intent of the Court's  
7 July 13, 2011 order.

8 The fact that Account Holder appears to confirm that she is Olga Rincon in the  
9 reply memorandum does not render the subpoena moot. Ms. Rincon has not appeared as  
10 the moving person on this motion and provides no factual support for the somewhat  
11 vague suggestion that she is the holder of the credit card used to purchase the domain  
12 name. Plaintiff provides reason to believe that the address associated with Olga Rincon  
13 is not in fact her true residence, and she does nothing to dispel this uncertainty, stating  
14 vaguely that "Olga Rincon may have a US mailing address different than her home  
15 address." Doc. 12 at 3.

16 Finally, Account Holder's expressions of privacy concerns and her protest against  
17 "expansive discovery" (Doc. 12 at 6) are not well taken. Plaintiff seeks only to discover  
18 the identity of the card holder and others affiliated with the account – information the  
19 card holder and other account participants have given to Wells Fargo and about which  
20 she has not shown any particular privacy sensitivity. What is more, obtaining the identity  
21 of the card holder and others related to the account simply cannot accurately be described  
22 as "expansive discovery."

23 **IT IS ORDERED** that the motion to quash the subpoena (Doc. 10) is **denied**.

24 Dated this 10th day of November, 2011.

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David G. Campbell  
United States District Judge