IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
ST. CLAIR COUNTY, ILLINOIS
LAW DIVISION

GUAVA, LLC,	)	
	)	
Petitioner,	)	
	)	
v.	)	12 MR 417
	)	
COMCAST CABLE COMMUNICATIONS, LLC,	)	
	)	
Respondent.	)	

MOTION TO QUASH AND/OR OBJECTION TO DISCOVERY

NOW COME John Doe 75.150.227.205, John Doe 98.213.192.42, John Doe 76.29.35.172, John Doe 98.214.217.213, John Doe 67.167.13.99, John Doe 67.173.94.229, John Doe 98.213.182.122, John Doe 67.174.24.44, John Doe 24.15.225.33, John Doe 71.194.189.101, John Doe 75.57.3.17, John Doe 98.213.129.83, John Doe 98.213.177.66, John Doe 67.173.71.42, John Doe 68.57.233.25, John Doe 68.162.51.34 and John Doe 67.167.112.222 (hereinafter "Movants"), in response to Petitioner's Petition for Discovery and the Court's December 12, 2012 Order, and in support of their Motion to Quash and/or Objection to Discovery show the Court as follows:

I. INTRODUCTION AND FACTUAL BACKGROUND

Petitioner has alleged in its Rule 224 Petition for Pre-Suit Discovery that Movants, and almost 300 other discovery targets, engaged in "computer hacking" and "computer tampering" for the alleged unauthorized access to Petitioner's pornographic website. Petition ¶¶ 11-30. Comcast, the Respondent-in-Discovery in this matter, objected to the Petition, but their objection was overruled and on December 12, 2012, the Court issued an Order requiring Comcast to identify the subscribers listed in the Petition, but only after Comcast provided the subscribers

with notice and those subscribers had an opportunity to object on their behalf. (See Discovery Order.)

This case was filed in response to an outcome in *Guava I*, a case filed by Petitioner in the Circuit Court of Cook County, and which remains pending in the Law Division before the Honorable Sanjay Tailor. In *Guava I*, Petitioner filed suit against a single defendant named Skyler Case. Mr. Case, for reasons that pass understanding, immediately entered into an *agreed* order permitting Guava to conduct far-reaching early discovery by issuing subpoenas to over 300 ISPs, and filed an answer in which he admitted the existence of, and his participation in, a vast conspiracy, with an unknown number of alleged co-conspirators, to wrongfully access Guava's computer systems. The undersigned counsel represented 37 John Doe subpoena targets in *Guava I*.

The situation was so unusual, and appeared so against the apparent interests of Mr. Case, that on no fewer than four occasions in the presence of the undersigned counsel, Judge Tailor inquired into the veracity of Guava's claims and the veracity of the "defense" being presented on behalf of Mr. Case. Over the course of at least four motion and status hearings, Judge Tailor asked counsel for Guava and for Mr. Case if they were involved in a collusive scheme to issue subpoenas, indicated that he believed that might be the situation, questioned counsel for Mr. Case as to why any defendant would consent to such wide-ranging discovery and simultaneously file an answer admitting liability and informed counsel for Guava that he did not see evidence of any conspiracy. (See Declaration of Erin K. Russell.) Ultimately, on October 4, 2012, Judge Tailor issued an order staying all subpoenas issued by Guava. (See Tailor Order, attached hereto as Exhibit A.) Not only did Judge Tailor stay all outstanding subpoenas; he also ordered that Guava cease issuing new subpoenas until further order of the court. (Ex. A, ¶2). After the hearing

on October 4, 2012, John Steele, counsel for Guava, approached the undersigned in the hallway outside the courtroom and assured her that she and her clients would regret filing their motions and that there would be retaliation. (See Declaration of Erin K. Russell.) On October 5, 2012, Guava filed a notice of withdrawal of subpoenas as to all of the undersigned's 37 clients. (Ex. B)[1].

Guava began filing federal lawsuits against those John Doe subpoena targets on October 5, 2012 (despite having told Judge Tailor in open court that they were seeking discovery of the John Doe subpoena targets' identities merely to conduct discovery as to damages against Mr. Case) (See Declaration of Erin K. Russell). The hearing on the John Doe motions to quash and motions to dismiss was scheduled for October 20, 2012. (Ex. A, ¶4) That hearing was rescheduled for Monday, November 5, 2012 at the request of attorney Paul Duffy, who claimed to have a medical emergency. On Friday, November 2, 2012, Guava filed a response to the outstanding motions, the language of which belies both their anger at the outcome of the October 4 hearing and the true purpose of their subpoena campaign. (Ex. C).

On November 5, 2012, the parties appeared for a hearing on the outstanding motions. The undersigned appeared for her 37 clients, and attorneys Paul Duffy, John Steele and Paul Hansmeier appeared for Guava. Judge Tailor declined to rule on the motions, as the subpoenas had already been withdrawn. However, he also declined to permit Guava to resume its subpoena activity, and has continued to do so at every status hearing since that date. Since that time, having received assurances from counsel for Guava and Mr. Case that they were conducting an actual adversarial case, and that depositions had been taken, Judge Tailor has ordered the parties to produce to him, in open court, copies of the transcripts of said depositions. In his most recent

[1] It is noteworthy that the withdrawal was signed on October 4, 2012, the day of the hearing at which Judge Tailor stayed all subpoena activity, and was signed by Paul Duffy, who was the only attorney who entered an appearance on behalf of Guava but who was sidelined at every hearing by Mr. Steele.

order, Judge Tailor gave the parties until January 30, 2013 to provide him with said transcripts. (Ex. D).

This case is nothing more than an attempt by Guava to do in St. Clair County what Judge Tailor specifically ordered would not occur in Cook County in *Guava I.* It seems clear that Guava hoped that if the objecting subpoena targets were out of the way, Judge Tailor would allow further subpoena activity. He refused that request on November 5, 2012, and Guava filed the instant case within 15 days of that order.

This case is merely an attempt by Guava to take up in St. Clair County where Judge Tailor forced it to leave off in Cook County. Venue is improper in St. Clair County, as none of the Movants reside here. This Court lacks jurisdiction over one of the Movants, John Doe 75.150.227.205, which is located in Michigan, a fact which is easily ascertained by the method Petitioner claims to have used to determine the ISP for each of Movants' IP addresses.

Moreover, Guava lacks capacity to sue in Illinois. It is not an Illinois limited liability company, and according to the Illinois Secretary of State website is not authorized to do business here. As such, under the Illinois Business Corporation Act it may not bring a lawsuit in Illinois without obtaining a certificate of authority from the Secretary of State. It is notable that Guava failed to identify the state in which it is organized in its Petition. Doing so is a common convention of civil pleading. Its failure to do so is no oversight. The undersigned could find only one case in the entire country in which Guava's location appears to have been revealed. One of the angry spinoff cases that emanated from *Guava I* was filed in federal court in Arizona. The Arizona attorney who filed that case completed a civil action cover sheet in which he identified "Guava, LLC" as being located in Maricopa County, Arizona. (Ex. E). Movants respectfully suggest that this is a threshold issue that can be addressed easily by requiring Guava to identify the state in which it is organized and in which its principal place of business is located.

II. TECHNICAL BACKGROUND

An ISP assigns an identifying number, called an IP address, to each ISP subscriber (like Movants) whose router the ISP connects to the Internet. Petition ¶ 4; *United States v. Heckenkamp*, 482 F.3d 1142, 1144 n.1 (9th Cir. 2007). Typically, ISPs assign subscribers a dynamic IP address that changes over time. *United States v. Kearney*, 672 F.3d 81, 89 (1st Cir. 2012). An IP address serves to route traffic efficiently through the network,[2] it does not identify the computer being used or its user.[3] Petitioner has identified only the IP addresses of routers or wireless access points for accounts it alleges were used to breach its computer systems, *not* the breaching parties. Complaint ¶ 14. "IP subscribers are not necessarily copyright infringers." *VPR Internationale v. Does 1-1017*, No. 11-cv-02068-HAB-DGB, 2011 U.S. Dist. LEXIS 64656, *3 (N.D. Ill. Apr. 29, 2011) (Prenda Law, for plaintiff). "Where an IP address might actually identify an individual subscriber and address the correlation is still far from perfect ... The infringer might be the subscriber, someone in the subscriber's household, a visitor with her laptop, a neighbor, or someone parked on the street at any given moment." *Id.* at *4; see also *Hard Drive Prods. v. John Doe*, Civ. A. No. 11 CV 8333, 2012 U.S. Dist. LEXIS 89937, *6 (N.D. Ill. June 26, 2012) (Prenda Law stating that "while it is common for an account holder to also be an infringer, it is also possible for the account holder and the infringer to be separate persons").[4] Forensics firms often misidentify innocent subscribers as infringers for other reasons, including:

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[2] *Poweroasis, Inc. v. Wayport, Inc.*, Civ. A. No. 04-12023-RWZ, 2007 U.S. Dist. LEXIS 34356, *35-38 (D. Mass. May 10, 2007), *vacated on other grounds*, 273 Fed. Appx. 964 (Fed. Cir. 2008).

[3] "IP addresses specify the locations of the source and destination nodes in the topology of the routing system." Wikipedia, *IP Address*, http://en.wikipedia.org/wiki/IP_address (as of April 18, 2012).

[4] See also *Third Degree Films v. Does 1-3577*, No. C-11-02768 LB, 2011 U.S. Dist. LEXIS 128030, *10 (N.D. Cal. Dec. 15, 2011) ("the ISP subscribers may not be the individuals who infringed upon Plaintiff's copyright") (citations omitted); *In re BitTorrent Adult Film Copyright Infringement Cases*, Civ. A. No. 11-3995 (DRH) (GRB) 2012 U.S. Dist. LEXIS 61447, *8-9 (E.D.N.Y. May 1, 2012) (citations omitted):

> An IP address ... is no more likely that the subscriber to an IP address carried out a particular computer function ... than to say an individual who pays the telephone bill made a specific telephone call. Indeed, due to the increasingly popularity of wireless routers, it much less likely. While a decade ago, home wireless networks were nearly non-existent, 61% of US homes now have wireless access. ... [A] single IP address usually supports multiple computer devices—which unlike traditional telephones can be operated simultaneously by different individuals... Unless the wireless router has been appropriately secured (and in some cases, even if it has been secured),

1. IP addresses and timestamps that do not reliably identify the correct party;[5]

2. An ISP subscriber with dynamic IP addressing through its website host shares its IP address with several other subscribers;[6] and

3. Anyone with wireless capability can use a subscriber's wifi network to access the Internet, giving the impression that it is the subscriber who is engaged in potentially wrongful acts.[7]

III. ARGUMENT AND CITATION OF AUTHORITY

A. Guava Lacks Capacity To Sue In Illinois Because It Is A Foreign Corporation Not Authorized To Do Business Here.

Under Illinois law, no foreign corporation transacting business in Illinois without authority to do so is permitted to maintain a civil action in any court of this State. 805 ILCS 5/13.70; *RehabCare Group East v. Camelot Terrace*, 2010 U.S. Dist. LEXIS 132581 (N. Dist. Ill., Dec. 15, 2010).

In *Camelot*, the plaintiff, a Delaware corporation with a principal place of business in Missouri, sought recovery for unpaid bills for therapy services it provided to residents of the defendant's nursing home. Defendant was an Illinois corporation. Id. at *6 -7. The court held that though it had subject matter jurisdiction to hear RehabCare's claims, RehabCare itself lacked capacity to sue in Illinois because it was a foreign corporation not authorized to do business here. Id. at *6-13.

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neighbors or passersby could access the Internet using the IP address assigned to a particular subscriber and download the plaintiff's film.

[5] Michael Piatek et al., *Challenges and Directions for Monitoring P2P File Sharing Networks—or Why My Printer Received a DMCA Takedown Notice*, Proceedings of 3rd USENIX Workshop on Hot Topics in Security, at 3 (2008) (http://dmca.cs.washington.edu/uwcse_dmca_tr.pdf); Wikipedia, *IP address spoofing*, http://en.wikipedia.org/wiki/IP_address_spoofing (as of April 18, 2012) ("spoofing" refers to creating a forged IP address with the purpose of concealing the user's identity or impersonating another computing system).

[6] Wikipedia, *Web hosting service*, http://en.wikipedia.org/wiki/Web_hosting_service (as of April 18, 2012).

[7] See, *VPR*, 2011 U.S. Dist. LEXIS 64656, at *3 (discussing raid by federal agents on home of IP subscriber falsely linked to downloading child pornography based on information provided by ISP; "Agents eventually traced the downloads to a neighbor who had used multiple IP subscribers' Wi-Fi connections.").

Guava, LLC is not an Illinois limited liability company. Though the Illinois Secretary of State records reflect that there is a Guava, LLC organized in Illinois, that entity is not the Guava that stands as Petitioner in this case. Guava's failure to identify the state in which it is organized is a strange departure from the general convention of civil pleading. Its failure to so identify itself is no accident. Counsel for Movants could find only one case nationwide in which Guava identified its location. As noted above, one of the federal cases spun off after Judge Tailor stayed the subpoena activity in *Guava I* was filed in federal court in Arizona. In that case, Guava's Arizona counsel filed a Civil Action Cover Sheet in which he identified "Guava, LLC" as being located in Maricopa County. (Ex. F) Strangely, the Arizona Secretary of State has only one records of a "Guava" entity, and that entity is named "Guava Enterprises, LLC". (Ex. G)

The question of where "Guava, LLC" is organized is a threshold question in this matter. If Guava lacks capacity to sue, then the Court need not examine any other argument herein, as the subpoena seeking Movants' information must be quashed due to Guava's lack of capacity. Movants respectfully request that the Court enter an Order requiring Guava to disclose its state of organization and the location of its principal place of business. If there is some error, and Guava indeed possesses a certificate from the Illinois Secretary of State, Movants are certain it will present such to the Court at its earliest opportunity.

B. Guava's Petition Fails To Allege Facts Sufficient To Support A Cause Of Action As Required By 735 ILCS 5/2-615 And As Such It Has Failed To Sustains Its Burden To Show That Discovery Of Movants' Identities Is Necessary, As Required Under Illinois Law.

To obtain discovery under Rule 224, Petitioner must first allege facts sufficient to survive a section 2-615 motion to dismiss. *Stone v. Paddock Publ'g, Inc.*, 961 N.E.2d 380, 389-90 (Ill. App. Ct. 2011). The Petition pleads two causes of action; Computer Fraud and Abuse Act (a federal claim) and Computer Tampering under the Illinois Criminal Code, 720 ILCS 5/127/-51 (erroneously

described by Petitioner as 720 ILCS 5 §16D-3(c). (The statute appears to have been amended in July of 2011.) See Petition ¶¶ 11-18 (Count I - 18 U.S.C. § 1030), ¶¶ 19-23 (Count II – computer tampering).

"Illinois is a fact-pleading jurisdiction." *Simpkins v. CSX Transp. Inc.*, 965 N.E.2d 1092, 1099 (2012). Under 735 ILCS 5/2-615, "a plaintiff cannot rely simply on mere conclusions of fact unsupported by specific factual allegations." *Anderson v. Vanden Dorpel*, 667 N.E. 2d 1296, 1299 (1996). "[S]ignificant facts [must be] contained in the pleadings which, if established, would entitle the complainant to relief." *Abrams v. Watchtower Bible & Tract Soc'y of N.Y., Inc.*, 715 N.E. 2d 798, 801 (Ill. App. Ct. 1999). Petitioner fails to plead sufficient facts supporting any cause of action or to satisfy the conditions of Rules 735 ICLS 5/2-413, 222 and 224.

A pleading must assert a legally recognized cause of action and it must plead facts that bring the particular case within that cause of action. Section 5/2-615; *Marshall v. Burger King Corp.*, 222 Ill. 2d 422 (2006). Sufficiently stating a proper cause of action is the petitioner's burden to show that the discovery requested is "necessary." *Stone v. Paddock Publ'g, Inc.*, 961 N.E.2d 380, 389 (Ill. App. Ct. 2011). Instead, Petitioner recites elements, void of supporting facts. Illinois requires "plaintiff to allege facts, rather than mere conclusions, to demonstrate that his claim constitutes a viable cause of action." *Stone* at 390. "To survive a motion to dismiss, the plaintiff must allege specific facts supporting *each element of [its] cause of action* and the trial court will not admit conclusory allegations and conclusions of law that are not supported by specific facts." *Id.* (citing *Crossroads Ford Truck Sales, Inc. v. Sterling Truck Corp.*, 406 Ill. App. 3d 325, 336 (2010)).

1. Petitioner Has Failed To State A Claim For Relief Upon Which Relief Could Be Granted Under The Computer Fraud and Abuse Act.

Petitioner alleges violations of the Computer Fraud and Abuse Act ("CFAA") 18 U.S.C. § 1030. See Petition ¶¶ 11-18.

A claim under 18 U.S.C. § 1030(a)(2)(C) requires "intentionally access[ing] a computer without authorization or exceed[ing] authorized access, and thereby obtain[ing] ... information from any protected computer." But mere copying or "taking of information" does not constitute "damage" under the CFAA. *Worldspan, LP v. Orbitz, LLC*, No. 05 C 5386, 2006 U.S. Dist. LEXIS 26153 (N.D. Ill. Apr. 19, 2006). Petitioner has not alleged any data, system or information was impaired. "[A] civil violation of the CFAA requires 'impairment to the integrity or availability of data, a program, a system, or information' and 'interruption in service.'" *Garelli Wong & Assocs., Inc. v. Nichols*, 551 F. Supp. 2d 704, 710 (N.D. Ill. 2008); *Farmers Ins. Exch. v. Auto Club Group*, 823 F. Supp. 2d 847, 852 (N.D. Ill. 2011). There is no "damage" under the CFAA unless the violation caused a diminution in the completeness or usability of the data on a computer system. *Cassetica Software, Inc. v. Computer Scis. Corp.*, 2009 U.S. Dist. LEXIS 51589, *10 (N.D. Ill. June 18, 2009) (*citing Del Monte Fresh Produce, N.A., Inc. v. Chiquita Brands Int'l Inc.*, 616 F. Supp. 2d 805 (N.D. Ill. 2009)); *Kluber Skahan & Assocs., Inc. v. Cordogan, Clark & Assoc., Inc.*, No. 08-cv-1529, 2009 U.S. Dist. LEXIS 14527, *7 (N.D. Ill. Feb. 25, 2009); *Sam's Wines & Liquors, Inc. v. Hartig*, 2008 U.S. Dist. LEXIS 76451, *3 (N.D. Ill. 2008). Petitioner's allegations of improper access cannot amount to "damage".

Petitioner also fails to state a loss. A Petitioner must "show that there are triable issues as to (i) whether a CFAA-qualifying 'loss' aggregating at least $5,000 occurred, and (ii) whether this loss was 'caused' by a CFAA violation." *Ground Zero Museum Workshop v. Wilson*, 813 F. Supp. 2d 678, 693 (D. Md. 2011). Petitioner offers neither facts or allegations of any value, what the "valuable information" may be, nor anything that totals an amount exceeding $5,000. The statute defines "loss" broadly as: "any reasonable cost to any victim, including the cost of responding to an offense, conducting a damage assessment, and restoring the data program, system, or information to its condition prior to the offense, and any revenue lost, cost incurred, or other consequential damages incurred *because of interruption of service*." 18 U.S.C. § 1030(e)(11) (emphasis added). "As the

statutory language makes clear, 'losses' under the CFAA are limited to costs incurred and profits lost as a direct result of interrupted computer service." *Gen. Scientific Corp. v. Sheervision,* No. 10-cv-13582, 2011 U.S. Dist. LEXIS 100216, *12 (E.D. Mich. Sept. 2, 2011); *Cassetica Software* at *11 ("the alleged loss must relate to the investigation or repair of a computer system following a violation that caused impairment or unavailability of data."). In asserting its cause of action, Petitioner failed to allege anything more than conclusory facts to support a claim that its losses were incurred because of an interruption of service, or any resulting impairment or unavailability of data. Complaint ¶¶ 11-18. This does not suffice.

The broad catch-all provisions of 18 U.S.C. § 1030(a)(4) are also inapplicable. A claim under subsection 1030(a)(4) has four elements: a defendant must (1) "knowingly and with intent to defraud" (2) access a "protected computer" (3) "without authorization," or by exceeding such authorization as was granted, and (4) as a result "furthers the intended fraud and obtains anything of value." 18 U.S.C. § 1030(a)(4).[8] Petitioner has not alleged specific facts constituting fraud as required. Petitioner has also failed to allege that Movants acted "knowingly and with intent to defraud." Moreover, Petitioner has not pleaded that any ISP subscriber obtained anything of value as defined in this subclause, because the "thing obtained [may not consist] only of the use of the computer ..." 18 U.S.C. § 1030(a)(4).

2. Petitioner's Computer Tampering Claim Must Fail Because There Is No Private Right Of Action As Pled By Petitioner.

Count II of Guava's Petition seeks damages under the Computer Tampering section of the Illinois Criminal Code, 720 ILCS 5/17-51 (improperly cited by Petitioner as 720 ILCS 5 § 16D-3(c), which was amended in July of 2011). However, Petitioner's "computer tampering" claim must fail because the statute does not provide a private right of action as pled by Petitioner.

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[8] *See* § 1030(g); *Kluber Skahan*, 2009 U.S. Dist. LEXIS 14527, *6 (citing *Motorola, Inc. v. Lemko Corp.*, 609 F. Supp. 2d 760 (N.D. Ill. 2009)); *P.C. Yonkers Inc. v. Celebrations the Party and Seasonal Superstore, LLC*, 428 F.3d 504, 508 (3d Cir. 2005).

The Illinois Criminal Code, 720 ILCS 5/17-51(c) provides in pertinent part as follows:

> Whoever suffers loss by reason of a violation of subdivision (a)(4) of this Section may, in a civil action against the violator, obtain appropriate relief. In a civil action under this Section, the court may award to the prevailing party reasonable attorney's fees and other litigation expenses."

There is no private right of action for violations of any other section of the computer tampering statute.

Section a(4) of the Statute provides that:

> A person commits computer tampering when he or she knowingly and without the authorization of a computer's owner or in excess of the authority granted to him or her: Inserts of attempts to insert a program into a computer or computer program knowing or having reason to know that such program contains information or comments that will or may (A) damage or destroy that computer, or any other computer subsequently accessing or being accessed by that computer; (B) alter, delete or remove a computer program or data from that computer, or any other computer program or data in a computer subsequently accessing or being accessed by that computer; or (C) cause loss to the users of that computer or the users of a computer which accesses or which is accessed by such program.

720 ILCS 5/17-51(a)(4).

In *Allstate Insurance Company v. Janice Mathison*, the United States District Court for the Northern District of Illinois held that Allstate's failed to state a claim upon which relief could be granted for an alleged violation of 720 ILCS 5/16D-3(a)(5) because 720 ILCS 5/16D-3 did not authorize civil actions for violations of section (a)(5). Id., 2002 U.S. Dist. LEXIS 11541 at *7 (N. Dist. Ill. June 25, 2002).

In the instant case, Count II of Guava's Petition consists of nothing more than conclusory allegations that the "Does" accessed Guava's computer system without Guava's authorization and obtained services as if they were paying members. Guava further alleges, *ipse dixit*, that they suffered certain damages as a result of the alleged unauthorized access. Such conclusory allegations not withstand scrutiny under 735 ILCS 5/2-615. Assuming *arguendo* that they could, the claim would

still fail because a civil action as plead by Petitioner is simply not authorized under 720 ILCS 5/17-51(c).

C. The Subpoena Seeking Information On John Doe 75.150.227.205 Must Be Quashed Because This Court Has No Jurisdiction Over John Doe 75.150.227.205, Which Is Located In Michigan.

Long before it filed its Petition, Guava knew that John Doe 75.150.227.205 was among the individuals over whom this Court has personal jurisdiction. In prior litigation, Petitioner's counsel has "acknowledge[d] that geolocation technology allows a person to ascertain the city and state where a particular IP address is located." *Millenium TGA v. Doe*, Case No. 10 C 5603, 2011 U.S. Dist. LEXIS 110135, *3 (N.D. Ill. Sept. 26, 2011) (Prenda Law, for plaintiff). For example, ARIN Whois ("http://whatismyipaddress.com"), a public domain tool, indicates that John Doe 75.150.227.205 is in Michigan. Thus, without any of the subpoenaed information, Petitioner already knew this John Doe discovery target was not subject to this Court's jurisdiction. Consequently, the Court may not authorize or enforce any discovery Petitioner seeks about this John Doe. *Cent. States, Se. & Sw. Areas Pension Fund v. Phencorp Reinsurance Co., Inc.*, 440 F.3d 870, 877 (7th Cir. 2006) (holding that a prima facie case for personal jurisdiction must be made before discovery is allowed); *Enterprise Int'l v. Corporacion Estatal Petrolera Ecuatoriana*, 762 F.2d 464, 470-471 (5th Cir. 1985) (no authority to issue preliminary relief without personal jurisdiction); *United Elec. Radio and Mach. Workers of America v. 163 Pleasant Street Corp.*, 960 F.2d 1080, 1084 (1st Cir. 1992) (same).

IV. CONCLUSION

Petitioner has failed to show that it has capacity to lawfully maintain this action in an Illinois court. None of the Movants reside in St. Clair County, and as such venue here as to them is improper. One of the Movants resides in Michigan, a fact which could have been ascertained easily and at no cost to Petitioner prior to filing its Petition. This Court has no jurisdiction over a Michigan party, and as such the Michigan John Doe must be dismissed and any request for its information from Comcast

quashed. And significantly, Petitioner has failed to satisfy its burden under Rule 224 and *Stone v. Paddock Publications*, 961 N.E.2d 380 (2011) that its claims can survive scrutiny under 735 ILCS 5/2-615. It has failed to sufficiently plead either of the two counts in its Petition, brought under the Computer Fraud and Abuse Act and the Illinois Criminal Code section on computer tampering, 720 ILCS 5/17-51.

WHEREFORE, Movants respectfully pray that the Court enter an Order a) denying Petitioner's Petition for Discovery as to their identities from Comcast; b) dismissing the claims against them pursuant to 720 ILCS 5/17-51; c) requiring that Guava disclose the state in which it is organized, the location of its primary place of business, and the nature of its activities in the State of Illinois; and d) enter an Order dismissing John Doe 75.150.227.205 due to lack of personal jurisdiction.

Dated: January 24, 2013

Respectfully submitted,

Erin Kathryn Russell

The Russell Firm
233 South Wacker Drive, 84th Floor
Chicago, IL 60606
T: 312-994-2424
F: 312-706-9766
ARDC# 6287255
erin@russellfirmchicago.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on January 24, 2013, she served copies of the foregoing document on all counsel of record at their addresses of record

Erin Kathryn Russell