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9
10 **IN THE UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**
12 **SAN JOSE DIVISION**

13 STRIKE 3 HOLDINGS, LLC.

14 Plaintiff,

15 Vs.

16 JOHN DOE subscriber assigned IP address
17 76.102.26.213

18 Defendant.

Case No. 5:19-cv-08239-VKD

Honorable Judge: Virginia DeMarchi

**DEFENDANT'S REPLY TO
OPPOSITION TO MOTION TO
QUASH SUBPOENA AND TO
DISMISS CASE UNDER F.R.C.P 41,
F.R.C.P. 11. MEMORANDUM OF
POINTS AND AUTHORITIES.**

Hearing

Date: April 14, 2020

Time: 10:00 AM

Courtroom: 2

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21 **REPLY**

1 **ISSUE PRESENTED**

2 The main issue presented is whether Plaintiff’s new (Post *COBBLER*) two-court litigation
3 forum-shopping strategy (filing first in Florida State Court, then cutting and running on every challenge,
4 then filing in this Federal Court, where they knew jurisdiction was proper in the first place) is an **abuse**
5 **of process** and provides adequate legal grounds to quash the subpoena and/or dismiss the case under
6 F.R.C.P. Rule 41.
7

8 Plaintiff proudly touts all the past Strike 3 cases (most pre-Cobbler) where Courts granted Strike
9 3 early leave to serve a subpoenas to identify an internet subscriber’s name and address. These motions
10 are not challenged because they are filed early in a litigation, usually without any notice to anyone that
11 may be affected. **Per-Cobble**, most of the motions were granted. However, when Cobbler became law
12 in the 9th circuit, Defendants knew they had a problem (they also had a problem in New Jersey in or
13 around the same time – Note Plaintiff take issue with citing cases out of this jurisdiction, but then goes
14 on to cite a slew of out of jurisdiction cases including its own New Jersey case, Maryland, New York,
15 Florida, Pennsylvania, Illinois, etc.).
16

17 At any rate, this is a case of **first impression**, and citing past cases prior to Strike’s 3’s
18 institution of its novel *Post-Cobbler* “East Coast / West Coast” forum shopping, “cut and run” abuse
19 of the court process) is not binding on this Court. As noted in our main opposition, Cobbler did not
20 decide a discovery issue, and thus its holding, as Plaintiff seeks to use it, is mere dicta. The Court, can
21 throw out any case that does not pass legal muster.
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23 Plaintiff urges that it is “plausible” that an internet subscriber is also the infringer, and thus its
24 pleading is proper. But this is not anymore true than a person made a phone call because they signed
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1 up for a phone account. This is purely a fishing expedition and they cite no evidence to overcome this.
2 Cobbler says merely suing an IP address (subscriber) is not enough. The reality is, Plaintiff has no clue
3 if the subscriber, anyone in their household, or some other third party infringed their movies. Yet, this is
4 “plausible?”

5
6 This is not an action seeking Rule 11 sanctions, this is an action to Quash the Subpoena because
7 it is the result of improper “game-playing” with the Court using a Florida “Bill of Discovery” (state
8 court action) to get “leads” (names and numbers they can pounce on to try to obtain “shame settlements”
9 as many courts have referred to them. While they have a right to enforce their copyrights, they do not
10 have the right to name innocent people who they cannot state even one fact other than “they are the
11 internet subscriber with a certain IP address on a certain day.” This does not meet the plausibility
12 standards, and their attempts at forum shopping and hopping from Coast to Coast in pursuit on a name
13 and address under these circumstances is atrocious.

14
15 Plaintiff claims in their opposition that “*Plaintiff first sought discovery in Florida State Court*
16 *– where Doe is subject to personal jurisdiction*” but they have made clear in their emails and pleadings
17 with various courts that using their Maxmind technology they know with near 100% certainty that the
18 IP address that is the subject of this lawsuit is located in Northern District of California. So, why didn’t
19 they file here in the first place? What is the grounds for personal jurisdiction over the Doe Defendant
20 in Florida? A server is located there? This is nonsense and shows the improper nature of filing in
21 Florida State Courts to generate “leads” to shakedown.

22
23 As noted in our main brief, Plaintiff has never challenged even one of these filings in Florida
24 when opposed. The argue in their opposition (**P4. Footnote 4**) – “Doe filed a motion to quash in
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1 Florida, but never filed a notice of a hearing.” Why would counsel in Florida further clog the Courts
2 their when Strike 3 “cuts and runs” on every single case in Florida, likely to avoid any threat of having
3 to pay legal fees for improper abuse of the Florida Court.

4 Defendant asks this court to take judicial notice of **Plaintiff’s “Exhibit 2” (P.1)** which shows
5 the opposition pleadings they face in Florida (which outlines all the shortcomings and frivolousness of
6 their “Bill of Discovery) to which they “cut and run” ON EVERY SINGLE CASE, they don’t even
7 pretend they will prosecute their claims in Florida State Court. Some of the grounds raised by Florida
8 defense counsel (which DOE has to pay legal fees for, and risks the improper passing of time in which
9 crucial ISP evidence could be lost are arguments that:

- 11 1. Subpoena requires disclosure of protected information and subjects Doe to undue burden
12 (the same argument being made here due to the intentional delay, and potential loss of
13 evidence, an undue and unnecessary burden, not to mention the costs of retaining counsel)
- 14 2. Plaintiff has an adequate remedy at law (i.e. filing a copyright infringement action which is
15 mentioned in the Orders they obtain if a Doe does not challenge them in State Court). *If*
16 *there is an adequate remedy at law, there is no need for a “action in equity” which is an*
17 *abuse of law.*
- 18 3. Plaintiff’s action is grounded and being pursued for purposes of pursuing copyright claims
19 and thus is preempted by federal law. (why not just file where they claim they know with
20 Maxmind technology where jurisdiction for their Copyrights infringement actions would be
21 proper, if the results are to be believed). They know there is no personal or subject matter
22 jurisdiction in the Florida state courts, but they are greedy and want to obtain as many
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1 “leads” as possible despite improper filings, improper jurisdiction, and having no intent
2 whatsoever to pursue their own pleadings in Florida.

3 Plaintiff is GREEDY, plain and simple, and having trimmed down from using the large Fox
4 Rothschild firm, down to a few small attorneys, they seek to get what they want no matter of the
5 propriety or load put on the system, and despite the fact this this intentional delay in Florida, is causing
6 potential exculpatory evidence the ISP may have to vanish (as they themselves have noted in their own
7 judicial pleadings). How can this type of forum shopping be permitted? This is improper and violates
8 the Federal Rules. If they are concerned with *Cobbler*, they should obtain more evidence before filing
9 federal court actions.
10

11 In that regard, we now see another tactic Strike 3 is employing in California federal courts.
12 Knowing *Cobbler* requires that a Plaintiff allege “*something more*” than just naming an ISP address,
13 Strike 3 is now obtaining names and addresses and comparing them with a person’s facebook posts. If
14 they can line up or, match or correlate the movies being downloaded with a person’s facebook “likes”
15 they figure this will overcome *Cobbler* and give them the “something more” needed.
16

17 Yet this is total junk science and will be challenged in other cases. For example, in one case
18 they stated that a Defendant is more likely to have downloaded their clients Blacked, Tushy, and Vixen
19 videos because their social media likes indicate they have an interest in “Star Wars.” Obviously, this
20 is a total joke, and will be opposed in another case. Making matters worse for them, the Defendant in
21 that case will show that the facebook account used was that of another person with a similar name.
22 These are the type of *callous intentional abuses* that are going on and the Courts have the inherent
23 power to quash the subpoena and dismiss the case for improper delay.
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1 Defendant is not seeking sanctions for rule 11 violation, and any meet and confer on the issue
2 would be completely pointless as Plaintiff has indicated ad nauseum that they believe what they are
3 doing is proper, and that they will not be dismissing case. The point of pointing out the violations of
4 the local federal rules is that case law under *F.R.C.P. 41 et seq* allows dismissal on these grounds, which
5 identify frivolous pleadings, game-playing with the courts which result in improper harassment of a
6 Defendant, undue Burden in chasing Plaintiff around the Courts when it know it should have sued in a
7 California federal court to pursue its copyright claim and not in a Florida state court “equity” action.
8 Then, cutting and running to avoid fees, and to vexatiously file in California.
9

10 The points are clear. Plaintiff should be stopped form improper forum shopping and filing
11 improper “equity” lawsuits in Florida state court. They should do more up-front work before naming
12 IP addresses to a lawsuit when they have no idea if the Subscriber is an infringer, a care-taker, a group
13 home, nothing. They do not care. They want their leads, but this abuse the Courts have the inherent
14 power to cure. For example, Arizona has a similar “Bill of Discovery” (can Strike 3 go file there after
15 they leave Florida following a “cut and run” there)? This novel litigation tactic, which arose post-
16 *Cobbler*, is a case of first impression and must be stopped.
17

18 Plaintiff citing the 1620 *Bacon Francis* quote (**p. 10 lines 17-19 of their brief**) completely
19 misses the point when cited in a case of first impression to addresses the new technologies (“Facebook
20 “Interests” matching they are using), and novel abuses (*Cut and run* in *equity* actions in State court
21 where no SMJ and/or personal jurisdiction is remotely conceivable) seen in this case and others. It’s
22 time to play fair, do your homework before suing subscribers, and stop shaking people down with this
23 East Coast – West Coast strategy.
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1 While technology is changing, the legal tools available have not. The Courts must use existing
2 tools such as the motion to quash, and motion to dismiss given the extraordinary actions being taken
3 by Plaintiff in pursuit of seeking to use Courts as an Arm to their collection activities, which includes
4 shakedowns and many demands on people (whether infringers or not), not uncommon at the \$50,000
5 level by Plaintiff and their counsel. As their counsel has noted, if you don't like being sued in Florida
6 state court, let us know and we will sue you in California, all while precious time drags on, risking the
7 loss of exculpatory evidence, and intentionally delaying the federal court case. This type of
8 unprecedented "work-around" must be frowned on, and the Order to quash and dismiss should be
9 signed.
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12 RESPECTFULLY SUBMITTED

13 DATED: March 23, 2020

14 THE LAW OFFICES OF STEVEN C. VONDRAN, P.C.

15
16 By: /s/ Steven C. Vondran

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