



DONGXIAO YUE)
 _____)
 Plaintiff)
 v.)
 TRIGMAX SOLUTIONS et al.)
 _____)
 Defendant)



**NON-PARTY BIAN-WANG.COM'S MOTION TO QUASH
 PLAINTIFF'S SUBPOENA AND SUGGESTIONS IN
 SUPPORT THEREOF**

COMES NOW, the non-party movant, bian-wang.com, and files this, its Motion to Quash Plaintiff's Non-Party Subpoena, and offers the following facts, arguments and objections to such subpoena in support thereof:

I. BACKGROUND INFORMATION:

1. On Tuesday, October 25, 2016, Plaintiff DONGXIAO YUE ("Plaintiff") served bian-wang.com ("bian-wang") with a non-party Subpoena ("Subpoena").
2. The Subpoena seeks to command bian-wang to produce the names, IP addresses, email addresses, browser agent information and other identifying information about the users who attacked Plaintiff on bian-wang.
3. Bian-wang is a not-for-profit personal web site that belongs to Chun-Hui Miao, an economics professor working for the University of South Carolina in Richland County, South Carolina.
4. Bian-wang hosts an online discussion forum for a wide range of topics. Its users

interact via blogs and comments. The web site does not require users to offer identification credentials including their legal names to register an account.

5. Bian-wang does not have any personal or business relationship with either Plaintiff Yue or Defendant Trigmax Solutions et al.

II. ARGUMENTS AND OBJECTIONS

Bian-wang seeks an Order quashing the Subpoena as it fails to allow reasonable time for compliance. Further, bian-wang seeks an Order quashing the Subpoena as it subjects bian-wang to undue burden as it requires significant time, expense and technical expertise to compile the information. Further, bian-wang seeks an Order quashing the Subpoena as it seeks information that is privileged and/or protected.

A. SERVED WITHOUT AN ADEQUATE TIME TO RESPOND

6. The South Carolina Rules of Civil Procedure *require* prior notice in writing of any commanded production of documents and things or inspection of premises before trial to be served on each party in the manner prescribed by Rule 5(b) at least *10 days* before the time specified for compliance. SCRCP 45(b)(1).

7. The Subpoena was served on bian-wang on October 25, 2016. The time specified for compliance is November 3, 2016, 10:00AM. There is not an adequate time for bian-wang to comply with the Subpoena.

B. UNDUE BURDEN

8. The South Carolina Rules of Civil Procedure *require* the court to quash or modify a subpoena that subjects a person to undue burden. SCRCP 45(c)(3)(A)(iv).

9. SCRCP 45(c)(1) requires the party issuing the subpoena to take reasonable steps not to impose undue burden or expense. The court should consider the burden on the

producing party as well as the issuing party's need for the information.

10. “Whether a subpoena imposes an undue burden upon a respondent raises a case-specific inquiry. It turns on such factors as relevance, the need of the party for the documents, the breadth of the document request, the time period covered by it, the particularity with which the documents are described and the burden imposed.” *Goodyear Tire & Rubber Co. v. Kirk's Tire & Auto Servicenter of Haverstraw, Inc.*, 211 F.R.D. 658, 662 (D.Kan. 2003). A court is to balance the relevance of the information sought against the burden imposed. *Id.*; *In re Coordinated Pretrial Proceedings in Petroleum*, 669 F.2d 620, 623 (10th Cir.1982).

11. Plaintiff has not shown a specific need for the information sought, nor the relevance of these information to his Complaint against Defendant.

12. Courts have also acknowledged that special consideration must be given to non-parties when assessing undue burden, balancing favor towards the non-party. See *North Carolina Right to Life, Inc. v. Leake*, 231 F.R.D. 49, 52 (D.D.C. 2005); *In re Automotive Refinishing Paint Antitrust Litig.*, 229 F.R.D. 482, 495 (E.D. Pa. 2005); *Guy Chemical Co. v. Romaco AG*, 243 F.R.D. 310 (N.D. Ind. 2007). “Although discovery is by definition invasive, parties to a lawsuit must accept its travails as a natural concomitant of modern civil litigation. Non-parties have a different set of expectations.” *Cusumano v. Microsoft Corp.*, 162 F.3d 708, 717 (1st Cir. 1998).

13. Further, courts have required a party issuing a subpoena to a third party that required the production of electronically stored information (“ESI”) to make a showing that the production of the ESI between the parties to the lawsuit was insufficient. See *Braxton v. Farmer's Ins. Group*, 209 F.R.D. 651, 653 (N.D. Ala. 2002).

14. Further, the South Carolina Rules of Civil Procedure stipulate that a person

responding to a subpoena need not provide discovery of electronically stored information from sources that are not reasonably accessible because of undue burden or cost. SCRCP 45(d)(D).

15. Almost all of the documents and information required by the Subpoena are in electronic format and stored in computer databases. The search and retrieval of the documents and information would be complex. In order to sift through all of the electronic information and compile it, bian-wang will have to expend a significant amount of time and resources.

16. Furthermore, compiling the information as demanded by the Subpoena requires technical expertise in the database technology. As a personal web site, bian-wang does not have any employee, much less a computer technician who has the required technical expertise.

17. While bian-wang could hire a computer technician to compile the information, the cost would be substantial for a not-for-profit personal web site. Bian-wang estimates that it would cost somewhere between \$600 and \$1000 to hire a technician to comply with the subpoena, in addition to paperwork, mailing and legal expenses.

C. PRIVILEGED OR OTHER PROTECTED MATTER

18. The South Carolina Rules of Civil Procedure *require* the court to quash or modify a subpoena that requires disclosure of privileged or other protected matter, if no exception or waiver applies. SCRCP 45(c)(3)(A)(iii).

19. In this case, the records commanded by Plaintiff for production are privileged or otherwise protected. Production under the Subpoena would require bian-wang to disclose confidential personal information of its users. This will adversely affect its relationships with the users who require confidentiality as an essential term of engagement and thus discourage users from participating in online discussions hosted on the web site.

20. Further, Plaintiff has not shown that the information sought regarding these

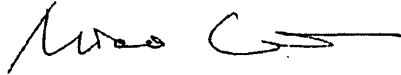
users are related to his Complaint against Defendant.

III. CONCLUSION

In conclusion, bian-wang seeks an Order quashing the Subpoena as it fails to allow reasonable time for compliance. Further, bian-wang seeks an Order quashing the Subpoena as it imposes an undue burden on bian-wang. The Subpoena seeks a large volume of information that is stored in electronic format. Compiling the information sought would require significant technical expertise, time, effort and expenses, which are exceedingly costly for a non-profit personal web site. Further, the information sought by Plaintiff would cause bian-wang to disclose confidential information of its users. Lastly, bian-wang seeks an Order quashing the Subpoena as Plaintiff has not shown good cause that warrants the discovery at issue.

WHEREFORE, Non-Party Movant, bian-wang.com, objects to the Subpoena Duces Tecum and prays that this Court issue its Order to quash Plaintiff's Subpoena Duces Tecum for the reasons stated above, and for such other and further relief as the Court deems just and proper.

Respectfully submitted,



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November 3, 2016
Columbia, South Carolina

Cc: Superior Court of California, DONGXIAO YUE