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PADMAPPER, INC.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

CRAIGSLIST, INC., a Delaware corporation,

Plaintiff

v.

3TAPS, INC., a Delaware corporation; PADMAPPER, INC., a Delaware corporation; DISCOVERY HOME NETWORK, INC., a Delaware corporation d/b/a LOVELY, BRIAN R. NIESSEN, an individual, and DOES 1 THROUGH 25, inclusive,

Defendants.

AND RELATED COUNTERCLAIMS

Case No. CV-12-03816 CRB

PADMAPPER, INC'S OPPOSITION TO CRAIGSLIST, INC'S MOTION TO BIFURCATE AND STAY DEFENDANTS' AMENDED COUNTERCLAIMS

Judge: Hon. Charles R. Breyer
Date: March 29, 2013
Time: 10:00 a.m.
Courtroom: 6, 17th Floor

INTRODUCTION

The Motion to Bifurcate and Stay Defendants' Amended Counterclaims (hereinafter, the "Motion") filed by craigslist, Inc. ("craigslist") should be denied. craigslist has failed to overcome its substantial burden to demonstrate that bifurcating this action and staying discovery on PadMapper's counterclaims will promote judicial economy and avoid inconvenience or prejudice to PadMapper. In fact, it will have just the opposite effect.

First, staying discovery on PadMapper's antitrust counterclaims will result in the Court having to resolve inevitable and ongoing disputes about the scope of permitted discovery, i.e., whether certain information relates to craigslist's claims or PadMapper's antitrust counterclaims. Conversely, joint discovery increases the likelihood of settlement, with both parties having the full benefit of all available evidence in order to evaluate the strengths and weaknesses of their cases. Moreover, the normal course of joint discovery ensures a quicker resolution of the antitrust counterclaims, assuming it will be required, and ensures that relevant facts will be fresher in the minds of witnesses and all involved.

Second, bifurcation is not warranted because there is a significant factual overlap between the issues in craigslist's claims and the issues in PadMapper's counterclaims. Because of the overlap of evidence between the issues, the parties would have to prepare and call many of the same witnesses in both phases of a bifurcated trial. The duplication of time and effort required by split trials works against judicial economy and efficiency, not for it.

Third, contrary to craigslist's assertions, PadMapper's antitrust claims will not be mooted if even if craigslist prevails on any of its claims. While any particular conduct of craigslist may be determined as lawful, and standing alone would not constitute a Sherman Act § 2 violation, all of an alleged monopolist's related conduct *in the aggregate* is relevant in determining whether such conduct, as a whole, is unlawfully anticompetitive. Consequently, evidence regarding craigslist's alleged scheme will remain relevant in any case, and PadMapper is entitled to adduce such evidence. Moreover, craigslist's attempt to subject all of PadMapper's allegations to the Noerr-Pennington doctrine, which only immunizes "litigation activity," fails because only PadMapper's claims of alleged spurious legal threats could be considered "litigation activity."

Finally, a decision on whether to bifurcate issues for trial or stay discovery is simply premature at this stage of the litigation. Whether bifurcation may ultimately prove warranted is a matter best addressed on a full record at the completion of discovery.

DISCUSSION

The parties agree that a court may order separate trials of one or more issues or claims "[f]or convenience, to avoid prejudice, or to expedite and economize." Fed. R. Civ. P. 42(b). However, while the question of whether to bifurcate a trial is committed to the discretion of the trial court, see Danjaq LLC v. Sony Corp., 263 F.3d 942, 961 (9th Cir. 2001), "separation of issues for trial is not to be routinely ordered." Californians for Disability Rights, Inc. v. California DOT, C 06-5125 SBA, 2009 U.S. Dist. LEXIS 40530, at *3-4 (N.D. Cal. Apr. 27, 2009) (quoting Adv. Com. Notes to 1966 Amendment to Fed. R. Civ. P. 42(b)). Indeed, "[i]n the Ninth Circuit, '[b]ifurcation . . . is the exception rather than the rule of normal trial procedure.'"[1] GEM Acquisitionco, LLC v. Sorenson Grp. Holdings, LLC, No. C 09-01484 SI, 2010 U.S. Dist. LEXIS 50622, at *3 (N.D. Cal. Apr. 27, 2010) (citation omitted).

Courts consider several factors in determining whether bifurcation is appropriate, including: "(1) whether separate trials would be in furtherance of convenience; (2) whether separate trials would avoid prejudice; (3) whether separate trials would serve judicial economy; (4) whether separate trials would reduce the risk of jury confusion; and (5) whether the issues are clearly separable." Datel Holdings, Ltd. v. Microsoft Corp., No. C 09-05535 EDL, 2010 U.S. Dist. LEXIS 110304, at *5 (N.D. Cal. Oct. 4, 2010).

[1] This is true even in patent cases. As a case involving intellectual property rights, craigslist likens this case to patent cases in which antitrust counterclaims were bifurcated and stayed. Notwithstanding craigslist's characterizations to the contrary, as this Court recently noted: "In patent cases, as in other types of cases, bifurcation 'is the exception, not the rule.'" Mformation Techs., Inc. v. Research in Motion Ltd., C 08-04990 JW, 2012 U.S. Dist. LEXIS 56784, at *6-7 n.6 (N.D. Cal. Mar. 29, 2012); see also WeddingChannel.com, Inc. v. The Knot, Inc., No. 03 Civ. 7369(RWS), 2004 U.S. Dist. LEXIS 25749, at *1 n.1 (S.D.N.Y. Dec. 23, 2004) (noting that it "is not unusual in patent infringement cases to try all issues in a single trial"); Netflix, Inc. v. Blockbuster, Inc., No. C 06-02361 WHA, 2006 U.S. Dist. LEXIS 63154, at *27 (N.D. Cal. Aug. 22, 2006) (denying motion to bifurcate antitrust counterclaims and stay antitrust discovery because it would be more efficient to conduct discovery and pretrial proceedings together); Nabi Biopharmaceuticals v. Roxane Labs., Inc., No. 2:05-CV-889, 2007 U.S. Dist. LEXIS 101850, at *24-25 (S.D. Ohio March 21, 2007) (same).

"With respect to both discovery and trial," the party seeking bifurcation "has the burden of proving that the bifurcation will promote judicial economy and avoid inconvenience or prejudice to the parties." Spectra-Physics Lasers, Inc. v. Uniphase Corp., 144 F.R.D. 99, 101 (N.D. Cal. 1992). "A moving party's mere contention that judicial economy would be promoted by bifurcation, insofar as a second phase of a bifurcated trial would be rendered unnecessary *if* the moving party prevails at the first phase, is *not* sufficient to meet that party's burden of showing that bifurcation is appropriate." Mformation Techs., Inc. v. Research in Motion Ltd., No. C 08-04990 JW, 2012 U.S. Dist. LEXIS 56784, at *30 n.32 (N.D. Cal. Mar. 29, 2012) (emphasis added). This is precisely the argument craigslist relies on in moving for bifurcation.

A. craigslist Relies on Generalities in Arguing for Bifurcation

craigslist improperly relies on generalities about the appropriateness of bifurcation of antitrust counterclaims in patent litigation instead of addressing application of the relevant factors to this particular case. In its Motion, craigslist states that "courts commonly bifurcate and stay antitrust counterclaims where—as here—resolution of the plaintiff's claims will obviate the antitrust claims." (Mot. at 17-18.) However, a decision whether to bifurcate should be made on a "case-by-case" basis and "only as a result of an informed exercise of discretion on the merits of each case." Lis v. Robert Packer Hosp., 579 F.2d 819-823 (3rd Cir. 1978), *cert. denied*, 439 U.S. 955 (1978); see also Calmar, Inc. v. Emson Research, Inc., 850 F. Supp. 861, 866 (C.D. Cal. 1994) ("Motions to bifurcate are to be granted on a case by case basis only when the separation will result in judicial economy and will not unduly prejudice any party.") Indeed, the argument that a "court should bifurcate the antitrust claims from the infringement claims because other courts routinely do so" has been rejected by other courts. Synopsys, Inc. v. Magma Design Automation, C.A. No. 05-701 (GMS), 2006 U.S. Dist. LEXIS 33751, at *10 (D. Del. May 25, 2006).

Yet nearly the entirety of craigslist's first supporting section of its Motion (section B(1)) is spent citing and quoting patent infringement cases where antitrust counterclaims have been bifurcated, without any application of the holdings in those cases to the facts of this case, and without substantively addressing the factors set forth in Datel for determining whether bifurcation is appropriate. craigslist simply relies on the following assertions in support of bifurcation:

(1) "Bifurcating and staying discovery of Defendants' antitrust counterclaims is warranted because these counterclaims will be rendered moot upon resolution of craigslist's claims." (Mot. at 5:26-28); and (2) "The Court can avoid the risk of wasted effort by addressing craigslist's claims first." (Mot. at 6:4-5.) craigslist then sums these up with the argument that, "[o]n this basis alone, the Court should bifurcate and stay Defendants' antitrust counterclaims." (Mot. at 6:8-9.)

These threadbare assertions fail to sustain craigslist's burden of demonstrating that bifurcation is appropriate in this case, much less that a stay of discovery is warranted.

B. A Stay of Discovery Would Not Promote Economy or Efficiency and Would Result in Prejudice

craigslist does not make separate arguments directed to the propriety of bifurcating this case for purposes of trial versus staying discovery. However, even if the Court were to determine that a bifurcation of this case for trial is appropriate, full discovery on all issues should be allowed to proceed. Motions to stay discovery "are disfavored because discovery stays may interfere with judicial efficiency and cause unnecessary litigation in the future." White v. E-Loan, Inc., 2006 U.S. Dist. LEXIS 76051, at *5 (N.D. Cal. Oct. 5, 2006). Therefore, before the Court issues a stay, the moving party must meet a "heavy burden of making a 'strong showing' why discovery should be denied… [by showing] a particular or specific need for the stay, as opposed to making stereotyped or conclusory statements." Id. (quoting Skellerup v. City of Los Angeles, 163 F.R.D. 598, 600 (C.D. Cal. 1995)). As this Court has previously noted, even cases that provide some support for bifurcation of antitrust claims typically "do not support separating or staying discovery." ACS Communs., Inc. v. Plantronics, Inc., 1995 U.S. Dist. LEXIS 22188, at *4 (discussing a number of prior cases involving antitrust counterclaims to patent infringement claims that, while perhaps supporting bifurcation of antitrust claims, did not support separating or staying discovery).

1. Staying discovery is contrary to judicial economy.

Allowing discovery on PadMapper's antitrust counterclaims to proceed even if the counterclaims are bifurcated would undeniably facilitate a faster resolution of all claims. See Donnelly Corp. v. Reitter & Shefenacher USA L.P., No. 1:00-CV-751, 2002 U.S. Dist. LEXIS 15205, at *8 (W.D. Mich. Aug. 12, 2002) ("[F]ull discovery now will permit quicker resolution of

this dispute.") In contrast, staying discovery "would undoubtedly delay resolution of the entire dispute assuming the second, antitrust trial is necessary after the patent trial." Id.; Ecrix Corp. v. Exabyte Corp., 191 F.R.D. 611, 614 (D. Colo. 2000) (denying stay of discovery on antitrust counterclaims in patent infringement suit, on the basis that "[d]enying the stay on discovery will also allow for a quick resolution of the antitrust trial, if it is required, as both parties will already have most of the information required.").

Allowing full discovery to proceed would also prevent ongoing disputes about the indefinite boundary between discovery related to craigslist's claims and discovery related to PadMapper's antitrust counterclaims. See Donnelly Corp. v. Reitter & Shefenacher USA L.P., 2002 U.S. Dist. LEXIS 15205, at *8 (denying motion to stay discovery, in part, because it would "eliminate disagreement between the parties about what is and is not related to which claims and thus what discovery is permitted now and what discovery has been stayed"); Ecrix Corp. v. Exabyte Corp., 191 F.R.D. 611, 614 (denying motion to stay discovery, and District Judge stating, "I do not want to be the mediator in disputes over what information relates to antitrust violations and what information relates to patent infringement."); Dentsply Int'l v. New Tech. Co., Civ. No. 96-272 MMS, 1996 U.S. Dist. LEXIS 19846, at *19 (D. Del. Dec. 19, 1996) ("[A] a stay of discovery on antitrust issues would most likely devolve into a series of time-consuming and expensive discovery disputes as to whether particular discovery is directed at the patent or antitrust claims. Efficiency dictates that discovery on all claims, including the antitrust counterclaims, continue apace.").

Staying discovery would thus be contrary to the interests of judicial economy.

2. Staying discovery would prejudice PadMapper.

On the other hand, delaying discovery on PadMapper's counterclaims will plainly prejudice PadMapper. Staying discovery would ensure that in the event PadMapper's counterclaims proceed to trial, this would require a second trial, along with the accompanying expense and investment of resources. Additionally, the "further passage of time may prejudice the ability of counsel to pin down the recollections of party witnesses." Intel Corp. v. Via Techs., Inc., No. C 99-03062, 2001 WL 777085, at *7 (N.D. Cal Mar. 20, 2001) (denying a request to stay discovery on an antitrust counterclaims). Conversely, allowing full discovery to proceed will help to ensure "the issues to be

fresher in all minds involved" and would increase "the likelihood of a fully fair resolution of this complex dispute." Donnelly Corp. v. Reitter & Shefenacher USA L.P., 2002 U.S. Dist. LEXIS 15205, at *8. Finally, as this Court previously stated, "prejudice may simply amount to unfair delay to the final disposition of the matter." Spectra-Physics Lasers, Inc. v. Uniphase Corp., 144 F.R.D. at 101 (internal quotations omitted).

3. Staying discovery will impede settlement.

This Court has noted the importance of not staying discovery because "complete discovery will educate the parties regarding the strengths and weaknesses of their positions and will facilitate settlement." eBay, Inc. v. Bidder's Edge, Inc., 2000 U.S. Dist. LEXIS 13326, at * 11. Other courts are in agreement. See Donnelly Corp. v. Reitter & Shefenacher USA L.P., 2002 U.S. Dist. LEXIS 15205, at *8 (denying motion to stay discovery, stating "[f]ull discovery now, thus permitting the parties to have the complete picture of all available evidence, facilitates settlement of this matter more than a stay would"). Without a full exchange of relevant information, the parties are likely to take radically different settlement positions—increasing the likelihood of two separate trials with two separate juries. These factors all favor proceeding with discovery, and counsel against bifurcating the case for purposes of discovery.

C. Neither a Bifurcation nor Stay is Appropriate Because the Claims at Issue are Intertwined

A court deciding whether to bifurcate must consider "whether the issues are clearly separable" and "whether separate trials would serve judicial economy." Datel Holdings, Ltd., 2010 U.S. Dist. LEXIS 110304, at *5. Where some overlap of the factual and legal issues exists between claims, a motion to bifurcate should be denied. Id. at *14-15 ("Because there may be at least some overlap in factual and legal issues between the DMCA claim and the antitrust claim bifurcation is not appropriate."); see also J2 Global Communs., Inc. v. Protus IP Solutions, No. CV 06-00566 DDP, 2009 U.S. Dist. LEXIS 33761, at *10-11 (C.D. Cal. Mar. 31, 2009) ("[T]here is some likelihood that, if the court were to bifurcate the claims, the parties would need to present evidence in the second trial that had also been presented in the first trial. . . Having one trier of fact likely will avoid duplicative time and effort, and will serve the jury's understanding by giving the jury fuller

context."); Synopsys, Inc. v. Magma Design Automation, 2006 U.S. Dist. LEXIS 33751, at *12 ("[W]ere the court to bifurcate, the evidentiary presentation in one case would likely be substantially duplicative of the evidentiary presentation in the other. In addition, bifurcation would likely create further duplication of evidence because both juries would need to be educated in the same relevant technology. Accordingly, the court concludes that neither jury confusion nor efficiency weigh in favor of bifurcating the antitrust claims from the infringement claims.").

Here, substantial evidence related to PadMapper's antitrust counterclaims will also be critical to establishing PadMapper's copyright infringement defenses, including its defenses that: (1) craigslist lacks standing to bring its copyright infringement claims (Answer to Am. Complaint at 27:27-28); (2) craigslist's copyright registrations are fraudulent, improper, or invalid (Id. at 28:2-3); and (3) craigslist actions constitute copyright misuse (Id. at 28:5-6). The factual bases underlying these defenses are inseparable from PadMapper's allegations that craigslist engaged in spurious legal threats and litigation.

The same can be said with respect to the factual basis underlying PadMapper's defense that a particular provision of craigslist's TOU is unconscionable. (Id. at 28:14.) These claims are also intertwined with PadMapper's antitrust counterclaims, which include the allegation that "[t]here is no legitimate business justification for this provision of craigslist's TOU" other than eliminating craigslist's competitors. (Counterclaim at ¶ 48.)

Consequently, craigslist and PadMapper "would need to present evidence in the second trial that had also been presented in the first trial," J2 Global Communs., Inc., 2009 U.S. Dist. LEXIS 33761, at *10, and jurors would be required to make largely the same decisions about witness credibility and inferences from circumstantial evidence.

Thus, instead of resulting in judicial economy and efficiency, craigslist's Motion to bifurcate and stay discovery of PadMapper's antitrust counterclaims would have the opposite effect.

D. PadMapper's Claims Will Not Be Rendered Moot if craigslist Prevails on Its Claims

craigslist argues that bifurcating and staying discovery of PadMapper's antitrust counterclaims is warranted because PadMapper's counterclaims would be rendered moot or significantly narrowed if craigslist prevails on its claims. (Mot. at 4:15-16.) However, craigslist's

argument relies on a mischaracterization and simplification of PadMapper's counterclaims, which craigslist asserts "are premised almost exclusively on craigslist's protected Noerr-Pennington activity."[2] (Id. at 1:15-16.)

Here, PadMapper's counterclaims are premised on allegations of a broad anti-competitive scheme that includes spurious legal threats and litigation (Counterclaim ¶ 36-41.), copyright misuse (Id. ¶ 42-45.), unconscionable terms of use (Id. ¶ 46-48.), and "ghosting" (Id. ¶ 49-54.). Thus, while craigslist's alleged spurious legal threats and litigation activities directed towards PadMapper might be immune standing alone, under the Noerr-Pennington doctrine, craigslist's other alleged anticompetitive activities are not. Consequently, PadMapper's counterclaims would not be rendered moot if craigslist establishes that its rights have been violated.

Additionally, regardless of whether craigslist were to prevail on any of its claims, such a victory would not foreclose PadMapper's antitrust claims. While a particular action might be deemed lawful, and standing alone would not constitute a Sherman Act § 2 violation, it may still be determined to form part of an unlawful anticompetitive scheme.

This Court recognized as much in the case of Free Freehand Corp. v. Adobe Sys., 852 F. Supp. 2d 1171 (N.D. Cal. 2012). In that case, plaintiffs alleged that defendant Adobe had engaged in unlawful anticompetitive behavior when it bundled one of its software offerings with various others, creating a significant barrier to entry for potential rivals. Id. at 25-26. While the parties and the Court recognized that Adobe's bundling "could not stand alone as a Sherman Act violation," the Court ruled against Adobe on its argument that this fact rendered plaintiffs' allegations irrelevant to plaintiff's Sherman Act § 2 claim. Id. at 26. As the court noted, "anticompetitive conduct may include otherwise *legal* conduct." Id. (quoting Tele Atlas N.V. v. NAVTEQ Corp., 05-CV-1673-RS, 2008 WL 4911230, at *1 (N.D. Cal. Nov. 13, 2008)). Consequently, the court

[2] "The Noerr-Pennington doctrine allows private citizens to exercise their First Amendment rights to petition the government without fear of antitrust liability." Kaiser Found. Health Plan, Inc. v. Abbott Labs., Inc., 552 F.3d 1033, 1044 (9th Cir. 2009). However, Noerr-Pennington "immunizes only litigation activity." Coalition for ICANN Transparency, Inc. v. VeriSign, Inc., 611 F.3d 495, 506 (9th Cir. 2010). Anti-competitive conduct that is unrelated to litigation activity enjoys no immunity. See eBay, Inc. v. Bidder's Edge, Inc., No. C 00-21200 RMW, 2000 U.S. Dist. LEXIS 13326, at *4-5 (N.D. Cal. July 21, 2000).

held that plaintiffs would be allowed "to adduce evidence to show that Adobe's bundling foreclosed competition." Id. at 27. (also citing Masimo Corp. v. Tyco Health Care Group, L.P., No. 2-CV-4770-MRP, 2004 U.S. Dist. LEXIS 26916, *1 (C.D. Cal. June 10, 2004) (allowing plaintiffs to present evidence on whether bundled rebates reduced competition and therefore constituted anticompetitive conduct for monopoly maintenance claim)).

Thus, "courts must consider all of an alleged monopolist's related conduct in the aggregate," Tele Atlas N.V. v. NAVTEQ Corp., 2008 WL 4911230, at *1, and should consider the "'synergistic effect' of the mixture of the elements." City of Anaheim v. S. Cal. Edison Co. 955 F.2d 1373, 1376 (9th Cir. 1992) (quoting City of Groton v. Connecticut Light & Power Co., 662 F.2d 921 at 929 (2d Cir. 1981)).

Thus, craigslist's argument that a ruling in its favor on its case-in-chief would obviate the need for a trial on PadMapper's counterclaims is incorrect.

E. craigslist has Not Established that It Will be Prejudiced

Although craigslist asserts that it will be prejudiced due to the risk of jury confusion and the possibility that PadMapper might "cloud the issues and cast aspersions on craigslist," (Mot. at 8:10-11), any possible prejudice arising out of jury confusion can be "tempered with cautionary warnings, limiting instructions, special verdict forms, and other jury instructions." Toney v. Accord N. Am., No 2:07-CV307, 2010 U.S. Dist. LEXIS 52383, at *4 (N.D. Ind. May 27, 2010); see also J2 Global Communs., 2009 U.S. Dist. LEXIS 33761, at *15-16 (C.D. Cal. Mar. 31, 2009) ("Jurors are often tasked with the job of making difficult determinations, and numerous tools exist to assist them in performing those duties, including the organized presentation of skillful advocates."); Boston Sci. Corp. v. Johnson & Johnson, No. C 02-00790 SI, 2006 U.S. Dist. LEXIS 89841, at *12-13 (N.D. Cal. Nov. 29, 2006) ("Jurors are asked to hear complicated cases every day . . . [j]udicial economy therefore far outweighs any juror confusion which might result from holding one trial on all of the patents.").

F. A Decision on Bifurcation is Premature

There is no need to decide at this time whether to bifurcate PadMapper's antitrust counterclaims. Currently pending before this Court are motions by both PadMapper and 3Taps to

dismiss several of craigslist's claims. No discovery has yet issued by any party to the action. There is simply no information at this early stage that would be useful in making a decision regarding bifurcation.

Courts regularly deny bifurcation of antitrust counterclaims under these circumstances because the likely scope and complexity of the litigation is unknown, and the benefits to be gained are too speculative. See Netflix, Inc. v. Blockbuster, Inc., 2006 U.S. Dist. LEXIS 63154, at *27 ("[b]y allowing both sides to develop their cases we will be in a better position later to decide the extent to which both cases should be tried to a jury"); Matsushita Elec. Indus. Co. v. CMC Magnetics Corp., No. C 06-04538 WHA, 2007 U.S. Dist. LEXIS 8480, at *9 (N.D. Cal. Jan. 29, 2007) ("This case is still at a relatively early stage. Parties have another five months of fact discovery ahead of them . . . some other plan for bifurcating might prove more advantageous later in the proceedings."); ACS Communications, Inc. v. Plantronics, Inc., No. C 95-20294 SW, 1995 U.S. Dist. LEXIS 22188, at *6 (N.D. Cal. Dec. 1, 1995) ("As the proceedings progress the Court may find separate trials for the patent infringement and antitrust issues furthers the interest of convenience and economy. However, at this time an order granting separate trials and a stay is not conducive to the expeditious disposition of the case."); Martinez v. Robinson, 2002 U.S. Dist. LEXIS 4454 (S.D.N.Y. Mar. 18, 2002) ("Discovery has barely begun, and, as a consequence, information necessary to evaluate the relevant factors is not yet available.").

Similarly, this Court has recognized that a hasty decision to bifurcate would preclude the possibility of a joint trial of all claims in front of a single jury. See Matsushita, 2007 U.S. Dist. LEXIS 8480, at *9 (stating that, even though plaintiff had presented "good argument in favor of bifurcation," bifurcation "would foreclose the possibility of trying the issues at the same time.") It is axiomatic that employing one jury would more properly serve the goals of furthering judicial efficiency and economy than employing two juries. The Court should preserve its option of a single trial with a single jury, and make a decision about bifurcation on a full record, rather than merely based on speculation regarding the scope of the litigation may develop.

CONCLUSION

For the foregoing reasons, Craigslist's motion to bifurcate should be denied.

DATED: March 1, 2013

Respectfully submitted,

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