

Court of Appeal Number: H030099

**IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT**

H.B. FULLER COMPANY,

PLAINTIFF AND RESPONDENT,

v.

JOHN DOE, aka "LASHWR45" on YAHOO!,

DEFENDANT and APPELLANT.

Santa Clara Superior Court Case No. 105CV053609
Honorable Socrates P. Manoukian

**H.B. FULLER'S RESPONSE TO COURT'S MAY 31, 2007
ORDER REGARDING JOHN DOE'S MOTION TO UNSEAL
AND REQUEST THAT CERTAIN DOCUMENTS BE
STRICKEN FROM THE RECORD; NOTICE OF
WITHDRAWAL OF SUBPOENA; REQUEST FOR DISMISSAL
OF APPEAL AS MOOT**

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Plaintiff and Respondent H.B. Fuller (“H.B. Fuller”) respectfully submits the following response to the Court’s Order dated May 31, 2007 (“May 31 Order”) regarding Defendant and Appellant John Doe’s Motion to Unseal Records On Appeal (“Motion”):

I. REQUEST THAT THE DECLARATION OF MR. MICHELE VOLPI, THE ATTACHED EXHIBITS, AND OTHER REFERENCES TO CONFIDENTIAL INFORMATION BE STRICKEN FROM THE APPELLATE RECORD.

Pursuant to the parties’ stipulation, certain documents that H.B. Fuller contends contain confidential H.B. Fuller information, including the Declaration of H.B. Fuller Chief Executive Officer Michele Volpi and exhibits thereto, were filed under seal with the trial court and with this Court. Notwithstanding this stipulation, John Doe moved the Court of Appeal to unseal these documents. By its May 31 Order, this Court granted John Doe’s motion and determined that these documents would be unsealed in 15 days “unless, prior to that time, [H.B. Fuller] designates specific documents, originally filed by it, that it wishes the court to strike from the record.” May 31 Order at 23. However, “[i]n the event [H.B. Fuller] designates such documents, they will be stricken from the record and the appeal will be decided without regard to them.” *Id.*

H.B. Fuller had obtained court approval in Minnesota for issuance of a subpoena to Yahoo!, Inc., which it sought to enforce in California. H.B. Fuller claims damages for the unlawful release of confidential business information, the dissemination of which would violate H.B. Fuller’s employment agreement if John Doe is in fact an employee, as H.B. Fuller contends he or she must be. Pursuant to the parties’ stipulation, this information was described in the Declaration of Mr. Michele Volpi and the

exhibits attached thereto filed by H.B. Fuller's in opposing John Doe's Motion to Quash its subpoena to Yahoo!, Inc.

H.B. Fuller maintains that John Doe unlawfully disseminated confidential company information. However, recognizing that its attempt to safeguard its confidential information cannot soundly be predicated on its acquiescence in a course of action that will further compromise the confidentiality of that information, H.B. Fuller cannot consent to the publication of the Volpi Declaration and attached exhibits. Accordingly, H.B. Fuller hereby requests that the Volpi Declaration and exhibits thereto be stricken from the record for this appeal.

In addition, H.B. Fuller further requests that specific additional portions of the record that contain or refer to the contents of the Volpi Declaration and exhibits thereto also be stricken. If these passages are unsealed, H.B. Fuller's determination to request that the documents identified by the Court's May 31 Order be stricken from the record will not effectively safeguard the information at issue. These portions of the record are identified in Exhibit A hereto.

II. NOTICE OF WITHDRAWAL OF SUBPOENA TO YAHOO!, INC.

Given that the confidential Volpi Declaration and exhibits contain much of the evidentiary basis supporting the trial court's decision to deny John Doe's motion to quash, H.B. Fuller has no choice but to withdraw its outstanding subpoena to Yahoo!, Inc. that was served in December 2005, and which is the subject of that motion. H.B. Fuller has therefore notified Yahoo!, Inc. that this subpoena has been withdrawn.

III. REQUEST FOR DISMISSAL OF JOHN DOE'S APPEAL.

In view of H.B. Fuller's withdrawal of its subpoena to Yahoo!, Inc., John Doe's appeal of the trial court's ruling on his motion to quash is now moot. H.B. Fuller therefore respectfully requests that the Court dismiss this proceeding. Because the withdrawal of the subpoena terminates the controversy between H.B. Fuller and John Doe in this proceeding, a ruling by the Court on the merits of this appeal will not provide the parties any effective relief, the subpoena at the core of the dispute having been withdrawn. *See MHC Operating Limited Partnership v. City of San Jose*, 106 Cal. App. 4th 204, 213 (2003) (“[w]hen no effective relief can be granted, an appeal is moot and will be dismissed.”).

IV. CONCLUSION.

For the reasons set forth above, H.B. Fuller respectfully requests that the Court:

- (a) Strike from the record the entirety of the Declaration of Michele Volpi and attached exhibits;
- (b) Strike from the record other matters containing or referring to the confidential information set forth in the Declaration of Michele Volpi and attachments thereto, as listed in Exhibit A hereto; and

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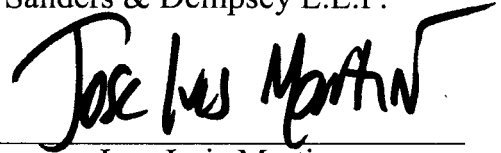
(c) Dismiss John Doe's instant appeal as moot based on H.B.
Fuller's withdrawal of its subpoena to Yahoo!, Inc.

Respectfully submitted,

Dated: June 15, 2007

Squire, Sanders & Dempsey L.L.P.

By: _____

A handwritten signature in black ink that reads "Jose Luis Martin". The signature is written in a cursive style with a long, sweeping flourish at the end of the name.

Jose Luis Martin

Attorneys for H.B. Fuller Company

EXHIBIT A

Appellant's Opening Brief

p.1 (Lines 22 - 24)

p.2 (Lines 5 - 8)

p.2 (Lines 8 - 11)

p.2 (Lines 11 - 13)

p.2 (Lines 20 - 22)

p.2 (Lines 26 - 29) - p.3 (Lines 1-2)

p.3 (Lines 2 - 5)

p.3 (Lines 5 - 7)

p.3 (Lines 7 - 33) - p.4 (Lines 1 - 2)

p.4 (Lines 3 - 7)

p.11 (Lines 1 - 3)

p.15 (Lines 23 - 28)

p.16 (Lines 16 - 19)

p.16 (Lines 19 - 22)

p.16 (Lines 25 - 28)

p.16 (Lines 28 - 29) - p.17 (Lines 1 - 2)

p.18 (Lines 1 - 4)

Respondent's Brief

p.3 (Lines 5 - 9)

p.4 (Lines 6 - 9)

p.4 (Lines 11 - 13)

p.4 (Lines 13 - 17)

p.4 (Lines 17 - 21)

p.4 (Lines 21 - 24)

p.4 (Lines 24 - 26)

p.5 (Lines 4 - 8)

p.5 (Lines 8 - 21)

p.5 (Lines 22 - 24)

p.5 (Lines 24 - 25) – p.6 (Lines 1 – 8)

p.7 (Lines 22 - 26) – p.8 (Line 1)

p.8 (Lines 23 - 28)

p.17 (Lines 4 - 9)

p.17 (Lines 9 - 14)

p.17 (Lines 14 - 16)

p.19 (Lines 9 - 10)

p.19 (Lines 11 - 13)

p.19 (Lines 14 - 17)

p.19 (Lines 18 - 21)

p.19 (Lines 22 - 24)

p.19 (Lines 25 - 28)

p.29 (Lines 21 - 25)

p.31 (Lines 26 - 27)

p.32 (Lines 1 - 2)

Appellant's Reply Brief

p.4 (Lines 18 - 21)

p.7 (Lines 19 - 22)

p.8 (Lines 19 - 29) – p.9 (Line 1)

p.10 (Lines 24 - 29)

John Doe's Reply Filed with the Trial Court (attached to Appellant's Opening Brief)

3:17 - 22

3:26 - 4:1

4:24 - 26

H.B. Fuller Opposition to Motion to Quash (Clerk's Transcript ("CT") at 51 to 68).

CT at 55:25 - 56:5

CT at 57:3 - 5

CT at 57:8 - 19

CT at 57:22 - 58:7

CT at 58:10 - 12

CT at 61:21

CT at 62:12

CT at 62:17 - 20

CT at 64:11

CT at 65:16 – 18

PROOF OF SERVICE

I am a citizen of the United States and employed in Santa Clara County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 600 Hansen Way, Palo Alto, California 94304-1043. On June 15, 2007, I deposited with U.S. Mail, a true and correct copy of the within document:

**H.B. FULLER'S RESPONSE TO COURT'S MAY 31, 2007
ORDER REGARDING JOHN DOE'S MOTION TO UNSEAL
AND REQUEST THAT CERTAIN DOCUMENTS BE
STRICKEN FROM THE RECORD; NOTICE OF
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DISMISSAL OF APPEAL AS MOOT**

in a sealed envelope, addressed as follows:

Clerk of the Court
Superior Court of California
County of Santa Clara
191 North First Street
San Jose, CA 95113

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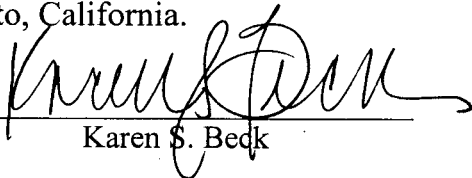
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BY U.S. MAIL: I am “readily familiar” with the firm’s practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Palo Alto, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on June 15, 2007, at Palo Alto, California.



Karen S. Beck

PALOALTO/105340.2