

ORIGINAL

Court of Appeal Number: H030099

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

FILED
25
MICHAEL J. VER
DEPUTY

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 Sociates P. Manoukian

STIPULATED REQUEST FOR DISMISSAL OF APPEAL

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Appellant John Doe and Respondent H.B. Fuller submit this Stipulated Request for Dismissal of the above-captioned appeal. On June 15, 2007, Respondent informed this Court it had withdrawn the subpoena to Yahoo!, Inc. that is the subject of the trial court's March 15, 2006 Order denying the Motion to Quash of Appellant John Doe at issue in this appeal. Along with that notice, Respondent filed a Request to Dismiss the Appeal on the ground that it was moot. Appellant did not file an opposition to this Request.¹

The Court has not yet ruled on Respondent's June 15, 2007 Request to Dismiss the Appeal. However, on January 14, 2008, the Court scheduled oral argument on February 21, 2008 at 9:30 a.m. (which has been continued to a date yet to be scheduled at the request of John Doe's counsel); and on January 28, 2008, the Court notified the parties that they should be prepared at oral argument to address "respondent's request for dismissal and the suggestion of mootness on which it is based...."

On February 14, 2008, the parties put into effect a recent stipulation that H.B. Fuller dismiss with prejudice the Minnesota state court proceeding in which the subpoena to Yahoo!, Inc. was issued, agree not to

¹ Notwithstanding Respondent's unopposed Request for Dismissal, on July 20, 2007 the Court issued an oral argument waiver notice. On July 27, 2007, Appellant requested oral argument in response to the waiver notice. On July 30, 2007, in response to the same notice, Respondent informed the Court that, although it was awaiting decision from the Court on the Request to Dismiss, it also requested oral argument in the event that the Court denied the Request to Dismiss.

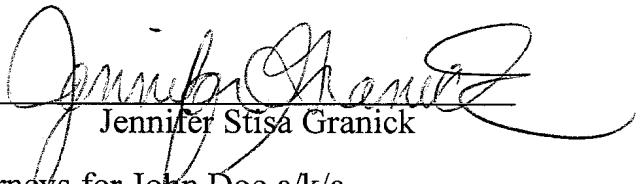
file any claims arising out of the facts alleged in the Minnesota complaint, and that it would not issue any further subpoena to discover the identity of John Doe. On February 15, 2008, the Minnesota state court approved the parties' stipulation and issued an order dismissing the Minnesota proceeding, together with all claims or causes of action which were or might have been alleged against Appellant with prejudice and without further cost to either party. For this Court's reference, attached hereto as Exhibits A and B are copies of the executed "Stipulation For Dismissal With Prejudice" and "Order For Dismissal With Prejudice" entered by the Minnesota state court, respectively.

Because the controversy between John Doe and H.B. Fuller is now fully and finally resolved, and a ruling by the Court on the merits of this appeal will not provide the parties any effective relief, the parties agree and stipulate that the instant appeal should be dismissed. *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.").

As a result, Appellant and Respondent hereby jointly request that the Court dismiss this appeal in its entirety and that the matter not be set for oral argument.

Respectfully submitted,

Dated: February 22, 2008

By: 
Jennifer Stisa Granick

Attorneys for John Doe a/k/a
"LASHWR45" in Yahoo!

Dated: February 25, 2008

Squire, Sanders & Dempsey L.L.P.

By: 
Jose Luis Martin

Attorneys for H.B. Fuller Company