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MILLENNIAL MEDIA, INC.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

STREETSPACE, INC.,

Plaintiff,

v.

GOOGLE INC.; ADMOB, INC.; APPLE INC.; QUATTRO WIRELESS, INC.; NOKIA CORPORATION; NOKIA INC.; NAVTEQ CORPORATION; MILLENNIAL MEDIA, INC.; JUMPTAP, INC.; and DOES 1 through 20,

Defendants.

Case No. 3:10-CV-01757-LAB-AJB

MILLENNIAL MEDIA'S OPPOSITION TO STREETSPACE'S MOTION TO DISQUALIFY

Date: March 14, 2011
Time: 11:15 AM
Courtroom: 9, 2nd Floor
Judge: Hon. Larry Alan Burns

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I. INTRODUCTION

Streetspace's Motion to Disqualify ("Motion") misstates the law and the facts. On the law, contrary to the hypothesis set forth in Streetspace's motion, Mr. Campbell and Cooley LLP are not "conclusively presumed" to have confidential information of Streetspace (Mot. at 1). The "conclusive presumption" test was jettisoned in favor of a more rational test that acknowledges the realities of modern law firms. The "conclusive presumption" test simply does not apply when the allegedly tainted lawyer did not provide services for the client at his prior law firm and his "taint" results solely from his membership in the prior law firm. *See Adams v. Aerojet-General*, 86 Cal. App. 4th 1324, 1341(Cal. Ct. App. 2001) (reversing the trial court for applying the wrong legal standard where "disqualification was based . . . on a conclusive presumption derived from [the attorney's] mere *membership* in the former firm"); *see also Ochoa v. Fordel, Inc.*, 146 Cal. App. 4th 898, 907 (Cal. Ct. App. 2007); *Goldberg v. Warner/Chappell Music, Inc.*, 125 Cal. App. 4th 752, 759 (Cal. Ct. App. 2005); *Frazier v. Superior Court*, 97 Cal. App. 4th 23, 28 (Cal. Ct. App. 2002); *Dieter v. Regents of the University of California*, 963 F. Supp. 908 (E.D. Cal. 1997).

On the facts, Streetspace goes to great lengths to insinuate that Mr. Campbell worked hand-in-hand with Streetspace and Mr. Coddington, yet nothing could be further from the truth:

- Mr. Campbell did ***not*** work in the Washington, D.C. office of Hunton & Williams ("Hunton") during Mr. Coddington's tenure with the Hunton firm. He worked in the McLean, VA office. Mr. Campbell maintained only a Washington, D.C. telephone number that, in turn, was forwarded to his Hunton office in McLean;
- Mr. Campbell did not bill a second of time to Streetspace. Tellingly Streetspace, who has access to the Hunton invoices, did not provide a shred of evidence to the contrary;
- In early January 2011, Mr. Campbell told Mr. Coddington in email correspondence that he had never heard of Streetspace, yet Streetspace deliberately withheld that email correspondence from the Court (Campbell Decl. ¶ 9 and Ex. 1);
- Mr. Campbell never discussed Streetspace with Mr. Coddington or anyone else for that matter prior to the initiation of the suit; Mr. Campbell was not even aware of the existence of Streetspace before this action commenced;
- Mr. Campbell never received any confidential information of Streetspace while at Hunton or thereafter;

- Streetspace was never discussed at any Hunton partnership meeting attended by Mr. Campbell, nor were any issues pertaining to Streetspace ever related to Mr. Campbell while he was a partner at Hunton;
- Mr. Campbell's responsibilities at Hunton were limited to the cases he handled, which did not include Streetspace;
- Mr. Campbell did not hold any firm-wide management functions at Hunton and thus was not in a position to formulate strategy for clients such as Streetspace with whom he had no relationship;
- Mr. Campbell, who worked in the McLean, VA office of Hunton, and Mr. Coddington, who worked in the Washington, D.C. office of Hunton, met perhaps on two or three occasions, yet those chance meetings happened only when one or the other happened to be visiting the other's resident office.

Streetspace's misrepresentation of both the law and the facts strongly suggests that this motion was filed for one reason: to multiply this proceeding. Motions to disqualify counsel—including the present motion—are often tactically motivated and "pose the very threat to the integrity of the judicial process that they purport to prevent." *Gregori v. Bank of America*, 207 Cal. App. 3d 291, 300-301 (Cal. Ct. App. 1989). Courts therefore subject motions to disqualify to "particularly strict judicial scrutiny." *Visa U.S.A., Inc. v. First Data Corp.*, 241 F. Supp. 2d 1100, 1104 (N.D. Cal. 2003) (quoting *Optyl Eyewear Fashion Int'l Corp. v. Style Cos.*, 760 F.2d 1045, 1050 (9th Cir. 1985)). Streetspace's motion must be denied.

II. STREETSPACE MISSTATES THE APPLICABLE LAW

A. *Adams* Jettisoned a "Conclusive Presumption" as Applied to the Circumstances Here – e.g., Where Membership in the Firm is the Only Basis of the Alleged "Taint"

Recognizing that the "conclusive presumption" is not in line with realities of large law practices, *Adams* criticized the "conclusive presumption" standard that Streetspace repeatedly declares is the controlling law based merely on the former membership in a law firm. *Adams* held that "where there is a substantial relationship between the current case and the matters handled by the firm-switching attorney's former firm, ***but the attorney did not personally represent the former client*** who now seeks to remove him from the case, the trial court should apply a modified version of the 'substantial relationship' test as described in *Ahmanson*." 86 Cal. App. 4th at 1340 (emphasis added). In jettisoning the "conclusive presumption" standard as applied to the circumstances here, the *Adams* court reasoned:

> Once an attorney departs the firm, however, a blanket rule to prevent future breaches of confidentiality is not necessary because the departed attorney no longer has presumptive access to the secrets possessed by the former firm. The court need no longer rely on the fiction of imputed knowledge to safeguard client confidentiality. Instead, the court may undertake a dispassionate assessment of whether and to what extent the attorney, during his tenure with the former firm, was reasonably likely to have obtained confidential information material to the current lawsuit.
>
> Disqualification based solely on the presumptive taint of imputed knowledge from membership in the former law firm, without regard for the member-attorney's personal involvement in, or exposure to, the former client's representation, would produce some odd results. For example, under current case law, even prior direct contact between an attorney and the former client does not necessarily result in disqualification when the attorney subsequently represents an adverse party, as long as the contact was not substantially likely to have compromised client confidences.
>
> * * *
>
> A rule of automatic disqualification such as that applied by the trial court would mean that an attorney who has had direct, personal contact with the former client may switch sides in subsequent litigation without adverse consequence if the court finds that his prior involvement was "minimal," yet an attorney who had *no contact whatever* with the former client can be disqualified if the court finds his *former firm's* relationship with the same client was substantially related to the new litigation, regardless of whether the attorney personally acquired any material confidential information. We do not believe rule 3-310(E) was intended to produce such an anomaly.

Id. at 1335-36.

Furthermore, *Adams* recognized that the "conclusive presumption" of *Ahmanson* is unworkable in the context of "mega-firms":

> Disqualification based on a conclusive presumption of imputed knowledge derived from a lawyer's past association with a law firm is out of touch with the present day practice of law. Gone are the days when attorneys (like star athletes) typically stay with one organization throughout their entire careers. Partners with one law firm may join a competing firm or splinter off and form their own rival firm; former defense lawyers may become plaintiffs' specialists and vice versa; law firms (like marriages) dissolve, often acrimoniously, members striking off on their own and taking divergent paths. We have seen the dawn of the era of the "mega-firm." Large law firms (like banks) are becoming ever larger, opening branch offices nationwide or internationally, and merging with other large firms. Individual attorneys today can work for a law firm and not even know, let alone have contact with, members of the same firm working in a different department of the same firm across the hall or a different branch across the globe.
>
> A rule under which a nonrebuttable presumption of imputed knowledge from an attorney's former firm follows him to whichever firm he subsequently joins would also pose insurmountable practical problems in screening for conflicts. When an attorney joins a new law firm, he normally discloses the names of former clients who will create a conflict for the new firm if it takes the opposing side in future litigation. But there is no way, when an attorney joins a new firm, that he or she can provide that new firm with notice of "imputed knowledge"—that is, names of clients and the nature of their matters the attorney never knew about or worked on while at the former firm. Application of the imputed knowledge doctrine under these circumstances would mean that the attorney's

> association with the new firm would automatically subject him and the new firm to disqualification without anyone knowing it.

Id. at 1336. That is exactly the "odd" result Streetspace seeks to inflict on Mr. Campbell, Cooley, and its client Millennial Media, namely, imputing knowledge of Streetspace's confidential information to Cooley and Mr. Campbell, who is now two firms removed from Hunton, a firm which by Mr. Coddington's own admission fits the bill of a "mega-firm." (Coddington Decl. ¶ 2 (characterizing Hunton as "employ[ing] more than 850 attorneys working in 17 offices").) Simply because Mr. Campbell incidentally overlapped with Mr. Coddington at Hunton—albeit in different offices—for two years in early 2000 is far from sufficient under *Adams* to disqualify Cooley or Mr. Campbell.

To be sure, *Adams* is not an outlier. It has been consistently applied by California courts. For example, in *Frazier*, *Goldberg*, and *Ochoa*, the California Courts of Appeal in several different districts applied *Adams* and either reversed the trial courts' orders of disqualification or upheld trial courts' orders denying disqualification. *Ochoa*, 146 Cal. App. 4th at 907; *Goldberg*, 125 Cal. App. 4th at 759; *Frazier*, 97 Cal. App. 4th at 28. In fact, *Ochoa* recently reiterated that "a presumption that the attorney knows confidential information applies ***only where*** the moving party (the client of the attorney's former law firm) makes an adequate showing that the attorney was in a position vis-à-vis the client to likely have acquired confidential information material to the current representation." *Ochoa*, 146 Cal. App. 4th at 908 (internal citation omitted) (emphasis added); *see also Dieter*, 963 F. Supp. 908 (denying a motion to disqualify patent litigators who were formerly at a firm where different attorneys at a different office prosecuted a related patent to the one asserted by the Regents). Thus, California law on this issue is settled in exactly the opposite manner as Streetspace has boldly pronounced. A "conclusive presumption" based merely on the former membership in a law firm is ***not*** the law. Mr. Campbell and Cooley are ***not*** conclusively presumed to possess Streetspace's confidential information, nor do they.

B. *Ahmanson* has been Significantly Limited by *Adams*

California Rule of Professional Conduct 3-310(E) provides that "[a] member shall not, without the informed written consent of the client or ***former client***, accept employment adverse to

the client or ***former client*** where, by reason of the representation of the client or former client, the member has obtained confidential information material to the employment." Cal. R. Prof. Conduct 3-310(E) (emphasis added).[1] Streetspace does not and cannot establish in its motion that it was a former client of Mr. Campbell's (*see generally* Streetspace Motion). Instead, in reliance on inapplicable law, namely *H.F. Ahmanson & Co. v. Salomon Bros., Inc.*, 229 Cal. App. 3d 1445 (1991), Streetspace proclaims that "'actual possession of confidential information **need not be proved** in order to disqualify the former attorney.'" (Mot. at 4-5 (citing *Ahmanson*, 229 Cal. App. 3d at 1452) (emphasis added by Streetspace).) Because Streetspace was never a client or former client of Mr. Campbell or Cooley, Streetspace's emphasis on "**need not be proved**" attempts to obscure the critical fact that Mr. Campbell and Cooley never represented Streetspace. Without establishing any factual predicates, Streetspace then assumes as true and argues for disqualification based on a fiction, namely "Mr. Campbell's former representation of plaintiff Streetspace, Inc. during prosecution of the '969 patent." (Mot. at 5.)

Without the factual predicate that Mr. Campbell or Cooley actually represented Streetspace previously, Streetspace's reliance on *Ahmanson* and *Elan Transdermal Ltd. v. Cygnus Therapeutic Systems*, 809 F. Supp. 1383 (N.D. Cal. 1992) is without merit. But even *Ahmanson* itself is distinguishable from the current facts involving Mr. Campbell and Cooley. Ahamanson retained Wachtell, Lipton, Rosen & Katz ("Wachtell") for legal advice. Thereafter, Salomon Brothers retained Wachtell to defend it in litigation with Ahmanson. *Ahmanson*, 229 Cal. App. 3d at 1450-51. Given that Ahmanson was a former Wachtell client, the issue was whether there was a "substantial relationship between the former and current representations." *Id*. at 1452 (internal citation omitted). Even under far more suggestive facts for disqualification in *Ahmanson*, the court affirmed the trial court's order denying the motion to disqualify Wachtell, *id*. at 1460, illustrating the heavy burden that Streetspace would have to meet even under the former state of the law in *Ahmanson*. Notwithstanding that outcome, *Ahmanson* is wholly

[1] Streetspace erroneously cited on page 4 of its brief to Cal. R. Prof. Conduct 3-310(D), which provides instead that "[a] member who represents two or more clients shall not enter into an aggregate settlement of the claims of or against the clients without the informed written consent of each client."

inapplicable to this case. Mr. Campbell never represented Streetspace (Campbell Decl. ¶ 8). And Cooley LLP never represented Streetspace (Kuan Decl. ¶ 2).

In *Elan*, Elan hired Irell & Manella ("Irell") to bring suit against Irell's former client, Cygnus. *Elan*, 908 F. Supp. at 1385. Streetspace explained that the court in *Elan* "disqualified the entire Irell & Manella firm from representing Elan in the subsequent lawsuit, even though the actual attorneys representing Elan may only have billed 'only a short period of time' to Cygnus in the previous representation." (Mot. at 8 (citing *Elan*, 908 F. Supp. at 1388).) Based on its account of *Elan*, Streetspace then erroneously attempts to parallel *Elan* with the present case. (*Id.*) But the reasoning by Streetspace is self-defeating. Its argument would, at most, support the disqualification of Brobeck, Hunton or Paul Hastings (the firms through which Mr. Coddington passed while prosecuting the '969 patent), but not Mr. Campbell or Cooley (who have never represented Streetspace, nor billed "only a short period of time" to Streespace as was the case in *Elan*). In disqualifying Irell, the court in *Elan* relied on the fact that attorneys who had billed Cygnus were still with Irell, whereas here, not only is Mr. Campbell no longer with Hunton, he never billed any time to Streetspace. (Campbell Decl. ¶ 8.)

Streetspace is essentially trying to impute Mr. Coddington's knowledge of confidential information in Streetspace matters to Hunton, and then impute from Hunton to Mr. Campbell knowledge of confidential information in Streetspace based solely on Mr. Campbell's former partnership in Hunton, and then again impute from Mr. Campbell to Cooley knowledge of confidential information in Streetspace based on Mr. Campbell's partnership with Cooley. (Mot. at 8 ("this Court must conclusively presume that Mr. Campbell has confidential information belonging to Streetspace and material to this litigation—***regardless of how little if any time Mr. Campbell may have billed to the prosecution matter***.") (emphasis added).) This logic is out of touch with California law. "To burden an attorney with such presumptive knowledge based solely on his former membership in a law firm which represented the former client . . . would require a significant extension of the doctrine of imputed knowledge beyond that recognized by any existing case law." *Adams*, 86 Cal. App. 4th at 1333-34. The *Adams* court reasoned that "such an extension" requiring imputation-upon-imputation "would be inconsistent with both the

policy objectives behind rule 3-310(E) and the *Ahmanson* test" and "would ignore certain undeniable realities regarding today's practice of law." *Id*. at 1334.

C. Applying the Applicable Standard to the Facts Here Compels a Denial of the Motion to Disqualify

Under the applicable legal standard, i.e., the modified substantial relationship test enunciated in *Adams*, Streetspace's motion must be denied. *Dieter* too is squarely on-point. There, in a patent infringement suit, the court denied a disqualification motion against the attorneys representing the Regents of the University of California ("Regents"). *Dieter*, 963 F. Supp. at 910. The Regents' attorneys formerly practiced at the San Francisco office of Townsend, while other attorneys at the Palo Alto office of Townsend prosecuted a related patent for Dieter. Based on the declarations submitted by the Regent's attorneys that they "practiced out of Townsend's San Francisco office," that "they did not work on" the adverse party's accounts at Townsend, and that "they [had] no knowledge" of the adverse party or its patents from their time at Townsend, the *Dieter* court denied the motion to disqualify. *Id*. In this case, Mr. Campbell similarly practiced in a different office from the attorney—Mr. Coddington—who prosecuted the '969 patent, Mr. Campbell did not work on any Streetspace matters, and Mr. Campbell had no knowledge of Streetspace or Streetspace's patent. (Campbell Decl. ¶ 8.)

The California Court of Appeals in *Adams* followed *Dieter* and reversed a disqualification order on facts that were even more suggestive of conflicts than the facts now before the Court. *Adams*, 86 Cal. App. 4th at 1338-40. In *Adams*, Hackard previously practiced at "a small office of seven to ten attorneys, of which Hackard was a name partner and Aerojet was a major client." *Id*. at 1345. Despite the small size of Hackard's former law firm and its representation of Aerojet from the same office, the *Adams* court reversed the trial court's disqualification of Hackard from representing clients adverse to Aerojet at his new law firm. *Id*. at 1341. In contrast, Mr. Campbell practiced in a firm that "employed more than 850 attorneys working in 17 offices in the United States, Europe, and Asia" (Coddington Decl. ¶ 2) and where he had no management responsibility. (Campbell Decl. ¶ 4; Doody Decl. ¶ 4; Duncan Decl. ¶ 4.) Streetspace and Mr. Coddington state that Mr. Campbell's former partnership "in the Washington, D.C. office of

Hunton" is "[s]ignificant[] for purposes of this motion." (Mot. at 2.) Mr. Coddington must know this is untrue, as Mr. Campbell was based in McLean, VA and not Washington, DC. Not only is Streetspace wrong, but according to *Adams*, membership in the same office alone is anything but "significant."

Streetspace also alleges that "it was common practice for attorneys in the Washington, D.C. office of Hunton & Williams to meet regularly to discuss intellectual property clients such as Streetspace and to discuss issues concerning those clients' interests." (Mot. at 3; Coddington Decl. ¶ 15.) Streetspace further alleges that Mr. Campbell "had access to client files and Streetspace confidential information while he was a partner there." (Mot. at 3; Coddington Decl. ¶ 16.) Leaving aside Streetspace's admission that "Mr. Coddington cannot personally recall whether Mr. Campbell actually attended or participated in meetings at which Streetspace or its intellectual property affairs were specifically discussed" (Mot. at 3)—meetings which, if they occurred, Mr. Campbell never attended or participated in (Campbell Decl. ¶ 6)—these allegations, even if true, would not be sufficient to disqualify Mr. Campbell or Cooley.

In *Ochoa*, the defendant Ridgeback was represented by the Jory Peterson firm. A former Jory Peterson attorney, Shelley Bryant, joined the W.J. Smith firm from Jory Peterson. Ridgeback moved to disqualify W.J. Smith because Bryant joined W.J. Smith from Jory Peterson. *Ochoa*, 146 Cal. App. 4th at 901-02. At Jory Peterson, Bryant billed no time to Ridgeback, but his office was adjacent to an attorney on the Ridgeback matter who "remembered 'two occasions when [he] had discussions with Mr. Bryant regarding issues and strategies relating to the present litigation.'" *Id*. at 902. In addition, Jory Peterson held Monday luncheon meetings, during which "new litigation matters in which the firm had been retained as well as issues and strategies in pending cases" were discussed. *Id*. at 903. Ridgeback proffered a declaration by a Jory Peterson attorney stating that he had "'no specific recollection as to whether Mr. Bryant was present at the particular meetings during which issues regarding the present matter were discussed, but [he] believes that [Mr. Bryant] was present.'" *Id*. (quoting declaration in support of disqualification). Finally, an audit of Jory Peterson's document system showed that "Bryant gained computer access to six documents created in connection with this litigation." *Id*. at 902.

Bryant submitted a declaration stating that he recalled discussing a generic legal question with the Ridgeback attorney but "did not discuss the facts of [plaintiffs'] cases or anything other than this generic legal question"; that he did "not recall anyone else discussing [plaintiffs'] cases during any of the Monday lunch meetings that [he] attended at Jory Peterson"; that since he "did not attend every Monday lunch meeting at Jory Peterson, [he] must conclude that [he] was not present at the meeting(s)" where the plaintiffs cases were allegedly discussed; and, that the files he accessed did not contain confidential information because he accessed five of the six documents after they were filed or served. *Id*. at 904-905. Even on these facts, the court affirmed the denial of the motion to disqualify the W.J. Smith firm, observing "the Bryant denials to be *credible and persuasive* and anything but cursory." *Id*. at 910 (emphasis in original; internal quotations omitted). Furthermore, although Bryant had "access to confidential information" on the document system, he "did not acquire any" confidential information because the documents accessed by Bryant were already filed and served. *Id*.

Even under those circumstances, the *Ochoa* court affirmed the denial of a disqualification motion of Bryant's present firm, W.J. Smith, because "whether described as access to confidential information or as the opportunity to acquire confidential information, that factor alone is not a sufficient basis for finding or conclusively presuming that 'confidential information material to the current representation would normally have been imparted to the attorney during his tenure at the old firm.'" *Id*. at 911-12 (quoting *Adams*, 86 Cal. App. 4th at 1340).

Streetspace's allegations against Mr. Campbell are far weaker than the allegations the court found to be insufficient in *Ochoa*. Streetspace has not established, nor can it, that Mr. Campbell actually accessed any of its files or attended any purported regular meetings at Hunton where Streetspace may have been discussed. Indeed, Mr. Campbell in fact did not access any Streetspace files nor attend any meetings where Streetspace was discussed. (Campbell Decl. ¶ 8.) Streetspace has not even established that its confidential information was generally available on Hunton's document management system or discussed in those purported regular meetings. Besides, there was no reason for Mr. Campbell to access files associated with a different office for a client of whom he had no knowledge. Mr. Campbell simply had no opportunity to acquire

Streetspace's confidential information.

Streetspace's resort to irrelevant and in some instances patently false innuendos contrast glaringly to its failure to present any billing records. And in moving to disqualify Mr. Campbell, Streetspace has the full cooperation of Mr. Coddington, the actual attorney who prosecuted the '969 patent. This case is "[u]nlike the situation where a client is seeking to disqualify his actual former attorney," and thus cannot obtain the cooperation of the former attorney in moving to disqualify. *San Gabriel Basin Water Quality Authority v. Aerojet-General Corp.*, 105 F. Supp. 2d 1095, 1106 (C.D. Cal. 2000). As in *San Gabriel*, Streetspace presents no evidence that Mr. Campbell "actually had conversations" with Mr. Coddington about Streetspace. *Id*. Streetspace's deficient motion shows that it lacks any factual basis in moving to disqualify and cannot rebut the fact that Mr. Campbell "had no exposure to confidential information relevant to the current action while he was a member of" Hunton. *Adams*, 86 Cal. App. 4th at 1341. The remoteness of Mr. Campbell to the prosecution of the '969 patent at Hunton is so compelling that the disqualification of Mr. Campbell would only harm Mr. Campbell's current client, Millennial Media, and reward Streetspace for multiplying this patent infringement litigation with a disqualification motion that is entirely without merit.

III. THE OBJECTIVE FACTS REQUIRE THE DENIAL OF STREETSPACE'S MOTION TO DISQUALIFY

A. Mr. Coddington is the Only Attorney Who Appeared At the Patent Office in the '969 Patent

Mr. Campbell and Mr. Coddington overlapped at Hunton in the early 2000s. This is the only common thread between Streetspace and Mr. Coddington on the one hand and Cooley and Mr. Campbell on the other hand. Streetspace offers no facts demonstrating that Mr. Campbell or Cooley has a shred of confidential information belonging to Streetspace. Instead, Streetspace's motion is based on innuendo and unfounded conjecture.

In contrast to Mr. Campbell, Mr. Coddington has been deeply involved with the '969 patent as he has moved first from Brobeck, Phleger & Harrison LLP ("Brobeck") to Hunton, then from Hunton to Paul, Hastings, Janofsky & Walker ("Paul Hastings"), and finally from Paul Hastings to his own firm, where he is acting as counsel of record for Streetspace in this

infringement litigation. (Coddington Decl. ¶¶ 1, 2, 4, 9; Kuan Decl. ¶¶ 3-5.) Even as Mr. Coddington moved from Brobeck to Hunton and then to from Hunton to Paul Hastings, Mr. Coddington signed ***all*** of the correspondence to the Patent Office other than the initial application filed in 2001 by Brobeck. Further, Mr. Coddington conducted ***all*** of the interviews with the Patent Office examiner. (Kuan Decl. ¶ 6.)[2] By contrast, Mr. Campbell, who had never heard of Streetspace prior to the filing of the suit, never signed a single paper with the Patent Office, a fact objectively showing that Mr. Campbell had no involvement with the Streetspace account.[3]

B. Mr. Campbell Did Not Participate in Meetings Involving Streetspace, Assuming Meetings Actually Occurred, and Mr. Campbell had No Knowledge of the Existence of Streetspace

Despite having Streetspace's complete cooperation and Mr. Coddington's intimate knowledge of the history of the '969 patent, Streetspace nonetheless asserts that "Mr. Coddington cannot personally recall whether Mr. Campbell actually attended or participated in meetings at which Streetspace or its intellectual property affairs were specifically discussed." (Mot. at 3.) Mr. Coddington's failure to recall an event is not evidence. To leave no doubt about it, Mr. Campbell affirmatively states that he never attended or participated in meetings at which Streetspace or its intellectual property affairs were discussed. (Campbell Decl. ¶ 8.) Mr. Campbell is not alone in this recollection. Two former Hunton partners, Messrs. Doody and Duncan, likewise state that not only had they never heard of Streetspace, but Streetspace was never discussed at any meetings at Hunton where they were in attendance, (Doody Decl. ¶ 5; Duncan Decl. ¶ 5). Mr. Coddington's recollections do not contradict Mr. Campbell's affirmative statement that Mr. Campbell had no involvement at all in any Streetspace matters or any discussions about Streetspace. Streetspace has access to the billing records it received from

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[2] Considering the sizes of Brobeck, Hunton, and Paul Hastings, Streetspace's motion to disqualify is absurd. Under Streetspace's theory, *all* of the thousands of attorneys who happened to work at the same firm as Mr. Coddington and *all* of the law firms those attorneys subsequently joined would be smeared by Streetspace's broad stroke of conflicts, regardless of whether anyone had any confidential information of Streetspace. Streetspace's theory of unlimited imputation of conflicts would even disqualify Jumptap's counsel in this case, Goodwin Proctor, because Mr. Campbell was a partner there upon withdrawing from Hunton. (Campbell Decl. ¶ 2.)

[3] Millennial Media invites Streetspace to file *in camera* any privileged documents it has in its possession showing that Mr. Campbell was ever involved with the Streetspace account.

Hunton, yet Streetspace has not produced any records showing that Mr. Campbell had any involvement in Streetspace. Again, why? Because none of the billing records will reveal any involvement by Mr. Campbell in any Streetspace matter.

Streetspace attempts to make much of the purported fact that "Chris Campbell . . . was a partner in the Washington, D.C. office of Hunton & Williams during precisely the same time period Streetspace's '969 patent was prosecuted there" (Mot. at 3). But even that is factually inaccurate. During Mr. Coddington's tenure with Hunton, Mr. Campbell was a partner in the McLean, VA office of Hunton & Williams, and only maintained a D.C. telephone number, which was automatically forwarded to his office in McLean, VA. (Campbell Decl. ¶ 3.)

To further illustrate how far-fetched Streetspace's disqualification argument is, the Court should take notice of the fact that Mr. Coddington and Mr. Campbell met by chance no more than two or three times. (*Id*. at ¶ 7.) Mr. Coddington never reported to Mr. Campbell. (*Id*.) Mr. Campbell never reviewed Coddington's performance as an associate. (*Id*.) Mr. Campbell never critiqued Mr. Coddington's work. (*Id*.) Upon leaving Hunton & Williams, Streetspace would have instructed Hunton to transfer all files, including email and electronic files, pertaining to Streetspace to Mr. Coddington. Mr. Coddington presents not a shred of evidence that Mr. Campbell ever appeared on email or electronic file pertaining to Streetspace. Why? Because none exist.

Tellingly, Streetspace and Mr. Coddington do not ***affirmatively*** allege that Mr. Campbell ever actually attended any meetings at which information about Streetspace was discussed (Streetspace Memo at 3), but instead resort to unsupported attorney argument that "Mr. Coddington cannot personally recall whether Mr. Campbell actually attended or participated in meetings at which Streetspace or its intellectual property affairs were specifically discussed." (Streetspace Memo at 3). But even Mr. Coddington is not willing even to say this much under oath. Mr. Campbell on the other hand has ***affirmatively*** stated that he never attended any meetings at which Streetspace or its intellectual property affairs were specifically discussed. (*Id*. at ¶ 8.) Nor does Streetspace or Mr. Coddington ***affirmatively*** allege that Mr. Campbell received any confidential information on Streetspace while at Hunton. Instead, they rely on manufactured

faulty memories, attorney argument, insinuation and factual misstatements—Mr. Campbell was not even based in the same office as Mr. Coddington, who prosecuted the '969 patent at Hunton (Coddington Decl. at ¶¶ 2, 9; Campbell Decl. ¶¶ 4-5; Doody Decl. ¶ 7; Duncan Decl. ¶ 7). Mr. Campbell, however, ***affirmatively*** stated that he never received confidential information of Streetspace while at Hunton. (Campbell Decl. ¶ 8.)

Streetspace has not made "an adequate showing that [Mr. Campbell] was in a position vis-à-vis [Streetspace] to likely have acquired confidential information material to the current representation." *Ochoa*, 146 Cal. App. 4th at 908 (internal citation omitted). Without a doubt, Mr. Campbell was not in a position with respect to Streetspace to likely have acquired confidential information material to the current representation. Not only did Mr. Campbell never represent Streetspace, Mr. Campbell was so far removed from the prosecution of the '969 patent at Hunton that he was not even aware of Streetspace or the prosecution of the '969 patent, and certainly did not receive any confidential information of Streetspace. (Campbell Decl. ¶¶ 7-10.) Mr. Campbell was based in the McLean, VA office. (Campbell Decl. ¶ 3.) Mr. Coddington, who prosecuted the '969 patent, was based in the Washington, D.C. office of Hunton (Coddington Decl. ¶ 2). Mr. Campbell "did not hold any firm-wide management functions" and "did not hold any management functions for Hunton & Williams' McLean, VA office or its Washington, DC office." (Campbell Decl. ¶ 4; Doody Decl. ¶ 4; Duncan Decl. ¶ 4.) Plainly and simply, Mr. Campbell and Cooley were not and are not in possession of confidential information of Streetspace.

C. Streetspace Deliberately Withheld Emails between Mr. Coddington and Mr. Campbell

Apparently realizing the weakness of its motion, Streetspace made a deliberate decision to withhold from the Court email correspondence between Mr. Coddington and Mr. Campbell in which Mr. Campbell unequivocally informs Mr. Coddington that he had never heard of Streetspace prior the filing of the suit. In response to a litany of questions presented by Mr. Coddington, Mr. Campbell responded as follows:

> Trevor,
>
> I had never heard of StreetSpace either while at Hunton & Williams or thereafter. The

> very first time I heard of StreetSpace was when I was engaged by Millennial Media to defend Millennial Media against a suit involving a patent you prosecuted while you were an employee of Hunton & Williams. Rest assured, the only way I know that you prosecuted the patent in suit is by the public records at the PTO and your representations to me during our calls involving this lawsuit against Millennial Media. Any "confidential" information I have regarding StreetSpace came from you after the suit was filed. So to the extent you contend I am in possession of "confidential" information of StreetSpace, that so-called "confidential" information came exclusively from you and thus you have waived the attorney client privilege.
>
> Please feel free to confirm for yourself that I was not involved in any way with StreetSpace. You are presumably in possession of all of StreetSpace's files involving the patent in suit, including the bills sent to them pertaining to your work. Feel free to review the bills. You will not find my name anywhere.
>
> Finally, as I'm sure you are aware, at any given time, Hunton is prosecuting hundreds (if not thousands) of patent applications. I would have had no reason whatsoever to access any of StreetSpace's files, and never did so. Nor did I have any discussions with Rodger Tate about StreetSpace – as I said at the outset, the very first time I heard of StreetSpace was after StreetSpace filed this lawsuit.

(Campbell Decl. ¶ 9.) Rather than "meeting and conferring" or at least reaching out to Mr. Campbell for further clarification, assuming any was needed, Streetspace simply filed a motion to disqualify Mr. Campbell and Cooley which misstates the applicable legal standard and the relevant facts.

IV. MILLENNIAL MEDIA WILL BE PREJUDICED IF STREETSPACE'S MOTION IS GRANTED

Streetspace had nothing to lose by filing this motion and everything to gain. Without a shred of evidence that either Mr. Campbell or Cooley are in possession of Streetspace's confidential information, Streetspace nonetheless seeks to disqualify Millennial Media's trial counsel. Millennial Media, by contrast, will be prejudiced insofar as it will have to hire replacement trial counsel, when it has already invested in Cooley generally and Mr. Campbell specifically. Rather than rewarding Streetspace, the more appropriate outcome under the circumstances would be for the Court to admonish Streetspace for bringing a motion that it had to know was wholly lacking in merit.

V. CONCLUSION

Streetspace's motion to disqualify is based on a misstatements of law and fact. Millennial Media respectfully request that the Court deny Streetspace's motion to disqualify Cooley and Mr. Campbell.

Dated: February 28, 2011

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on February 28, 2011, to all counsel of record who are deemed to have consented to electronic service via the Court's CM/ECF system per Civil Local Rule 5.4. Any counsel of record who have not consented to electronic service through the Court's CM/ECF system will be served by electronic mail, first class mail, facsimile and/or overnight delivery.

/s/ John Kyle
John Kyle, Esq.

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