

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MERCEXCHANGE, L.L.C.,

Plaintiff,

v.

EBAY INC. AND HALF.COM, INC.,

Defendants.

Civil No. 07cv0231-IEG (POR)

**ORDER (1) DENYING DEFENDANTS
EBAY INC.'S AND HALF.COM'S
MOTION TO COMPEL FISH &
RICHARDSON P.C. TO COMPLY
WITH A SUBPOENA *DUCES TECUM*
AND (2) DENYING PLAINTIFF'S
MOTION TO QUASH SUBPOENA
DUCES TECUM UPON FISH &
RICHARDSON P.C.**

[Doc. Nos. 1, 7]

On February 2, 2007, Defendants filed a Motion to Compel Fish & Richardson P.C. to Comply with Subpoena *Duces Tecum* ("Motion to Compel") [Doc. No. 1]. This Court did not receive Defendants' Motion to Compel until February 6, 2007. On February 9, 2007, the subpoenaed party, Fish & Richardson P.C., filed an Opposition to Defendants' Motion to Compel [Doc. No. 5]. On that same day, Plaintiff filed an Opposition to Defendants' Motion to Compel [Doc. No. 10] and a Motion to Quash Subpoena *Duces Tecum* Upon Fish & Richardson P.C. ("Motion to Quash") [Doc. No. 7]. Defendants filed a Reply in support of their Motion to Compel [Doc. No. 13] and Opposition to Plaintiff's Motion to Quash [Doc. No. 15] on February 13, 2007.

Magistrate Judge James Bradberry of the United States District Court Eastern District of Virginia ("Virginia Court") addressed the issue of discovery disputes arising from the parties' limited discovery in his December 18, 2006 Order. Specifically, Magistrate Judge Bradberry's Order states "In the event that discovery disputes arise, the parties must contact Magistrate Judge

1 James Bradberry no later than February 6, 2007, to determine an expedited discovery dispute
2 procedure.” (Declaration of Ann Marie Mortimer in Support of Plaintiff Mercexchange, L.L.C.’s
3 Brief in Opposition to Defendants’ Motion to Compel Enforcement of Subpoena *Duces Tecum* Upon
4 Fish & Richardson P.C., Exhibit 1 at 16.)

5 Further, the subpoenaed party, Fish & Richardson, is Plaintiff’s lawyer in this case.
6 Although Defendants argue Fish & Richardson is a third party, Fish & Richardson is counsel for
7 Plaintiff and is litigating two pending motions before the Virginia Court.

8 Accordingly, this Court defers to the Virginia Court and finds (1) Defendants’ Motion to
9 Compel is DENIED without prejudice to allow Defendants to bring their motion before the proper
10 court, and (2) Plaintiff’s Motion to Quash is DENIED without prejudice to allow Plaintiffs to bring
11 their motion before the proper court.

12 **IT IS SO ORDERED.**

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14 DATED: February 16, 2007

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16 LOUISA S PORTER
17 United States Magistrate Judge

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19 cc: District Judge
20 All parties
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