

1  
2  
3  
4  
5  
6  
7  
8 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 MICROTOUCH, L.L.C., et al.,

11 Plaintiffs,

12 v.

13 PAIGE DOYLE, et al.,

14 Defendants.

CASE NO. C17-996 MJP

ORDER ON MOTION TO QUASH  
SUBPOENA

15  
16 The above-entitled Court, having received and reviewed:

- 17 1. Defendants' Motion to Quash Subpoena to Bundy Law Firm (Dkt. No. 76),  
18 2. Plaintiffs' Opposition to Motion to Quash Subpoena to Bundy Law Firm (Dkt. No.  
19 78),  
20 3. Defendants' Reply Brief in Support of Motion to Quash Subpoena to Bundy Law  
21 Firm (Dkt. No. 81),

22 all attached declarations and exhibits, and relevant portions of the record, rules as follows:

23 IT IS ORDERED that the motion is GRANTED and the subpoena is QUASHED.  
24

1 In Defendants' Answer to Plaintiffs' First Amended and Supplemental Complaint, an  
2 admission was made which included language that Defendant, "based on the general advice of  
3 counsel related to preservation of documents," had accessed "documents contained in a Dropbox  
4 account" managed by one of the Plaintiffs. (Dkt. No. 56, Answer at ¶ 19.) On the basis of that  
5 statement, Plaintiffs served a subpoena *duces tecum* on the Bundy Law Firm, PLLC, seeking the  
6 designation of one or more officers to testify on the firm's behalf relative to the above admission.  
7 In response, Defendants filed the instant motion, seeking to quash the subpoena.

8 The attempt to subpoena suffers from two deficiencies. First, Defendants in this case  
9 have not claimed that their actions were reasonable because they were so advised by counsel;  
10 i.e., they have not asserted an "advice of counsel" defense which would operate as a waiver of  
11 the attorney-client privilege. On the contrary, Defendants have indicated that they are willing  
12 stipulate that Ms. Doyle will not raise an advice of counsel defense as to any claim regarding  
13 accessing the Dropbox accounts. (Dkt. No. 77, Fichter Declaration, Ex. 7.)

14 Second, there are other requirements which must be satisfied by a party seeking to depose  
15 opposing counsel. Among them is the requirement that "no other means exist to obtain the  
16 information than to depose opposing counsel." Shelton v. Am. Motors Corp., 805 F.2 1323,  
17 1327 (8th Cir. 1986). "If there are other available sources of information, [the party] should  
18 explore those sources first." Ed Tobergte Assoc's Co. v. Russell Brands, LLC, 259 F.R.D. 550,  
19 555 (D.Kan. 2009). Plaintiffs have produced no evidence that they have attempted to obtain this  
20 information from other, readily available sources (such as deposing Ms. Doyle).

21 Until Plaintiffs can satisfy the Court that the Shelton factors have been satisfied, they will  
22 not be permitted the extraordinary measure of deposing opposing counsel. The motion to quash  
23 the subpoena served on the Bundy Law Firm is GRANTED.

1  
2 The clerk is ordered to provide copies of this order to all counsel.

3 Dated: April 4, 2018.

4 

5 The Honorable Marsha J. Pechman  
6 United States Senior District Court Judge  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24