

1
2
3 UNITED STATES DISTRICT COURT
4 WESTERN DISTRICT OF WASHINGTON
5 AT SEATTLE

6 STRIKE 3 HOLDINGS, LLC,

7 Plaintiff,

8 v.

9 JOHN DOE (73.225.38.130),

10 Defendant.

C17-1731 TSZ

MINUTE ORDER

11 The following Minute Order is made by direction of the Court, the Honorable
Thomas S. Zilly, United States District Judge:

12 (1) Plaintiff's motion to compel production of defendant's hard drive,¹ docket
13 no. 125, is GRANTED in part and DENIED in part, as follows. Plaintiff may designate
14 one expert to examine the "imaged" hard drive. Such examination shall occur, within
15 twenty-one (21) days of the date of this Minute Order, at a facility upon which the parties
16 mutually agree. Defendant's expert may also be present during the examination. Such
17 examination shall be limited to searching for existing and/or deleted files matching the
18 hash values set forth in Exhibit A to the Complaint, docket no. 1. If any such files are
19 discovered, plaintiff's expert may copy and/or otherwise make a record concerning the
20 presence of such files, which may be provided to plaintiff's counsel along with any report
21 concerning the examination. Plaintiff (and/or its attorneys and/or its experts) may not
22 take possession of the "imaged" hard drive (or the original drive) and may not search for
23 or view any other materials on the "imaged" hard drive, including any items protected by
attorney-client or work-product privilege. Except as granted, plaintiff's motion is denied.

¹ Plaintiff has moved with respect to two hard drives, but defendant has only one relevant hard drive (Serial No. 9VP05TWX) of which defendant's expert Michael Yasumoto made a copy for forensic purposes (the "imaged" hard drive). *See* Yasumoto Report, Ex. 10 to Edmondson Decl. (docket no. 175-10). Although defendant has purchased other used computers to refurbish (and presumably sell) them, plaintiff makes no motion to compel the hard drives of those devices.

1 (2) Plaintiff's motion to compel production of defendant's son's hard drive,
2 docket no. 136, and plaintiff's motion to compel production of communications between
3 defendant's attorneys and defendant's son's lawyers, docket no. 141 & 170, are
4 DENIED. Plaintiff's request to examine defendant's son's hard drive is not proportional
5 to the needs of the case, which has been narrowed to solely defendant's counterclaim for
6 declaratory judgment of his own (as opposed to his son's) non-infringement of plaintiff's
7 copyrighted materials. Pursuant to the common defense and work-product doctrines,
8 plaintiff is not entitled to communications between defendant's attorneys and defendant's
9 son's lawyers.

6 (3) Plaintiff's motion to compel responses to five questions posed and
7 unanswerd in defendant's deposition, docket no. 126, is DENIED. To the extent not
8 already produced, however, defendant shall provide to plaintiff within fourteen (14) days
9 of the date of this Minute Order copies of any fee agreements between him and his
10 attorneys.

9 (4) Defendant's motion to compel source code, docket no. 143, is STRICKEN
10 without prejudice to refileing if necessary after the Court rules on defendant's motion for
11 summary judgment.

11 (5) The Court DECLINES to award attorney's fees or costs to either party in
12 connection with the discovery motions addressed in this Minute Order.

12 (6) Defendant's motion for summary judgment, docket no. 174, is RENOTED
13 to November 1, 2019. Any supplemental response relating solely to the examination of
14 defendant's "imaged" hard drive, which shall not exceed eight (8) pages in length, shall
15 be filed by plaintiff on or before October 28, 2019. Any supplemental reply, which shall
16 not exceed four (4) pages in length, shall be filed by defendant on or before the new
17 noting date.

16 (7) The Clerk is directed to send a copy of this Minute Order to all counsel of
17 record.

17 Dated this 19th day of September, 2019.

18 William M. McCool
19 Clerk

20 s/Karen Dews
21 Deputy Clerk