UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

JOHN HRITZ,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. C-1-00-835
	)	(Judge Weber)
JOHN AND/OR JANE DOE(S), *et al.*	)	
	)	
Defendants.	)	

DEFENDANT'S MEMORANDUM IN
IN OPPOSITION TO MOTION TO REMAND

John Hritz, an executive in a large steel company based in Middletown Ohio, initiated this proceeding to identify Jane Doe so that he can sue Doe for unspecified "threatening, libelous and disparaging remarks " that Doe posted about Hritz, using a pseudonym, on a Yahoo! message board. Doe removed the case from Ohio Superior Court for Butler County to this Court because Doe and Hritz are citizens of different states and the amount in controversy in this proceeding, and in the underlying libel action to which this proceeding is intended to lead, is in excess of $75,000. After removing to this Court, Doe moved to quash the subpoena to America Online seeking Doe's identity, arguing that the subpoena violated her First Amendment right to criticize Hritz anonymously, unless Hritz could establish that he had viable claims against Doe.

Hritz now moves to remand based on several arguments, most importantly that, because this is a proceeding to obtain discovery, rather than a libel action, there is nothing to remove and **no** amount in controversy. Hritz further argues that the removal is defective because Yahoo!, on which the first subpoena was served, did not join in the removal, that removal was not effected within the proper time after Yahoo!

was served with the subpoena and sent notice of the subpoena to Doe, and that there is insufficient proof that Doe is not a citizen of Ohio. As we now explain, none of these arguments is meritorious, and hence the federal courts, and not state courts, are the proper forum in which to decide whether Hritz can show a sufficiently compelling reason to strip Doe of her First Amendment right to engage in anonymous speech.

V. The Court Has Jurisdiction of This Action Because Citizenship Is Diverse and the Amount in Controversy Exceeds $75,000.

We begin with the two arguments advanced by plaintiff that go to the Court's diversity jurisdiction over this proceeding. Simply put, Hritz argues that his choice to bring a pre-litigation proceeding to identify Doe, instead of filing his action for supposedly libelous and threatening speech as a complaint against Doe, and then seeking discovery to identify the Doe through discovery during the lawsuit, deprives Doe of the right to remove to federal court. According to Hritz, there is nothing in controversy in a petition for discovery, and even if the Court believes there is a case or controversy, there is nothing that proves decisively that the **amount** in controversy exceeds $75,000. Hritz also argues that there is no evidence of diversity because Doe's citizenship in a state other than Ohio has not been proved.

We address the latter matter first. The notice of removal recited that Hritz is a citizen of Ohio, while Doe is a citizen of a state other than Ohio. These facts are sufficient to establish diversity – there is no need to identify the other state, so long as it is truly not Ohio. Moreover, the basis for counsel's representation with respect to Doe's citizenship is that undersigned counsel Mr. Levy has examined the letter sent by America Online to Doe informing Doe of the subpoena seeking to identify her, and enclosing the papers filed with the Virginia state court, which included that petition for pre-litigation discovery. The letter to Doe bore Doe's residential address, which is in a state other than Ohio. Moreover, Mr. Levy has examined

copies of Doe's pay stubs, which include both the name of the facility where Doe works (which is located outside Ohio), and Doe's residential address, which is identical to the (non-Ohio) address on the AOL letter. This address was on Doe's pay stubs from July 2000, when this proceeding began, as well as on the stub from September, just before the case was removed. *See* Levy Affidavit, ¶¶ 2-4. Consequently, there can be no question that Doe has been a citizen of a state other than Ohio since the petition was originally filed. We are prepared to present these papers to the Court *in camera* if the Court deems that necessary to verify counsel's representations. In short, citizenship in this case is diverse.

Turning now to the amount in controversy, Hritz' argument is that, because he seeks equitable relief and not damages, there is **no** amount in controversy. This argument is mistaken. The basic rule is, when relief sought is injunctive or equitable, the amount in controversy is the value of the interest that the litigation is intended to protect. *Hunt v. Washington State Apple Advert. Comm.*, 432 U.S. 333, 347-348 (1977). The Sixth Circuit tends to take an expansive view of the amounts in controversy in cases of injunctive relief. *Pennsylvania R. Co. v. Girard*, 210 F.2d 437, 439 (6th Cir. 1954); *Wisconsin Elec. Co. v. Dumore Co.*, 35 F.2d 555, 556 (6th Cir. 1929).

Nor is this matter unremovable just because it is a pre-litigation discovery proceeding that seeks to develop information that Hritz wants to use to bring an action for damages for libelous and threatening speech. The Judicial Code expressly allows the removal of either an "action" or a "proceeding," 28 U.S.C. § 1446, and there are a number of cases where courts have allowed the removal of state proceedings that seek to obtain information to be used in a lawsuit. *In re Texas*, 110 F. Supp.2d 514, 528-530 (E.D. Tex. 2000); *Christian, Klein & Cogburn v. NASD*, 970 F. Supp. 276, 278 (S.D.N.Y. 1997); *HMB Acquisition Corp. v. Cohen*, 143 F.R.D. 50, 52 (S.D.N.Y. 1992); *see also Agosto v. Barcelo*, 594 F.

Supp. 1390, 1392-1393 (D.P.R.), *mandamus granted on other grounds*, 748 F.2d 1 (1st Cir. 1984) (effort to enforce legislative subpoena deemed "civil action" within meaning of removal statutes).

In each of these pre-litigation petition cases, the courts held that removability depended on the character of the underlying claim that the petition sought to enable. Thus, in *Christian, Klein & Cogburn v. NASD*, 970 F. Supp. 276, 278 (S.D.N.Y. 1997), the court held that a pre-litigation petition for discovery sought in order to frame a complaint under the federal securities laws, in addition to various state law theories, was a claim under federal law that was removable to federal court. Similarly, in *HMB Acquisition Corp. v. Cohen*, 143 F.R.D. 50, 52 (S.D.N.Y. 1992), the court held that a pre-litigation discovery proceeding arose under the RICO statute where the stated purpose of the discovery was to identify individuals who had allegedly conspired to violate the plaintiff's rights. Most recently, in *In re Texas*, 110 F. Supp.2d 514, 528-530 (E.D. Tex. 2000), the court held that a pre-litigation petition that raised questions about the adequacy of the basis for a settlement concerning attorney fees in a federal court suit was within the court's jurisdiction under the All Writs Act because the information would be used for a purpose that could undermine the court's judgment.

In all of these cases, it was the litigation purpose for which the discovery was to be used that determined whether the petition was within the federal court's jurisdiction. Similarly here, where the purpose of the petition for discovery is to enable Hritz to sue Doe for libel, the removability of the petition depends on the character of the action Hritz is trying to facilitate, which, given the diversity between the parties, depends on the amount in controversy in the proposed libel case.

A similar result is found in an analogous series of cases where, instead of suing to obtain information to enable a case to be brought, the plaintiff is suing either to require the defendant to participate in a

separate proceeding or to prevent the defendant from pursuing a case. In that situation, it is the amount in controversy in the underlying litigation that governs. The leading case is *Horton v. Liberty Mutual Ins.* Co., 367 U.S. 348, 353-354 (1961), where a suit was filed to set aside a workers compensation proceeding, and the Supreme Court upheld diversity jurisdiction because the amount in controversy was not just the amount of the judgment in the underlying workers compensation case, but the total amount that had been in controversy in that case. Similarly, in *Davenport v. Procter & Gamble Co.*, 241 F.2d 511, 514 (2d Cir. 1956), when a union sued under state law to compel an employer to arbitrate a grievance, the amount in controversy was the award that might be made by the arbitrator. *Accord, Webb v. Investacorp*, 89 F.3d 252, 256 (5th Cir. 1996) (citing other cases). And in *Blyfogel v. Carvel Corp.*, 666 F. Supp. 730, 732 (E.D. Pa. 1987), suit was filed in Pennsylvania to enjoin the prosecution of a separate action then pending in New York court, and it was held that the amount in controversy in the Pennsylvania case was the amount in controversy in the suit that the case was brought to stop. *See also Hirsch v. Jewish War Veterans*, 537 F. Supp. 242, 243 (E.D. Pa. 1982) (suit to enjoin private "court martial" that could ruin plaintiff's reputation); *Leininger v. Leininger*, 705 F.2d 727, 729 (5th Cir. 1983) (suit to annul state court judgment). Here, the purpose for the disclosure of Doe's identity is to enable Hritz to sue Doe for libel, and it is the value of the libel suit that this case is intended to enable that determines the value of this litigation.

One more line of cases is analogous to the present one – where a plaintiff who owns shares in a corporation sues to compel the corporation to provide him with certain information to enable him to protect his rights (such as by promoting a particular position in a shareholder election). In those cases, the modern approach is to value the case according to the purpose for which the information is to be used – that is, to

protect the shareholder's interest in the corporation. Thus, the amount in controversy is the value of the shareholder's holdings. 1 *Moore's Federal Practice* ¶ 0.92[5], at 861, citing, *e.g.,Weeks v. American Dredging Co.*, 451 F. Supp. 464, 466 (E.D. Pa. 1978); *Susquehanna Corp. v. General Refractories Co.*, 250 F. Supp. 797, 800 (E.D. Pa. 1966). Here the plaintiff seeks to compel the disclosure of information so that he can find the defendant whom he wants to sue for allegedly besmirching his reputation, and the value of the threatened libel suit provides the measure of the information's value.

Hritz' underlying claim is for libel. Because the rule against prior restraints poses an insuperable obstacle to injunctive relief as a remedy for libel, Hritz' claim must be for damages. Because Hritz has chosen not to mention the amount of damages he is seeking, the Court should look at the damages that would logically follow from Hritz' claims. In this regard, the courts have been unwilling to allow a plaintiff to avoid removal of state law claims against diverse defendants by the simple ploy of omitting a claim for a specific amount of damages. Instead, defendants are entitled to establish, by a preponderance of the evidence, that the claims advanced in the state law proceeding are sufficient to warrant the conclusion that the jurisdictional amount will be satisfied by the case. *De Aguilar v. Boeing*, 47 F.3d 1404, 1412 (5th Cir. 1995). The Sixth Circuit has held that this standard is met by evidence that, if the plaintiff establishes his claims, he would be entitled to recover damages and other monetary relief in excess of the jurisdictional amount. *Gafford v. General Elec. Co.*, 997 F.2d 150, 160-161 (6th Cir. 1993). But it has also been held sufficient for the defendant to allege the facts in her removal petition; such facts need not be established by affidavit or documentary evidence unless the allegations in the petition have been contested, as they are not in this case. *Szalay v. Yellow Freight Sys.*, 999 F. Supp. 972, 974 (N.D. Ohio. 1996); *Garza v. Bettcher Indus.*, 752 F. Supp. 753, 763 (E.D. Mich. 1990); *McCurtain Cy. Prod. Corp. v. Cowett*,

482 F. Supp. 809, 813 (E.D. Okla. 1978); *Garland v. Humble Oil & Ref. Co.*, 306 F. Supp. 608, 610 (E.D. Tenn. 1969). *See also Allen v. R&H Oil & Gas Co.*, 63 F.3d 1326, 1336 (5th Cir. 1995) (allegations in removal petition may be sufficient; only if amount in controversy is not apparent from pleadings must summary-judgment-type evidence be examined).

Here, the allegedly defamatory comments that respondent Doe made about Hritz are about Hritz' professionalism in a job that brings him compensation of nearly $3 million per year. (A copy of the Yahoo! web page revealing this figure is attached as Exhibit B). Moreover, in his opposition to Doe's motion to quash his subpoena, Hritz has complained about the "pervasive" character of the Internet and the ease of republication of Doe's messages, so that, potentially, "millions of people can access it." Opposition at 12. Thus, an attack on the manner in which he conducts himself in this occupation, if it causes any damages at all, must cost him well in excess of $75,000. Indeed, a recent survey of post-trial verdicts in libel cases shows that the average award in libel cases in federal court during the past two decades was $6,650,082, with the median award being $462,500; in state courts, the average award was $1,967,743, and the median award was $200,000. *See Libel Defense Resource Center 2000 Report on Trials and Damages*, summarized in a press release published at http://www.ldrc.com/damage00. html. A copy of this press release is attached as Exhibit C. In this regard, we note that evidence of the amounts of damages awarded in cases stating the same cause of action has been accepted as one form of evidence that can help establish the amount in controversy. *Kennard v. Harris Corp.*, 728 F. Supp. 453, 454 (E.D. Mich. 1989).

The underlying report provides average and median figures for libel trials in the federal courts within the Sixth Circuit and in state courts in Ohio; the relevant pages are attached as Exhibit D. Like the national

figures, the geographically-specific data support Doe's contention that the amount in controversy with respect to Hritz' libel claim alone exceeds the $75,000 jurisdictional amount. Thus, in all Sixth Circuit cases, the average award was $2,864,395, and the median award was $375,000; in the state courts of Ohio, the average award was even higher than the national average at $7,797,423, while the median award was somewhat lower than the national average at $150,000. Although many of these awards were overturned on appeal or by post-verdict motion in the trial courts, that does not affect a determination of the amount in controversy in the average libel case, which is plainly far in excess of $75,000.

Hritz' petition to the Ohio state court indicates that, in addition to his claim for libel, he desires to pursue a claim for "threatening" speech. In opposing the motion to quash in the United States District Court for the Eastern District of Virginia, Hritz claimed that, in addition to affecting his reputation, Doe's messages on the Yahoo! message board were so threatening that he was "concerned for his own safety as well as that of his family." Opposition at 12. It is apparent that Hritz is trying to bring a claim for infliction of emotional distress as well as damage to reputation, and hence these damages must be added to the reputational damage allegedly caused by Doe's "libelous" statements in computing the total amount in controversy in this case. Thus, it is apparent that the damages in controversy far exceed $75,000.[1]

Not only does Hritz not contest our characterizations of the amount of damages that have been inflicted on him, but it is worthy of notice how carefully he avoids the normal means for plaintiffs who really don't want more than $75,000 to avoid federal jurisdiction – an offer to stipulate to less than $75,000 in

[1]Although we have grave reservations about whether such a claim is tenable under Ohio law, *see Yeager v. Teamsters Local 20*, 6 Ohio St. 3d 369, 375 (1983) ("liability clearly does not extend to mere . . . threats), it is plaintiff's allegations that establish the amount in controversy.

damages. *E.g., De Aguilar v. Boeing*, 11 F.3d 55 (5th Cir. 1993). *But see Rogers v. Walmart Stores*, No. 99-2342 (6th Cir., October 26, 2000) (such stipulations are not binding on issue of jurisdiction). Hritz does not even argue that less than $75,000 is at issue – he carefully limits his contention to the proposition that Doe has not carried her burden of making a sufficient showing that the minimum jurisdictional amount has been satisfied. Thus, this is not a case in which the Court must decide which side to believe, and thus must decide whether to defer to the plaintiff's characterization of his claims on the theory that the plaintiff is the master of his own complaint.

In summary, the facts and evidence set forth above are sufficient to show that the underlying tort action, which Hritz describes as the motivation for his pre-litigation petition, implicates damages claims that are far greater than the jurisdictional amount, and that removal was therefore completely justified. However, if the Court does not regard our proof as sufficient, Doe wishes to take discovery to establish the amount in controversy, and requests that a final decision on Hritz' motion to remand be deferred to permit such discovery to be conducted.

Finally, regardless of the amount of damages that are in controversy in the underlying tort suit, when an injunction or declaratory judgment is sought, it is not just the immediate amount of the dispute that provoked the suit that is determinative, "but rather the value of the consequences which may result from the litigation." *Beacon Const. Co. v. Matco Elec. Co.*, 521 F.2d 392, 399 (2d Cir. 1975), *citing Smith v. Adams*, 130 U.S. 175 (1889). And many cases hold, particularly when an injunction is sought, that jurisdiction exists if the jurisdictional amount is met **either** by the benefit to the plaintiff or by the impact on the defendant. *E.g.*, *Smith v. Washington*, 593 F.2d 1097, 1099 (D.C. Cir. 1978); *Oklahoma Retail Grocers v. Wal-Mart Stores*, 605 F.2d 1155, 1159-1160 (10th Cir. 1979). Even if Hritz never brings

this case, Doe could easily be fired once she is identified. Given the amount of pay that is revealed by her pay records, the consequences of losing her pay could eventually exceed $75,000, in only two years' time (again, counsel are prepared to make an in camera showing to support these representations). And, of course, identification of Doe would deny her priceless right to speak anonymously. *Cf. Fifth Avenue Peace Parade Comm. v. Hoover*, 327 F. Supp. 238, 242 (S.D.N.Y.1971) ("[Free speech rights] may be difficult of evaluation, but 'priceless' does not necessarily mean 'worthless.'").

Thus, both because of the costs that compelled disclosure of her identity could impose on Doe, and because of the damages that Hritz stands to gain through the tort action that his subpoenas are designed to enable, the amount in controversy in this proceeding exceeds $75,000, and the case was properly removed under diversity jurisdiction.

II. Hritz' Procedural Objections to the Removal Also Lack Merit.

In addition to objecting based on lack of subject matter jurisdiction, Hritz advances two procedural objections, claiming that the case should be remanded because Doe's removal notice was not timely, and because Yahoo! did not join in the removal notice. Neither argument has merit.

A. Yahoo's Notice to Doe's Screen Name Did Not Trigger the Time for Removal.

Hritz argues first that, regardless of when Doe received a copy of his petition for discovery in this case, her notice of removal is untimely because it was filed more than thirty days after Yahoo! sent to Doe a "notice of the state court action." Hritz then slyly suggests that, in order to discover whether Doe received the notice, Hritz is entitled to take her deposition. This argument fails because, contrary to Hritz' assumption, mere notice of the existence of a state court lawsuit is insufficient to trigger the running of the

thirty days for filing a removal notice.[2]

The language of 28 U.S.C. § 1446(b) is quite clear in this regard: "The notice of removal of a civil action or proceeding shall be filed within thirty days after the receipt by the defendant, through service or otherwise, **of a copy of the initial pleading** setting forth the claim for relief upon which said action or proceeding is based . . .." (emphasis added). Hritz does not contend that Doe received "a copy of the initial pleading setting forth the claim for relief" until the time set forth in the Notice of Removal. In this regard, we attach a copy of the notice sent by AOL to Doe, with Doe's name and address redacted, to show the date when Doe received it.

The language of the statute, requiring receipt "of the initial pleading," has been read quite literally. The defendant need not be served, but she must receive the actual pleading, not just a summons or something that says some sort of action has started. *Tech Hills II v. Phoenix Home Life. Ins. Co.*, 5 F.3d 963, 966-968 (6th Cir. 1993); *Munsey v. Testworth Labs.*, 227 F.2d 902, 903 (6th Cir. 1955). The basis for the rule is explained in Wright, Miller & Cooper, 14C *Federal Practice & Procedure: Jurisdiction* § 3731, at 295 (3d ed. 1998), by quoting the reasoning of Judge Murrah in *Ardison v. Villa*, 248 F.2d 226, 227 (10th Cir. 1957): The defendant needs to be able to see, from the document he gets, both that the case is removable, and whether removal is in his interests in light of the specifics of the case. A document other than the actual proceeding in the state court does not accomplish that end.

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[2] Any rational defendant would want to oppose a petition for discovery like this in the California courts, where an anti-SLAPP motion could be filed. This fact tends to suggest that Doe is not likely to have received the notice in time to move to quash the subpoena to Yahoo!, which is located in California. However, it would be difficult to litigate the question of whether Doe received the notice without presenting Doe's testimony, which would admittedly be difficult to do without identifying Doe. Accordingly, for the purpose of this motion only, we take the fact of this notice as admitted.

The Notice that was sent by e-mail to Doe's screen name, a copy of which is attached as Exhibit A, does not meet this test. The notice states as follows, in pertinent part:

> We are writing to inform you that Yahoo! has been served with a subpoena requiring disclosure of information related to your user account at Yahoo!
>
> The subpoena was issued in an action entitled:
> Hritz v. John and/or Jane Doe, et al., CV791449
> pending in:
> Santa Clara Superior Court, San Jose
>
> The subpoena, dated 07/27/2000, requires that Yahoo! produce documents related to your Yahoo! account.

Even assuming that Doe received this notice, it is an insufficient basis to trigger her thirty-day period for removing the proceeding. It provides even less information than a summons, which has been held to be insufficient by itself to begin the running of the time for removal.

The notice tells the recipient nothing about why her account information is being sought, or even that account information is being sought to learn her identity. It does not inform the recipient that she is a defendant, and doesn't describe the cause of action for which identities are claimed to be needed. Nor does the notice inform Doe whether or not other individuals or entities are identified in the petition (a fact that would plainly go to removability on the basis of diversity); it does not even tell Doe where the underlying petition has been filed, or if it is simply a case pending in Santa Clara County where Yahoo! is located. In short, the notice did not supply **any** of the information that a sensible defendant would need to know to make an intelligent decision about whether removal was permissible or desirable. Consequently, it does not meet the well-established standards for the kind of notice that is sufficient to trigger the running of the thirty-day time limit for removal.

B. The Fact that Yahoo! Did Not Join the Notice of Removal Is Irrelevant.

Hritz' final argument for remand is that the notice of removal is defective because it was not joined by all of the defendants. This contention should be rejected because it is only the genuine defendants whose consent to removal is required – not those who are nominal, formal, or fraudulently joined. Wright, Miller & Cooper, 14C *Federal Practice & Procedure: Jurisdiction* § 3731, at 270-271 (3d ed. 1998); *Shaw v. Dow Brands*, 994 F.2d 364, 369 (7th Cir. 1993); *Emrich v. Touche Ross & Co.*, 846 F2d 1190, 1193 n.1 (9th Cir. 1988). "A defendant is nominal if there is no reasonable basis for predicting that it will be held liable." *Shaw*, 994 F.2d at 369; *Alexander v. Electronic Data Sys. Corp.,* 13 F.3d 940, 947 (6th Cir. 1994). One of Hritz' own cases supports our argument – it is only the "defendants who have been . . . properly joined in the action" that must consent to the removal. *Brierly v. Alusuisse Flexible Packaging*, 184 F.3d 527, 533-534 n.3 (6th Cir. 1999).

Yahoo! was not properly joined as a defendant in this matter. First of all, Yahoo! cannot conceivably be held liable because section § 509 of the Communications Decency Act, 47 U.S.C. § 230, makes interactive computer service providers immune from liability under any state law for the content of communications that other persons place on their web sites. *Zeran v. America Online*, 129 F.3d 327, 330-331 (4th Cir. 1997); *Blumenthal v. Drudge*, 982 F. Supp. 44, 49-53 (D.D.C. 1998); *see also Lockheed Martin Corp. v. NSI*, 985 F. Supp. 949, 962 n.7 (C.D. Cal. 1997), *aff'd*, 194 F.3d 980 (9th Cir. 1999). Nor was Yahoo! properly named as a respondent to the petition for discovery under Ohio Civil Rule 34(D). The Supreme Court Rules Advisory Committee Notes for the 1994 Amendments to Rule 34 make clear that this rule was adopted to make it unnecessary for a prospective plaintiff to begin an action against a party whom it knew was not liable, potentially subject to Rule 11 sanctions, solely as

a vehicle for securing information known to be in that party's possession. Ohio Rev. Code Ann. Ohio R. Civ. P. 34, Commentary of Supreme Court Advisory Committee, 1994 at p. 416 (West 1995). Naming Yahoo! as a defendant in the proceeding runs contrary to the purpose of this rule.

That it was completely unnecessary for Hritz to name Yahoo! as a respondent in order to seek issuance of a subpoena for the identification of Doe is apparent from the fact that, after Yahoo! revealed that Doe had used an AOL screen name to register with Yahoo!, Hritz was able to obtain a new subpoena directed to AOL without amending his state court petition to add AOL as a respondent. The only **real** respondent in this case is Jane Doe, and hence she was the only respondent required to consent to removal.[3]

If anything, Yahoo!'s role in this case, like the role of AOL, which is the current recipient of Hritz' subpoena seeking to identify Doe, is that of a stake holder in this case – it has property in the form of information, to which two sides have laid a claim. This case is comparable to an interpleader action, over which this Court would have jurisdiction so long as the adverse claimants have diverse citizenship; the citizenship of the stake holder is irrelevant. 28 U.S.C. § 1335(a)(1); *Treinies v. Sunshine Mining Co.*, 308 U.S. 66, 72-73 (1939). Whether the case is treated as analogous to an interpleader, or because Yahoo! is merely a nominal defendant in an Ohio pre-litigation petition for discovery, there was no need for Doe to ask Yahoo! to join in the notice of removal.

CONCLUSION

The motion to remand this case to state court should be denied. Doe requests the opportunity to

[3] Even Hritz appears to recognize that Yahoo! is a nominal party, inasmuch as his Certificate of Service does not reflect that a copy of his motion to remand was mailed to counsel for Yahoo!

have her counsel present oral argument on this motion.

Respectfully submitted,

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