

**In the Court of Common Pleas of Philadelphia
Civil Trial Division**

Guava, LLC,	:	
	:	
<i>Plaintiff,</i>	:	
	:	December Term 2012
v.	:	
	:	No. 083387
John Does 1-40,	:	
	:	
<i>Defendants.</i>	:	
	:	

Plaintiff's Motion for Leave to Take Pre-Complaint Discovery Under Pa. R. Civ. P. 4003.8

Plaintiff Guava, LLC, through its undersigned attorney, moves this honorable Court to grant its Motion for Leave to Take Pre-Complaint Discovery under Pa. R. Civ. P. 4008.3.

Plaintiff states the following in support of its motion:

1. Plaintiff is a Limited Liability Company that owns and operates protected computer systems.
2. Plaintiff initiated this action by filing a Writ of Summons against John Does 1-40.
3. Plaintiff believes that defendants, John Does 1-40, have illegally hacked into Plaintiff's protected computer systems.
4. Defendants John Does 1-40, to date, have been identified only by Internet Protocol ("IP") addresses.
 - a. An IP address is a numerical label assigned to a device (like a computer) that participates in a computer network that uses the internet protocol for communication.

- b. An IP address is a unique identifying number for a computer connection that is assigned by an internet service provider to an internet service subscriber. It is similar to a telephone number.
5. Plaintiff does not possess information identifying defendants other than 40 IP address.
6. To file a sufficient complaint against the Doe defendants, Plaintiff must conduct pre-complaint discovery so it may:
 - a. Identify defendants;
 - b. Serve defendants; and
 - c. Notify defendants of the claims against them.
7. Pa.R.Civ.P. 4003.8 provides that a plaintiff may obtain pre-complaint discovery where the information plaintiff seeks is material and necessary to the filing of the complaint. Furthermore, the rule requires that the discovery will not cause unreasonable annoyance, embarrassment, oppression, burden, or expense to any person or party.
8. In *McNeil v. Jordan*, 586 Pa. 413, 443 (Pa. 2006), the Pennsylvania Supreme Court explained the standard for obtaining pre-complaint discovery:

To obtain pre-complaint discovery, a litigant should be required to demonstrate his good faith as well as probable cause that the information sought is both material and necessary to the filing of a complaint in a pending action. A plaintiff should describe with reasonable detail the materials sought, and state with particularity probable cause for believing the information will materially advance his pleading, as well as averring that, but for the discovery request, he will be unable to formulate a legally sufficient pleading. Under no circumstance should a plaintiff be allowed to embark upon a “fishing expedition,” or otherwise rely on an amorphous discovery process to detect a cause of action he lacks probable cause to anticipate prior to the pre-complaint discovery process under this standard. The reasonableness of a given request, as well as the existence of probable cause and the good faith of the party seeking discovery, are matters for the trial court to determine in the exercise of its sound discretion.
9. In this case, the John Doe defendants’ identities are material and necessary to the filing of a complaint.

10. The defendants' identities are necessary to advance this case to the point where Plaintiff may file a legally sufficient complaint; the defendants' identities are essential to name and properly serve them. Pre-complaint discovery is essential to learn the identities of the persons behind these IP addresses.

11. This is not a "fishing expedition" like that which the Supreme Court cautioned against in *McNeil*. In this case, Plaintiff already possesses the IP addresses of those individuals who have hacked into Plaintiff's computer systems.

12. This pre-complaint discovery request is reasonable. Plaintiff seeks leave to subpoena Verizon Online LLC, an internet service provider, to learn the identities of the owners of the IP addresses that illegally hacked into Plaintiff's protected computer systems.

13. Without the identities of the owners of the IP addresses already in Plaintiff's possession, it cannot file a sufficient complaint, nor can it properly serve all defendants under Pa.R.Civ. P. 400.

WHEREFORE, Plaintiff Guava, LLC, requests that this Court grant its Motion for Leave to take Pre-Complaint Discovery and enter the proposed order that accompanies this Motion.

RESPECTFULLY SUBMITTED,

/s/ Isaac F. Slepner

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