

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
WESTERN DIVISION**

MICHAEL MOORE; RONALD P.)
GENTRY,)
)
Plaintiffs,)
)
v.)
)
INTERNET CORPORATION FOR)
ASSIGNED NAMES AND NUMBERS;)
et al.,)
)
Defendants.)

CIVIL ACTION NO.
7:07-cv-01153-RDP

OPPOSITION TO PLAINTIFFS’ MOTION FOR DISCOVERY

The Internet Corporation for Assigned Names and Numbers (“ICANN”) hereby opposes the plaintiffs’ September 10, 2007 “Motion to Seek Leave to Conduct for Discovery” (Doc. 29) based on the following:

1. On August 30, 2007, ICANN moved to dismiss the complaint pursuant to Rule 12(b)(2) of the Federal Rules of Civil Procedure based upon an absence of personal jurisdiction and, in the alternative, pursuant to Rule 12(b)(6) for failure to state a claim (Doc. 23). ICANN demonstrated that it is a non-profit, public benefit corporation organized under the laws of the State of California with its principal place of business in Los Angeles County, California; that it has no employees, assets, bank accounts, real property, personal property, offices or facilities in Alabama; and that it has no registered agent in Alabama for service of

process. Neither plaintiffs' complaint nor the motion for discovery disputes any of these facts.

2. This is a motion to dismiss. ICANN's Rule 12(b)(6) motion accepts the truth of all of plaintiffs' allegations for purposes of the motion, and explains that the complaint fails to state a claim as a matter of law even if those facts were true. In light of the nature of Rule 12(b)(6) motions, the Eleventh Circuit has held that they should be decided "before discovery begins," because they raise "purely legal question[s]" and "there are no issues of fact because the allegations in the pleading are presumed to be true." *Chudasama v. Mazda Motor Corp.*, 123 F.3d 1353, 1367 (11th Cir. 1997). Plaintiffs' motion offers no explanation for the basis of its request, fails to mention *Chudasama*, and cites no other authority. Therefore, the motion is baseless and should be denied.

3. Plaintiffs' request for discovery is similarly baseless with regard to ICANN's motion to dismiss for lack of personal jurisdiction under Rule 12(b)(2). "There is no absolute right to conduct jurisdictional discovery; indeed, courts have routinely denied such requests in the absence of any specific showing by the movant establishing the need for same." *Utsey v. New England Mut. Life Ins. Co.*, Civ. A. No. 07-0199, 2007 WL 1076703, at *2 (S.D. Ala. Apr. 9, 2007) (citing 11th Circuit authority as well as cases from various Federal District Courts). In order to

support a request for jurisdictional discovery, a plaintiff must, at a minimum, explain what they seek to discover and why the discovered information could support personal jurisdiction. *See id.*; accord, e.g., *Posner v. Essex Ins. Co.*, 128 F.3d 1209, 1214 n.7 (11th Cir. 1999) (noting that the plaintiff was required to “specify what they thought could or should be discovered”). Thus, plaintiffs must first make specific allegations sufficient to constitute a *prima facie* case for jurisdiction *before* being entitled to jurisdictional discovery. *See, e.g., Utsey*, 2007 WL 1076703, at *2; *Abramson v. Walt Disney Co.*, 132 Fed. Appx. 273, 275 (11th Cir. 2005) (noting that evidentiary hearing is required only after determination on *prima facie* case, if such a case exists); *Vogt v. Greenmarine Holding, LLC*, No. Civ. A. 1:01-CV0311JOF, 2002 WL 534542, at *7 (N.D. Ga. Feb. 20, 2002).

4. Here, ICANN has shown that plaintiffs have made no such *prima facie* case, and that plaintiffs allege no facts that could conceivably support personal jurisdiction. Plaintiffs’ motion does not contest this showing, and does not explain how jurisdiction could possibly exist over ICANN here. Indeed, when contacted by counsel for ICANN, counsel for plaintiffs was unable even to explain what jurisdictional discovery he believed was necessary. *See* Attachment A (Letter from ICANN’s counsel to plaintiffs’ counsel). Thus, plaintiffs have not met, and cannot meet, their burden to support jurisdictional discovery. *See Utsey*, 2007 WL 1076703, at *2.

5. Finally, plaintiffs have already expressly agreed that their responsive brief to ICANN's motion to dismiss will be filed on September 13, 2007, and that the parties "will defer the exchange of the information required by Fed. R. Civ. P. 26(a)(1) until one month *after* the Court has issued its ruling on" that motion. (Doc. 28 ¶¶ 2-3 (emphasis added); *see id.* ¶ 7 (agreeing "that the discovery necessary to the preparation of this case will be determined largely by what claims, and what parties, remain in the case *after* the resolution of the pending motions to dismiss" (emphasis added))). Because plaintiffs have agreed to a schedule under which discovery will proceed only, if necessary, after resolution of the motions to dismiss, the motion should be denied for this independent reason as well.

6. Defendants, especially non-profit entities like ICANN, rely on courts to enforce the constitutional, statutory, and federal rule-based jurisdictional protections against being hauled into a court merely because that particular court happens to be convenient for the plaintiffs. The Motion for Discovery filed by the plaintiffs is further support that this action is due to be dismissed against ICANN.

NOW, THEREFORE, ICANN respectfully requests that this Court deny the Motion for Discovery and to dismiss the present action.

Date: September 14, 2007.

Respectfully submitted,

/s/ Will Hill Tankersley
One of the Attorneys for ICANN

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Opposition has been properly filed with the Clerk of the Court by Electronic Filing and served upon the below counsel of record by CM/ECF on this the 14th day of September, 2007:

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