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6 6x7 Networks, LLC and Benjamin Cannon

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 COUNTY OF SAN FRANCISCO

10 6x7 NETWORKS, LLC, a Delaware limited
liability company,,

11 Plaintiff,

12 vs.

13 SUDO SECURITY GROUP, INC., a
14 Delaware corporation doing business as
Guardian; STEVE RUSSELL, an individual;
15 SEAN SNYDER, an individual, and DOES 1
through 100, inclusive,,

16 Defendants.

18 SUDO SECURITY GROUP, INC., a
19 Delaware corporation,

20 Cross-Complainant,

21 vs.

22 6x7 NETWORKS, LLC, a Delaware limited
liability company, and BENJAMIN
23 CANNON, an individual,

24 Cross-Defendants.

Case No. CGC-19-581498

**PLAINTIFF AND CROSS-DEFENDANTS
6X7 NETWORKS, LLC AND BENJAMIN
CANNON'S MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF MOTION TO QUASH
DEPOSITION SUBPOENA OF SUDO
SECURITY GROUP, INC. TO ANDREW
WATTERS AND/OR FOR A
PROTECTIVE ORDER**

Date: February 26, 2021

Time: 9:00 am

Dept.: 301

Action Filed:

December 13, 2019

Trial Date:

None Set

25 Cross-Defendant 6x7 Networks, LLC ("6x7") and Lady Benjamin Cannon ("Cannon"), by
26 and though their counsel, submit the following memorandum of points and authorities in support of
27 their motion to quash the deposition subpoena served by Sudo Security Group, Inc. ("Sudo") to
28 Andrew Watters served on December 15, 2020 ("the deposition subpoena").

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 6x7 is a communications services company that allows businesses to operate online by
4 building data centers and providing content delivery services. Sudo was a former client of 6x7.

5 Sudo has served an overly broad and burdensome deposition subpoena on 6x7's former
6 general counsel, Andrew Watters ("Watters"). The categories of documents sought therein
7 include documents containing trade secrets and confidential and/or privileged information from
8 Watters' former client. Attorneys for 6x7 have requested that Sudo withdraw its deposition
9 subpoena and Sudo has refused. 6x7 therefore requests this Court enter an order quashing the
10 deposition subpoena, and/or entering a protective order that excuses compliance with Sudo's
11 subpoena.

12 **II. STATEMENT OF RELEVANT FACTS**

13 **A. Summary of Allegations**

14 6x7 is a communications services company and data services provider. One of the most
15 important aspects of 6x7's dealings with its customers is the privacy and security 6x7 offers in
16 keeping the customers' transactions and accounts private and confidential. (See Declaration of
17 Lady Benjamin Cannon ("Cannon Decl."), at ¶ 3.)

18 Sudo (which does business as Guardian), is a startup data privacy security company. Sudo
19 Security hired 6x7 to build infrastructure and content delivery solutions. Sudo made its first
20 services order from 6x7 in June 2019. (Declaration of Jessica Beeler ("Beeler Decl."), ¶ 2, Exh.
21 "A" [FAC¹ at ¶ 11-12].) Sudo Security's initial order was for three years and included non-
22 recurring costs of \$8,000 and monthly costs of \$5,748. (FAC at ¶ 13.)

23 In July 2019, Sudo made a second order from 6x7. (FAC at ¶ 15.) The second order was
24 for two hardened data centers and additional content delivery services. The non-recurring costs
25 associated with the second order were \$52,600, and monthly costs were \$29,652. (*Id.* at ¶ 16.)

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27 _____
28 ¹ As used herein, the term "FAC" shall refer to 6x7's First Amended Complaint in the above-
entitled action filed on June 17, 2020.

1 In August 2019, Sudo failed to make the required payments, and so 6x7 terminated the
2 orders. (FAC at ¶ 20-26.) 6x7 brought suit in the above action for breach of contract and other
3 related allegations. Its First Amended Complaint was filed on June 17, 2020. On November 5,
4 2020, Sudo filed a Cross-Complaint for fraud, breach of contract, and other claims related to the
5 services agreements between the parties.

6 **B. Mr. Watters' Relationship with 6x7**

7 Watters previously acted an attorney for 6x7 and he is no longer employed in that role.
8 (See Cannon Decl., at ¶ 5.) He began performing legal services for 6x7 from on or about April
9 2018 and continued to do so until July 12, 2020. (*Ibid.*)

10 On August 26, 2020, Watters filed a civil lawsuit against 6x7 in San Francisco Superior
11 Court, making similar allegations to those in Sudo's Cross-Complaint, such as alleged fraud
12 related to 6x7's services. (See Beeler Decl., ¶ 3, Exh. "B".) Watters' public filing revealed
13 numerous items of confidential client information, and contained several personal attacks against
14 Cannon, 6x7's owner and founder. (See *ibid.*; see also Cannon Decl., at ¶ 7.)

15 **C. Sudo's Deposition Subpoena and Other Written Discovery Efforts**

16 On December 15, 2020, Sudo served a deposition subpoena to Watters demanding that
17 Watters produce responsive documents by January 6, 2021. (Beeler Decl., ¶ 4, Exh. "C".) Sudo
18 identified the following twelve categories of documents to which Watters was to respond:

19 1. All documents relating to Benjamin Cannon's and/or 6x7 Networks LLC's access to or
20 ownership of rights to "dark fiber" or rooftops to provide internet or data services.

21 2. All documents relating to Benjamin Cannon's and/or 6x7 Networks LLC's account and
22 amounts owed to Wave Broadband from January 1, 2019, to October 31, 2019, including, without
23 limitation, Wave Broadband's notice of amounts outstanding and termination of services.

24 3. All documents relating to Benjamin Cannon's and/or 6x7 Networks LLC's account and
25 amounts owed to Cogent from July 1, 2019, to October 31, 2019.

26 4. All documents relating to Benjamin Cannon's and/or 6x7 Networks LLC's purchase of
27 electronic equipment from April to August 2019.

28 5. All documents reflecting contract counterparties and/or potential clients of 6x7

1 Networks LLC from January 2019 to present.

2 6. Any list of names of employees of 6x7 Networks LLC.

3 7. All documents relating to the presence of security personnel at 6x7 Networks LLC's
4 location(s) from March 1, 2019 to October 31, 2019 (not including employee personnel files).

5 8. All documents relating to the creation and/or content of 6x7 Networks LLC's website
6 from January 2019 to present.

7 9. All documents relating to the unlawful detainer lawsuit filed against 6x7 Networks LLC
8 in or about 2019.

9 10. All documents relating to Sudo Security Group and/or Guardian, Steven Russell,
10 and/or Sean Snyder.

11 11. All documents reflecting or relating to statements by Benjamin Cannon and/or 6x7
12 Networks LLC to existing and/or prospective customers (including you) regarding 6x7 Networks
13 LLC's data center operations, including, without limitation, copies of sales packets distributed to
14 prospective customers and email correspondence between 6x7 Networks LLC's employees and
15 prospective customers.

16 12. All photographs of 6x7 Networks LLC's datacenter location(s).

17 (*Ibid.*)

18 On January 13, 2021, Sudo served counsel for 6x7 with various discovery devices
19 including a document demand to 6x7. The document demand includes 51 categories of
20 documents, many of which overlap with and/or encompass the requests in the deposition subpoena
21 to Watters. (Beeler Decl., ¶ 5, Exh. "D".)

22 **D. Cross-Defendants' Meet and Confer Efforts**

23 On December 24, 2020, counsel for 6x7 met and conferred with Sudo about the content of
24 its subpoena to Watters. (Beeler Decl., ¶ 6, Exh. "E".) 6x7 sent counsel for Sudo a letter
25 requesting that Sudo withdraw the subpoena, and explaining that responsive documents Watters
26 has in his possession are attorney-client privileged or confidential attorney-client communications
27 or materials. (See *ibid.*)

28 Watters offered his opinion regarding the subpoena in a response email to 6x7's counsel.

1 (Beeler Decl., ¶ 7, Exh. “F”.) He has since provided what he calls a client file, but he admits he
2 has other information and/or documents related to 6x7 in his possession. As to most or all of these
3 documents, he could only have obtained them through his role as general counsel for 6x7. (See
4 Cannon Decl., at ¶ 6, 9.)

5 On January 8, 2021, Sudo’s counsel Ryan Pinkston engaged in a lengthy telephone
6 conversation with two of 6x7’s attorneys, Jessica Beeler and Marc Indeglia, about the various
7 categories of items sought in the deposition subpoena. (Beeler Decl., ¶ 8.) He also sent a meet
8 and confer letter to Attorney Beeler the same date. (*Id.*, Exh. “G”.) Attorney Pinkston stated that
9 he would not agree to withdraw the subpoena.

10 As a follow-up to that conversation, Attorney Beeler sent Attorney Pinkston a letter dated
11 January 12, 2021, asking if he would agree to allow 6x7’s attorneys to conduct a privilege review
12 prior to the agreed production date, and provide a privilege log where appropriate, due to concerns
13 about Watters possibly revealing privileged or confidential information. (Beeler Decl., ¶ 9, Exh.
14 “H”.) In a response letter dated January 18, 2021, Attorney Pinkston denied that request. (Beeler
15 Decl., ¶ 10, Exh. “I”.)

16 This response does not take into account Watters’ response to learning that 6x7 would go
17 forward with the present motion. Watters has offered numerous written statements revealing his
18 obvious prejudice against his former client as to the subjects raised by the present motion, and his
19 unusual eagerness to reveal client confidences. (Beeler Decl., ¶ 11, Exhs. “J” and “K”.)

20 **III. THE COURT SHOULD QUASH SUDO’S SUBPOENA BECAUSE IT SEEKS**
21 **PRIVILEGED AND CONFIDENTIAL INFORMATION, AND TRADE SECRETS**

22 **A. The Court Should Use Its Power to Quash Sudo’s Impermissible Subpoena**

23 *Code of Civil Procedure* section 1987.1, subdivision (a) provides:

24 If a subpoena requires the attendance of a witness or the production
25 of books, documents, or other things before a court, or at the trial of
26 an issue therein, or at the taking of a deposition, the court, upon
27 motion reasonably made by any person described in subdivision (b),
28 or upon the court's own motion after giving counsel notice and an
opportunity to be heard, may make an order quashing the subpoena
entirely, modifying it, or directing compliance with it upon those
terms or conditions as the court shall declare, including protective
orders. In addition, the court may make any other order as may be

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appropriate to protect the person from unreasonable or oppressive demands, including unreasonable violations of the right of privacy of the person.

A motion to quash may be brought by a party, the witness, a consumer, or an employee. (Code Civ. Proc. § 1987.1, subdivision (b).) 6x7, as a party to the action in which the deposition subpoena was served, has standing to bring this motion to quash. An order quashing Sudo’s deposition subpoena is warranted and appropriate.

B. The Deposition Subpoena Seeks Information Protected by the Attorney-Client Privilege and Duty of Confidentiality

Evidence Code section 954 prevents the disclosure of confidential communications between a client and attorney made in the court of their relationship. An attorney also has obligations under Business and Professions Code section 6068, subdivision (e)(1), which provides it is a duty of a member: “To maintain inviolate the confidence, and at every peril to himself or herself to preserve the secrets, of his or her client.”

Sudo has subpoenaed the former attorney of its adversary in this litigation, and Watters was acting as general counsel for 6x7 at the time he gained access to the records sought by the deposition subpoena. Because all responsive documents are confidential and/or protected by the attorney client privilege, the subpoena is patently improper in this respect and should be quashed.

Permitting Sudo to subpoena testimony and records directly from 6x7’s former counsel, when said counsel is also 6x7’s direct adversary in another pending civil lawsuit, is contrary to the general reluctance of California courts to allow depositions of opposing counsel. (See, e.g., *Spectra- Physics, Inc. v. Superior Court* (1988) 244 Cal. Rptr. 258, 262 [“The circumstances under which opposing counsel may be deposed are limited to those where (1) no other means exist to obtain the information than to depose opposing counsel; (2) the information sought is relevant and not privileged; (3) the information is crucial to the preparation of the case.”].) Here, Sudo has made no effort to explain how the sought-after information is relevant, let alone “crucial”. Moreover, the records are available from 6x7 directly. Sudo has the written discovery process at its disposal to request the same records from 6x7, and in fact has already done so. (Beeler Decl., ¶ 5, Exh. “D”.)

1 This subpoena creates an truly unenviable situation for 6x7 as a former client of Watters.
2 Watters commenced a separate legal action against it and is openly hostile and adversarial to it, yet
3 6x7 must rely on this same attorney to make determinations of privilege, confidentiality, trade
4 secret, and any other available privilege or protection under law. Indeed, as the records are in
5 6x7's possession, custody, or control already, seeking the documents from 6x7 pursuant to a
6 request for production of documents would allow 6x7's current counsel to review and make these
7 determinations. The subpoena directly to Watters, if it were enforced, has the effect of stripping
8 6x7 of its right to have its own counsel – one who is not openly hostile against it - make the
9 determinations of privilege, confidentiality, and other legitimate bases of withholding production.

10 **C. The Deposition Subpoena Seeks Information Protected by the Trade Secret**
11 **Privilege**

12 Under California law, the owner of a trade secret has a privilege from disclosing the
13 information and may prevent others from disclosing it. (Evid. Code § 1060.) The Uniform Trade
14 Secret Act, Cal. Civ. Code § 3426 et seq., defines a trade secret as: information, including a
15 formula, pattern, compilation, program, device, method, technique, or process, that: (1) Derives
16 independent economic value, actual or potential, from not being generally known to the public or
17 to other persons who can obtain economic value from its disclosure or use; and (2) Is the subject
18 of efforts that are reasonable under the circumstances to maintain its secrecy. In other words, the
19 information "is valuable because it is unknown to others" and "the owner has attempted to keep
20 [it] secret." (*DVD Copy Control Assn. v. Bunner* (2004) 116 Cal.App.4th 241, 251.)

21 In *American Credit Indemnity Co. v. Sacks* (1989) 213 Cal.App.3d 622, the customer list
22 of an accounts receivable insurer was a trade secret under the Uniform Trade Secrets Act (CC §§
23 3426 et seq.), and at common law, where it constituted "information" which had potential
24 economic value. The insurer took reasonable steps to insure the secrecy of the information as
25 required by the act, including requiring employees to sign confidentiality agreements respecting
26 the client list, expiration date of policies, lists of business leads, claims histories, and related client
27 information. (*Id.* at p. 631-632.)

28 The deposition subpoena to Watters calls for the disclosure of confidential material that is

1 a trade secret or otherwise constitutes confidential research, development, commercial, or other
2 proprietary information, including customer information. Specifically, request no. 1 calls for
3 information related to the assets of the communication services company; requests nos. 2 and 3
4 request information related to the company's vendor list; request no. 4 requests supply chain
5 information; request nos. 5 and 11 seek client lists/information; request no. 6 seeks an employee
6 list; request no. 7 seeks a security log; and request no. 12 seeks photographs of all company
7 locations. This information is confidential. In some instances, revealing this information would
8 violate 6x7's confidentiality agreements with its customers and would also require divulging
9 confidential communications and transactions. It may also pose a security risk to 6x7.

10 The material sought constitutes trade secrets because it has been maintained confidentially,
11 it is owned by 6x7, it has value to 6x7, and 6x7 does not consent to its disclosure. (See Cannon
12 Decl., ¶ 15.) Moreover, 6x7's client records in particular are unambiguously confidential because,
13 like *American Credit Indemnity Co, supra*, it is the practice of 6x7 to require a nondisclosure
14 agreement before engaging in negotiations with potential clients. (See Cannon Decl., ¶ 11.) 6x7's
15 master service agreement with every eventual client is even specifically marked as "confidential".
16 (*Ibid.*)

17 Perhaps the most concerning category of documents is request no. 5, which requests all
18 manner of records regarding all contract counter parties and potential clients, irrespective of
19 whether or not it relates to Sudo. This request, considered in conjunction with other requests
20 being sought, seeks information with economic value because the totality of the information
21 sought by the document subpoena would provide enough private information for a competitor of
22 6x7 to create (or at least attempt to create) another identical company. (See Cannon Decl., ¶ 16.)
23 Due to its confidential nature and potential economic value, such trade secret information is
24 protected from disclosure, and therefore the nonparty whose records are subject to the subpoenas
25 must not be required to produce these records.

26 Sudo has not demonstrated any compelling reason for disclosure of this confidential
27 proprietary information, via supporting declaration or otherwise, that outweighs the privacy rights
28 at issue. In fact, the deposition subpoena is unnecessary because Sudo has served a document

1 demand to 6x7 requesting nearly identical information. (Beeler Decl., ¶ 5, Exh. “D”.)

2 **IV. IN THE ALTERNATIVE, THE COURT SHOULD ISSUE A PROTECTIVE**
3 **ORDER**

4 Code of Civil Procedure section 2017.020 states in pertinent part:

5 (a) The court shall limit the scope of discovery if it determines that
6 the burden, expense, intrusiveness of that discovery clearly
7 outweighs the likelihood that the information sought will lead to the
8 discovery of admissible evidence,

8 Further, Code of Civil Procedure section 2023.010 states that it is a misuse of the
9 discovery process to do the following:

10 (a) Persisting, over objection and without substantial justification, in
11 an attempt to obtain information or materials that are outside the
12 scope of permissible discovery.

12 This Court must not require Watters to release documents that include the private,
13 confidential, and possibly privileged documents and records being sought. The Court has the
14 inherent power to deny discovery where sensitive information is sought because the need for
15 discovery is outweighed by the privacy rights of the party to whom the information pertains. The
16 Court should use its inherent power to issue a protective order that excuses Watters’ compliance
17 with Sudo’s overly-broad and unnecessary subpoena.

18 The Court might also consider an order than requires Watters to first present all responsive
19 records to counsel for 6x7 to conduct a privilege review. Watters’ open hostility toward his
20 former client, along with his obvious eagerness to assist his former client’s adversary in this
21 litigation, indicates that he is not the appropriate party to conduct a privilege review.

22 **V. 6x7 PROPERLY MET AND CONFERRED BEFORE BRINGING THIS MOTION**

23 Counsel for 6x7 engaged in detailed meet and confer efforts before bringing this motion.
24 (See Beeler Decl. at ¶¶ 5-9, Exhs. “D”, “F”, and “G”.) Sudo has refused to withdraw the subpoena.

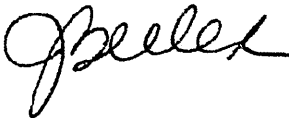
25 **VI. CONCLUSION.**

26 Based on the foregoing, 6x7 respectfully requests that the Court quash Sudo’s subpoena in
27 its entirety or, in the alternative, order that production or inspection of the materials described in
28 the subpoena is excused, or fashion some other appropriate remedy as the Court deems fit.

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DATED: January 25, 2021

LEWIS BRISBOIS BISGAARD & SMITH LLP



By: _____
Brian Slome
Jessica Beeler
Attorneys for Cross-Defendants, 6x7 Networks,
LLC and Benjamin Cannon

1 CALIFORNIA STATE COURT PROOF OF SERVICE
2 6x7 Networks, LLC v. Sudo Security Group, Inc., et al.
3 San Francisco County Superior Court, Case No. CGC-19-581498

4 STATE OF CALIFORNIA, COUNTY OF ALAMEDA

5 At the time of service, I was over 18 years of age and not a party to this action. My
6 business address is 333 Bush Street, Suite 1100, San Francisco, CA 94104-2872.

7 On January 25, 2021, I served true copies of the following document(s): CROSS-
8 DEFENDANTS 6X7 NETWORKS, LLC AND BENJAMIN CANNON'S MEMORANDUM OF
9 POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO QUASH DEPOSITION
10 SUBPOENA

11 I served the documents on the following persons at the following addresses (including fax
12 numbers and e-mail addresses, if applicable):

Attorneys for Plaintiff, 6x7 Networks, LLC	Attorneys for Defendant/Cross-Complainant Sudo Security Group
13 Marc A. Indeglia 14 Indeglia PC 15 13274 Fiji Way, Suite 250 16 Marina del Rey, California 90292 17 Tel.: (310) 982-2720 18 Email: marc@indegliapc.com	19 Richard D. Lutkus 20 M. Ryan Pinkston 21 Seyfarth Shaw LLP 22 560 Mission Street, 31st Floor 23 San Francisco, California 94105 24 Tel.: (415) 397-2823 25 Fax: (415) 397-8549 26 Email: rlutkus@seyfarth.com 27 Email: rpinkston@seyfarth.com

28 The documents were served by the following means:

(BY U.S. MAIL) I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses listed above and:

Deposited the sealed envelope or package with the U.S. Postal Service, with the postage fully prepaid.

Placed the envelope or package for collection and mailing, following our ordinary business practices. I am readily familiar with the firm's practice for collection and processing correspondence for mailing. Under that practice, on the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the U.S. Postal Service, in a sealed envelope or package with the postage fully prepaid.

(BY ELECTRONIC SERVICE VIA FIRST LEGAL) Based on a court order, I caused the above-entitled document to be served through First Legal at <https://firstlegal.com> addressed to all parties appearing on the electronic service list for the above-entitled case. The service transmission was reported as complete and a copy of the First Legal Filing Receipt Page/Confirmation will be filed, deposited, or maintained with the original document in this office.

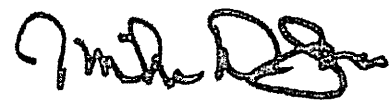
(BY E-MAIL OR ELECTRONIC TRANSMISSION) Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent from e-mail address mike.lewis@lewisbrisbois.com to the persons at the e-mail addresses listed above. I did not receive, within a reasonable time after the

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transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on January 25, 2021, at Oakland, California.



Mike D. Lewis