

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Neil Leonard Haddley,

Civil No. 16-1960 (DWF/LIB)

Plaintiff,

v.

**MEMORANDUM
OPINION AND ORDER**

Next Chapter Technology, Inc., a corporation;
Vaughn Mulcrone, an individual;
dataBridge, LLC, a limited liability company;
County of Kittson, Minnesota;
County of Mahnomen, Minnesota;
County of Marshall, Minnesota;
County of Norman, Minnesota;
County of Polk, Minnesota;
County of Red Lake, Minnesota;
County of Roseau, Minnesota;
County of Kandiyohi, Minnesota;
County of Rice, Minnesota;
County of Scott, Minnesota;
County of Stearns, Minnesota;
County of Washington, Minnesota;
County of Becker, Minnesota;
County of Clay, Minnesota;
County of Dodge, Minnesota;
County of Isanti, Minnesota;
County of Otter Tail, Minnesota;
County of Mower, Minnesota;
County of Steele, Minnesota; and
County of Waseca, Minnesota;

Defendants.

Alexander Farrell, Esq., and Russell M. Spence, Jr., Esq., Hellmuth & Johnson PLLC,
counsel for Plaintiff Neil Leonard Haddley.

Bruce H. Little, Esq., and Sarah Pruett, Esq., Lindquist & Venum LLP, counsel for
Defendants.

INTRODUCTION

This matter is before the Court on Defendants' Motion to Dismiss for Lack of Subject Matter Jurisdiction and Failure to State a Claim (Doc. No. 44); and Plaintiff's Motion to Consolidate (Doc. No. 51). For the reasons set forth below, the Court grants in part Defendants' Motion to Dismiss and grants Plaintiff's Motion to Consolidate.

BACKGROUND

I. Factual Background

Plaintiff Neil Haddley filed suit against Defendants alleging various acts of copyright infringement stemming from their use and then replacement of a software program called Scanning Enabler. In 2007, Plaintiff developed Scanning Enabler as a program to scan documents into Microsoft SharePoint and which also allowed the user to view and index paper documents without leaving SharePoint. (Doc. No. 18 ("Am. Compl.") ¶ 36.) Haddley first published Scanning Enabler in Australia while he was living there. At the time, Haddley was operating as the sole shareholder of Blue Duck Pty., Ltd, an Australian entity that Haddley formed in 2006. Blue Duck Pty. had no formal employees. Instead, Haddley used Blue Duck Pty. as a vehicle to market and sell Scanning Enabler. (Defs.' MTD Memo. at 4.)¹

¹ The Court will cite Defendants' Memorandum in Support of their Motion to Dismiss as "Defs.' MTD Memo." (Doc. No. 46); Plaintiff's Memorandum in Opposition as "Pl.'s MTD Opp." (Doc. No. 48); and Defendants' Reply Brief as "Defs.' MTD Reply" (Doc. No. 49). The Court will cite Plaintiff's Memorandum in Support of his Motion to Consolidate as "Pl.'s Consolidation Memo." (Doc. No. 54); and Defendants' Memorandum in Opposition to the Motion to Consolidate as "Defs.' Consolidation Opp." (Doc. No. 58).

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In 2009, Haddley entered into a resale agreement for Scanning Enabler with Defendant Next Chapter Technology (“NCT”). (Am. Compl. ¶ 46.) Haddley also licensed to NCT two versions of Scanning Enabler, which NCT then incorporated into its document-management program ScottWorks. (*Id.* ¶¶ 47-48.) NCT helped develop ScottWorks for Scott County, Minnesota. (*Id.* ¶ 51.) Based on the success of ScottWorks, NCT began marketing the product as CaseWorks to other county governments in Minnesota. (*Id.* ¶¶ 52-53.) A number of Minnesota counties purchased licenses for CaseWorks, which used Scanning Enabler as part of its functionality. These counties are defendants in this action (generally, the “County Defendants”).²

In 2012, Haddley began working for NCT. While Haddley worked there, NCT licensed Scanning Enabler to Clay County and Steele County, Minnesota. (*Id.* ¶¶ 60, 98.) To download and access Scanning Enabler, a purchaser was required to enter a unique license key. (*See id.* ¶ 63.) Plaintiff alleges that Defendants Clay and Steele Counties exceeded the licenses by downloading too many copies of Scanning Enabler. (*Id.* ¶¶ 67, 103.) Additionally, Plaintiff alleges that six of the County Defendants³ accessed Steele and Clay counties’ servers to copy Scanning Enabler without paying for additional

(Footnote Continued From Previous Page)

² The County Defendants are the Minnesota counties of Kittson, Mahnomen, Marshall, Norman, Polk, Red Lake, Roseau, Kandiyohi, Rice, Scott, Stearns, Washington, Becker, Clay, Dodge, Isanti, Otter Tail, Mower, Steele, and Waseca.

³ The six counties are Becker, Dodge, Isanti, Otter Tail, Mower, and Waseca.

licenses. Plaintiff also alleges that NCT was actively involved in enabling this system of shared licenses. (*See, e.g., id.* ¶ 84.)

Near the end of 2012, Haddley apparently learned that some of the County Defendants were allegedly using unlicensed versions of Scanning Enabler. (*Id.* ¶ 131.) Haddley raised the issue with NCT. Haddley and NCT attempted to resolve the issue, but could not reach an agreement to remedy Haddley's concerns. With the issues unresolved, NCT fired Haddley without cause. (*Id.* at ¶ 139.) NCT then hired Defendant dataBridge to create a replacement product for Scanning Enabler. The replacement product was distributed to the County Defendants. (*Id.* ¶ 166-67.)

II. Procedural History

On August 24, 2015, Haddley filed a *pro se* complaint against eight of the County Defendants⁴ (the "Isanti Matter").⁵ In that complaint, Haddley brought claims related to the Isanti Defendants' use of Scanning Enabler. On September 16, 2015, NCT moved to intervene pursuant to its contractual duty to defend the Isanti Defendants. (Isanti, Doc. No. 26.) Plaintiff, still *pro se*, opposed the motion. (Isanti, Doc. No. 36.) On November 18, 2015, the magistrate judge denied the motion. (Isanti, Doc. No. 49.) In the Isanti Matter, Haddley has obtained counsel, discovery has closed, and the parties have cross-moved for summary judgment.

⁴ The eight defendants are Becker, Clay, Dodge, Isanti, Otter Tail, Mower, Steele, and Waseca (generally, the "Isanti Defendants").

⁵ *Haddley v. Isanti et al.*, Civ. No. 15-2106 (D. Minn). The Court will cite to documents in the Isanti Matter as "Isanti, Doc. No. ___."

After hiring counsel, Haddley filed a new complaint here, which was later amended. In the Amended Complaint, Plaintiff brings three claims: (1) a claim against NCT and its sole shareholder, Vaughn Mulcrone, for copyright infringement for providing copies of Scanning Enabler to the Isanti Defendants; (2) a claim against all defendants for copyright infringement stemming from the creation and use of the replacement product for Scanning Enabler; and (3) a claim against NCT, Mulcrone, and the Isanti Defendants alleging that they undertook efforts to circumvent Scanning Enabler's license-key system.

DISCUSSION

Defendants moved to dismiss for lack of subject matter jurisdiction. (Doc. No. 44.) Plaintiff has moved to consolidate this case with the Isanti Matter. (Doc. No. 51.) Defendants also moved to dismiss for failure to state a claim for Count 2 as to the County Defendants and for Count 3 as to the Isanti Defendants.

I. Motion to Dismiss for Lack of Subject Matter Jurisdiction

A motion to dismiss under Rule 12(b)(1) challenges the Court's subject matter jurisdiction. Fed. R. Civ. P. 12(b)(1). To survive a motion under Rule 12(b)(1), the party asserting jurisdiction has the burden of proving jurisdiction. *V S Ltd. P'ship v. Dep't of Hous. & Urban Dev.*, 235 F.3d 1109, 1112 (8th Cir. 2000). "Subject-matter jurisdiction is a threshold requirement which must be assured in every federal case." *Kronholm v. Fed. Deposit Ins. Corp.*, 915 F.2d 1171, 1174 (8th Cir. 1990).

A Rule 12(b)(1) motion may challenge a plaintiff's complaint either on its face or on the factual truthfulness of its averments. *Osborn v. United States*, 918 F.2d 724, 729

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