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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ELF-MAN, LLC,

Plaintiff,

v.

DOES 1 - 152,

Defendants.

Case No. C13-0507RSL

ORDER TO SHOW CAUSE AND
QUASHING SUBPOENAS

This action was filed on March 20, 2013. It is one of fifty-one copyright infringement actions filed during a four month period in this district against approximately 2,773 individual Doe defendants. The 152 defendants in this case are represented by IP addresses linked to on-line sharing of the movie “Elf-Man” between 5:18 am on December 1, 2012, and 1:39 am on March 1, 2013. Although the evidence of internet activity shows that hours, if not days, separated each defendant’s allegedly infringing conduct, plaintiff alleges that all 152 defendants participated in a single “swarm” utilizing interactive peer-to-peer file transfer technology protocol called a BitTorrent to illegally copy and share “Scary or Die.” Plaintiff affirmatively alleges that the “swarm” aspect of the file-sharing justifies joinder of these disparate defendants in a single lawsuit.

1 On March 26, 2013, the Court granted plaintiff's motion to initiate early
2 discovery, including the issuance of subpoenas under Fed. R. Civ. P. 45 to internet
3 service providers, in an attempt to identify each Doe defendant. No defendants have filed
4 objections to the subpoena. Despite the fact that more than six weeks have elapsed since
5 discovery was authorized, there is no indication that any defendants have been served, nor
6 has plaintiff amended its complaint to identify the Doe defendants.

7 All BitTorrent cases filed in the Western District of Washington have been
8 referred to the undersigned for pretrial handling. Dkt. # 6. As the full extent of this
9 assignment has become clear, the Court admits to some concerns regarding both the
10 appropriateness of joinder and the possibility that the judicial authority of the United
11 States may be used to wrest improvident settlements from pro se litigants under threat of
12 huge statutory penalties. The Court is not alone: other judicial officers in the Ninth
13 Circuit are beset by the same concerns and have taken various paths to mitigate the
14 potential for abuse. See, e.g., Ingenuity 13 LLC v. John Doe, No. 2:12-cv-9333-
15 ODW(JCx) (C.D. Cal. May 6, 2013); Voltage Pictures, LLC v. Does 1-12, No. 2:13-292-
16 AA (D. Or. May 4, 2013).

17 Having reviewed the pending motions to quash, the remainder of the record
18 in this and related cases, and relevant case law, it is hereby ORDERED as follows:

19 1. Any and all subpoenas issued in the above-captioned matter are hereby
20 QUASHED. Plaintiff shall immediately notify the subpoena recipients that they need not
21 respond.

22 2. To the extent plaintiff has obtained identifying information regarding one or
23 more Doe defendants, whether through the service provider, defendant, or another source,
24 it shall not utilize that information in any way. If plaintiff has already contacted one or
25 more of the defendants, it shall file under seal all correspondence or other written
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1 communications (including emails) sent to defendants and a summary of any oral
2 communications. Plaintiff shall refrain from any further oral or written communications
3 with defendants unless expressly approved by the Court in advance.

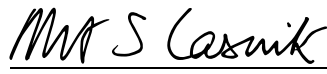
4 3. Plaintiff shall, within fourteen days of the date of this Order, show cause why
5 the above-captioned matter should not be dismissed as to all defendants other than Doe 1
6 for improper joinder and/or pursuant to the Court’s inherent authority to control its
7 docket.

8 4. With the exception of the actions specifically set forth in this Order, the above-
9 captioned matter is hereby STAYED.

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The Clerk of Court is directed to place this Order to Show Cause on the
Court’s calendar for Friday, May 24, 2013.

Dated this 9th day of May, 2013.


Robert S. Lasnik
United States District Judge