

David A. Lowe
LOWE GRAHAM JONES
701 Fifth Avenue, Suite 4800
Seattle, WA 98104
206.381.3300

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ELF-MAN, LLC,

Plaintiff,

v.

RYAN LAMBERSON,

Defendants.

Civil Action No. 13-cv-00395 TOR

REPLY IN SUPPORT OF
PLAINTIFF'S MOTION TO STRIKE

1/16/15

Without Oral Argument

Defendant Lamberson's opposition merely compounds the problems with the earlier filings that necessitated Plaintiff Elf-Man, LLC's motion to strike. Pursuant to Fed. R. Civ. P. 12(f), the latest Lynch declaration and each of the exhibits thereto should be stricken as immaterial, impertinent, improper hearsay and untimely for the same reasons as those previously submitted.

A. Within ECF No. 107 Lynch Declaration:

Paragraphs 3, 8, 10, 12, 15-16, 19-20 and 26 (related to third parties) for the same reasons as set forth in ECF No. 105 with respect to paragraphs 8, 10, 12, 15-16, 19-20 and 26 of the prior Lynch Declaration (ECF No. 104).

1 Paragraphs 4 and 6-7 (related to alleged billings) for the same reasons as set forth
 2 in ECF No. 105 with respect to paragraphs 4-7 of the prior Lynch Declaration (ECF
 3 No. 104).

4 Paragraphs 5, 8-9, 11, 13, 20-23, 27 (related to the merits of the case and various
 5 alleged sanctions) for the same reasons as set forth in ECF No. 105 with respect to
 6 paragraphs 8-9, 13, 21-22, 15, 20-23, 27 of the prior Lynch Declaration (ECF No. 104).

7 Paragraphs 14, 17-18 and 24-25 (related to irrelevant and/or speculative
 8 statements) for the same reasons as set forth in ECF No. 105 with respect to
 9 paragraphs 14, 17-18 and 24-25 of the prior Lynch Declaration (ECF No. 104).

10 **B. ECF No. 107-1 in its entirety**

11 Exhibit A to the Lynch Declaration consists entirely of declaration of Daniel
 12 Macek in his capacity as an investigator for a different BitTorrent plaintiff from a case
 13 outside this jurisdiction. There is nothing to tie this declaration to this case.

14 **C. ECF No. 107-2 in its entirety**

15 Exhibit B to the Lynch Declaration consists entirely of declaration of Tobias
 16 Fieser, apparently in his capacity as an investigator for IPP International UG for a
 17 different BitTorrent plaintiff from a case outside this jurisdiction. There is nothing to tie
 18 this declaration to this case.

19 **D. ECF No. 107-3 in its entirety**

20 Exhibit C to the Lynch Declaration consists entirely of inadmissible, third party
 21 hearsay statement, utterly lacking foundation. This ostensibly relates to an early stage of
 22 litigation in Australia involving unrelated plaintiff and defendant, and therefore wholly
 23 immaterial to the present case and issues.
 24
 25
 26

1 **E. ECF No. 107-4 in its entirety**

2 Exhibit D to the Lynch Declaration consists entirely of inadmissible, third party
3 hearsay statement, utterly lacking foundation. This ostensibly is a complaint involving a
4 different plaintiff and defendants in a different jurisdiction. There is nothing to tie this
5 pleading to this case.

6 **F. ECF No. 107-5 in its entirety**

7 Exhibit E to the Lynch Declaration consists of another declaration of Darren
8 M. Griffin, a former investigator for BitTorrent plaintiffs from a different case in a
9 different jurisdiction. There is nothing to tie this declaration to this case.

10 **G. ECF No. 107-6 in its entirety**

11 Exhibit F to the Lynch Declaration consists entirely of inadmissible, third party
12 hearsay statement, utterly lacking foundation. This ostensibly is a “typed-up chart of
13 alleged infringement.” Even if substantiated, there is nothing to tie this document to this
14 case.
15

16 **H. ECF No. 106 Opposition**

17 Any portions of Defendant’s opposition that refers to or incorporates any matter
18 struck from the Lynch declaration and exhibits.

19 Defendant again submits an improper Lynch declaration and exhibits that are
20 almost wholly comprised of immaterial, impertinent, improper hearsay and untimely
21 matter. Pursuant to Fed. R. Civ. P. 12(f), Plaintiff respectfully submits that the above-
22 identified matters, including in ECF. Nos. 106, 107-1, 107-2, 107-3, 107-4, 107-5 and
23 107-6 should be struck.
24
25
26

1 RESPECTFULLY SUBMITTED this 29th day of December, 2014.

2 s/David A. Lowe, WSBA No. 24,453

3 Lowe@LoweGrahamJones.com

4 LOWE GRAHAM JONES^{PLLC}

5 701 Fifth Avenue, Suite 4800

6 Seattle, WA 98104

7 T: 206.381.3300

8 Attorneys for Plaintiff Elf-Man, LLC

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
REPLY IN SUPPORT OF PLAINTIFF'S MOTION

TO STRIKE - 4

Civil Action No. 13-cv-00395

INIP-6-0001P10 RSPMStrike

LOWE GRAHAM JONES^{PLLC}



701 Fifth Avenue, Suite 4800

Seattle, Washington 98104

206.381.3300 • F: 206.381.3301

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document has been served to all counsel or parties of record who are deemed to have consented to electronic service via the Court's CM/ECF system.

s/ David A. Lowe