

May 12, 2017

David A. Lowe  
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**Re: Criminal Productions, Inc. v. Bethke, WD WA Case No. 2:16-cv-1647**

Dear Mr. Lowe:

This law firm represents Zach Bethke with respect to the federal lawsuit your law firm has filed against him and personally served on him.

We reference our earlier letters regarding James Collins, Jasmin Teodoro, Patricia Alexander, Larry Lewis, Jaime Alacorn, Osamu Motoda, Deanna Robinson, Pauline Conley, Ms. Doe #19, and William Krisanda. All the defenses we raised in those letters apply equally to Mr. Bethke.

As Mr. Bethke explained to your law firm over the telephone, he is wholly innocent. Mr. Bethke lives with his girlfriend in a house purchased by Mr. Bethke in 2014. The home is in a crowded neighborhood of homes just west of I-5 across from Jackson Park Golf Course and just north of where Roosevelt Way NE cuts under the freeway.

Mr. Bethke did not have Wi-Fi password protection at the time he is alleged to have been “observed infringing.” Currently, Mr. Bethke can see over 15 Wi-Fi networks from his home. One of his closest neighbors is running Air B&B rentals from their home.

Neither Mr. Bethke nor his girlfriend copied your client’s movie and they do not know who, if anyone, may have done so. Mr. Bethke does not use BitTorrent. Prior to this lawsuit, Mr. Bethke had never heard of your client’s movie and he has no interest in it. If he did have any interest in it, he could have rented it for no marginal cost using his Netflix or Amazon Prime accounts.

Mr. Bethke was asleep on Wednesday September 12 at 2:39:37am when your client’s foreign investigator entrapped its blip. Mr. Bethke is a small business owner and keeps regular weekday sleeping hours that do not include computer use at 2:39am.

Mr. Bethke was personally served on May 4, 2017. His Answer is due Thursday May 25, 2017.

We respectfully request that Criminal Productions voluntarily dismiss Mr. Bethke. If he is dismissed by Noon on Thursday May 25, 2017, we will not Answer or seek defense attorneys' fees. If he is not dismissed by Noon Thursday May 25, 2017, we will Answer May 25, 2017 and seek defense attorneys' fees when Mr. Bethke wins, which is a certainty given his innocence.

We continue to be astonished that your client's foreign representatives show little respect for our federal judicial system and its rules. We previously noted issues with declarant Daniel Arheidt of "Maverickeye" and connections to Daniel Macek of Maverickeye and "Crystal Bay Corporation" where fictitious declarant "Darren M. Griffin" purportedly "worked" along with William Gorfein.

The APMC Prezi explains your client's foreign representatives' obfuscation strategies using these declarants "to tell a story to the judge and persuade him to grant an order, ordering the ISP's to provide APMC with the information so that we can persecute [sic] the infringers . . . . In regards to the software consultant (i.e. he can talk about software issues) and we're hoping the judge won't question his qualifications too much."

[https://prezi.com/b\\_f7djco81ri/copy-of-themanako123/](https://prezi.com/b_f7djco81ri/copy-of-themanako123/)

It is long past due for a judge to question the qualifications of these "software consultants." As we understand the background of Mr. Arheidt, he is not qualified to testify as to the functionality, reliability, accuracy, or any other admissibility criteria of the software used to entrap the blips, or as to the variety of typed up charts of alleged infringement.

We have previously explained that Mr. Arheidt has used identical language to describe his technical background to that of Mr. Achache, and to that of fictitious witness "Darren M. Griffin," as well as that of three other people with purportedly identical technical backgrounds.

We have previously explained an overlap in time of the declarations of "observations" of "infringement" made by Mr. Macek and Mr. Arheidt in many of the current cases. For example, our October 28, 2016 letter explained that LHF Productions' declarations for Mr. Macek in D CO overlap in time with declarations of Mr. Arheidt in WD WA.

The pleadings in this Criminal Productions case allege that the declarant "observed infringing" by each defendant, but since the soaks happen before the data is divided into judicial districts after geo-location, how can Mr. Arheidt be the witness for some observations when Mr. Macek is apparently making observations at the same time?

We assume the real answer is that “no one” actually “observes” anything, but that is not the impression your client’s foreign representatives are trying to make. For example, Judge Jones’ Default Order, Dkt. # 76, in Criminal Productions’ Case No. 2:16-cv-729 rules that the defendants are alleged to have used BitTorrent “to download” the movie. But your client’s foreign representatives/investigators have no evidence that a defendant “downloaded” anything. Indeed, the only party for whom there is apparently evidence that the movie was downloaded is the investigator.

The Complaint and Amended Complaint both allege “observation” of “infringement” as a legal conclusion: i.e. without alleging the actual facts. The foreign investigator, with a direct financial interest in the matter, solicits the uploading of one data packet from each target IP address. The data packets entrapped by the investigator are not humanly observable with or without the aid of a machine or device.

In investigating for Mr. Bethke, again we looked for overlap between alleged observations of Mr. Macek and Mr. Arheidt. And again, we found overlap in declarations filed in D CO with declarations filed in WD WA. For example, in the Criminal Productions WD WA Case No. 2:16-cv-1016, Mr. Arheidt’s declaration covers “observations” from June 25 through June 27. By contrast, in the Criminal Productions D CO Case No. 1:16-cv-1761, Mr. Macek’s declaration covers “observations” from June 25 through June 28. Both declarations cover the same “hash number” of the movie, i.e. the same soak. This overlap seems impossible if we stick with the fictions of the Complaint and Motion for Expedited Discovery that the declarant “observed” the defendant “infringing.”

We looked carefully and discovered another anomaly our Courts should question. Mr. Macek’s declaration from that D CO case 1:16-cv-1761 (ECF # 4-1) is dated June 14<sup>th</sup> (maybe June 16<sup>th</sup>) – but BEFORE the date of the accompanying “observations” that ran from June 25 through June 28. How can a witness sign a declaration that he observed something BEFORE it happened?

Criminal Productions submitted four such Declarations of Mr. Macek that were executed BEFORE the dates of the accompanying typed up list of observations that Mr. Macek swore that he made. Unless Daniel Macek is also Marty McFly, it is impossible to execute a declaration claiming to observe something that has yet to happen.

From our review, it appears these metaphysical Macek declarations are not just temporally improper, they are also photocopies, including the signatures not separately executed. Here are copies of the signatures to examine:

1.

D CO 16-cv-01761 (ECF # 4-1) (covering dates June 25-28)

Executed on this 16<sup>th</sup> day of June, 2016.  
By:   
Daniel Macek

2.

D CO 16-cv-01802 (ECF # 4-1) (covering dates June 23-24)

Executed on this 16<sup>th</sup> day of June, 2016.  
By:   
Daniel Macek

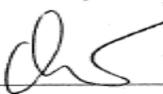
3.

D CO 16-cv-01813 (ECF # 4-1) (covering dates June 1-23)

Executed on this 16<sup>th</sup> day of June, 2016.  
By:   
Daniel Macek

4.

D CO 16-cv-01836 (ECF # 4-1) (covering dates June 4-18)

Executed on this 16<sup>th</sup> day of June, 2016.  
By:   
Daniel Macek

Like I said, we are astonished by your client's foreign representatives' apparent lack of respect for our federal judicial system. Use of duplicate signatures from a witness testifying to events that have yet to happen is on the same level of horror as the use of a fictitious witness and "his" initials as a convenience to obtain subpoenas.

If we go forward, we will expect full discovery as to the Macek/Arheidt overlap. Although we know it will draw your client's foreign representatives to file needless Rule 8/9/12 Motions, we will have no choice but to present defenses of copyright misuse and unclean hands for the use by Criminal Productions of the falsely concocted declarations. We assume Judge Jones will not be impressed with Criminal Productions' submission of duplicated and false declarations to obtain subpoenas.

Presumably Criminal Productions could present an excuse why it submitted these declarations. Your firm used "clerical error" to explain repeated use of "IP Squared" as its investigator (e.g. Dkt. #5, page 3). Our point about these "errors" is that they are direct evidence tying the Guardaley cases to undeniable abuse of our federal judicial system. We will ask the Court to examine the connections between Messrs. Arheidt and Macek and Achache and fictitious witness "Darren M. Griffin" (and to Mr. Gorfein and his duplicated and differing signatures.)

Our experience in the Lamberson case was bitter, since your client's foreign representatives continually resisted discovery in a manner that the federal rules forbid. We do not expect them to be more candid in this case. But now we have a better understanding than we did in Lamberson. We would diligently and properly discover your client's foreign representatives' speculative invoicing program, and then examine whether it is lawful and sufficient to prove liability in a civil copyright lawsuit.

At trial, we will ask a few simple cross examination questions of Mr. Arheidt ("Did you actually observe Mr. Bethke doing anything?") and then call Mr. Bethke to the stand. Mr. Bethke testifies that he was sleeping at 2:39am on September 12, 2016 and about his related nightmare of a defending a federal lawsuit born of inaccurate allegations brought against him by strangers. We are confident the jury will see that Mr. Bethke is telling the truth. We are confident Judge Jones will award attorneys' fees.

Please consider our offer to not Answer, nor pursue defense attorneys' fees, if the case against Mr. Bethke is dismissed by Noon, Thursday May 25, 2017. Otherwise, we will submit our Answer that afternoon and patiently work towards Mr. Bethke's full exoneration and the ruling on our request for defense attorneys' fees.



Thank you for your consideration of our position.

Very truly yours,

LEE & HAYES, PLLC

A handwritten signature in blue ink, appearing to read "J. Christopher Lynch".

J. Christopher Lynch  
(509) 944-4792

[Chris@leehayes.com](mailto:Chris@leehayes.com)

c: Mr. Bethke  
Kyle D. Nelson, Esq.