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8 **UNITED STATES DISTRICT COURT**  
9 **EASTERN DISTRICT OF WASHINGTON**

10 ELF-MAN, LLC,

11 Plaintiff,

12 vs.

13 RYAN LAMBERSON,

14 Defendant.

No. 2:13-CV-00395-TOR

DECLARATION OF J.  
CHRISTOPHER LYNCH  
REGARDING ECF NOS. 114 AND  
116

15  
16 J. CHRISTOPHER LYNCH declares under penalty of perjury as follows:

17 1. I am over the age of 18, competent to be a witness herein, and make  
18 this declaration on personal knowledge.

19 2. I am an attorney for Defendant, Ryan Lamberson. My law firm is the  
20 assignee of Mr. Lamberson's judgment against Elf-Man LLC. I submit this  
21 Declaration regarding the Center for Justice's Motions, ECF Nos. 114 and 116.  
22

1 3. I signed a Protective Order, ECF No. 32, in the form proposed by Ms.  
2 VanderMay, and I consented to its submission to the Court.

3 4. Sealed documents ECF Nos. 39-1 and 39-2 were submitted as  
4 evidence to oppose ECF No 37, Elf-Man's Motion to Dismiss Mr. Lamberson's  
5 Counterclaims.

6 5. Sealed documents ECF Nos. 43-5, 43-6, and 51-2 were submitted as  
7 evidence to support ECF No. 42, Mr. Lamberson's Motion to Compel Discovery to  
8 require deposition of the investigators.

9 6. Sealed document ECF No. 65-2 was submitted as evidence to support  
10 ECF No. 57, Mr. Lamberson's Motion to Compel Discovery to require production  
11 of correspondence with the investigators.

12 7. Sealed document ECF No. 85-2 was submitted by Ms. VanderMay in  
13 response to ECF Nos. 76, 78, and 80, Mr. Lamberson's post-dismissal Motions for  
14 attorneys' fees and sanctions.

15 8. Here is a summary of the relevance of these Motions and the sealed  
16 documents to final disposition of the lawsuit:

17 **A. Elf-Man's Motion to Dismiss, ECF No. 37.**

18 9. Mr. Lamberson is wholly innocent – one of thousands of wholly  
19 innocent federal court defendants in Bit Torrent copyright cases nationwide. My  
20 firm appeared as defense counsel and I offered Ms. VanderMay a deposition of Mr.  
21 Lamberson and examination of his computer. Ms. VanderMay declined. She  
22 declined to withdraw the Amended Complaint under Fed. R. Civ. P. 11. Mr.

1 Lamberson answered the Amended Complaint, and then amended that Answer.  
2 The Amended Answer, ECF No. 36, includes Counterclaims for declaratory relief  
3 of non-infringement and unenforceability of the Elf-Man copyright against Mr.  
4 Lamberson. Elf-Man did not answer the Counterclaims.

5 10. Instead, Elf-Man brought its Motion to Dismiss, ECF No. 37, arguing  
6 that the Noerr Pennington antitrust immunity doctrine immunized Elf-Man from  
7 any civil claims of liability, including claims for declaratory relief, stemming from  
8 its copyright campaign. Elf-Man argued that this immunity doctrine warranted  
9 immediate dismissal of the Counterclaims as a procedural matter, prior to the  
10 requirement of filing any Answer or discovery.

11 11. Mr. Lamberson opposed under the “sham litigation” exception to  
12 Noerr Pennington. ECF No. 38. My declaration, ECF No. 39, submits evidence  
13 that Elf-Man’s copyright campaign met the sham litigation test.

14 12. Sealed document 39-1 is a purported assignment of rights from Elf-  
15 Man to Vision Films. Sealed document 39-2 is a memorandum regarding that  
16 assignment in the form of a press release. My declaration explains how these  
17 documents are evidence of sham litigation. For example, Vision Films and Elf-  
18 Man LLC had each filed copyright cases in different U.S. District Courts, each  
19 claiming the right to enforce the Elf-Man copyright, which the law does not allow.  
20 My declaration also identifies other categories of “sham litigation” evidence.

21 13. Elf-Man’s elaborate, well briefed Motion and Reply to Dismiss the  
22 Counterclaims are manifest examples of how Elf-Man LLC was “used” in

1 furtherance of the sham litigation program of its representatives. No economically  
2 rational actor would have brought such a Motion. A rational plaintiff certain of its  
3 own evidence would simply deny the non-monetary Counterclaims and they would  
4 disappear with plaintiff's victory at trial. There is no legitimate economic upside to  
5 Elf-Man to bringing this Motion, only downsides. Even if Elf-Man could prove  
6 copyright infringement at trial, would the court award attorneys' fees for an  
7 elaborate procedural motion that was not preceded by a letter or call explaining the  
8 applicability of the immunity to the facts, giving defense counsel an opportunity to  
9 avoid the Motion in deference to its Constitutional principles? On the other side, if  
10 Mr. Lamberson prevails at trial there is a risk Elf-Man will have to pay his  
11 expenses to oppose an unnecessary Motion. Maybe *Cadkin v. Loose*, 569 F.3d  
12 1142 (9th Cir. 2009) is the rationale for Elf-Man's representatives to invest the  
13 time and legal research resources into a policy of filing elaborate Motions to  
14 Dismiss even non-monetary Counterclaims.

15 14. In the end, Elf-Man's Motion to Dismiss was denied as moot. ECF  
16 No. 73. But the sealed evidence relevant to the "sham litigation" exception remains  
17 important to other falsely accused copyright defendants whose Counterclaims are  
18 met with Motions to Dismiss under the Noerr Pennington antitrust immunity  
19 doctrine. Indeed, hindsight reveals the representatives' awareness of the sham.  
20 Since *Elf-Man v. Lamberson*, Mr. Lowe has filed over 100 Bit Torrent copyright  
21 cases against over 1000 individuals in WD WA, but zero in ED WA.

1 **B. Mr. Lamberson’s Motion to Compel, ECF No. 42.**

2 15. Prior to and during our Fed. R. Civ. P. 26(a) meeting of counsel, Ms.  
3 VanderMay was unaware of the identity of Elf-Man’s investigators. The other Elf-  
4 Man (and Vision Films) cases filed in other Districts used a Declaration of “Darren  
5 M. Griffin” purporting to be a “software consultant to” (or “data supply expert  
6 with”) “Crystal Bay Corporation of South Dakota.” The typed up charts of alleged  
7 infringement of those cases overlapped with the time ascribed to Mr. Lamberson,  
8 so I initially assumed that “Darren M. Griffin” had to be Elf-Man’s witness for Mr.  
9 Lamberson. I inquired of Ms. VanderMay prior to and at our Fed. R. Civ. P. 26(a)  
10 meeting. She said she would “get back” to me about “Darren M. Griffin.” She  
11 never “got back.”

12 16. Instead, Elf-Man served its Initial Disclosures, which are silent about  
13 “Darren M. Griffin” and South Dakota. Elf-Man identified Daniel Macek and  
14 Michael Patzer as its witnesses, with identical addresses in Stuttgart, Germany. Mr.  
15 Patzer purportedly wrote special software used by Mr. Macek purportedly to make  
16 the observations alleged in the Amended Complaint.

17 17. Given the time overlap between the time ascribed to Mr. Lamberson  
18 and the Elf-Man cases where “Darren M. Griffin” declared that “he” had made the  
19 observations, either (i) these Initial Disclosures identifying Mr. Macek and Mr.  
20 Patzer had to be incorrect, or (ii) the Declarations of “Darren M. Griffin” filed by  
21 Elf-Man in the other U.S. District Courts had to be incorrect. Or worse. With the  
22 benefit of hindsight, I am convinced “Darren M. Griffin” is fictitious. Elf-Man

1 filed Declarations of “Darren M. Griffin” in eight cases in six U.S. District Courts  
2 in order to obtain Subpoenas. Between November 2012 and November 2013, over  
3 500 Declarations of “Darren M. Griffin” were filed by various plaintiffs in U.S.  
4 District Courts. Declarations of “Darren M. Griffin” were filed in over 40 cases in  
5 the Western District of Washington. None were filed in this District. Since the  
6 conclusion of this case, I have gathered information on this topic and could provide  
7 more to the Court if requested.

8 18. At the status conference with the Court on December 19, 2013, I  
9 raised the unexpected identification of German nationals as the only witnesses in  
10 the case and the complications this created for discovery.

11 19. I proposed that Elf-Man bring the witnesses to Spokane for  
12 deposition, and that Elf-Man could perpetuate their trial testimony at that time. Elf-  
13 Man refused – another economically irrational decision. I assumed the Court  
14 would understand the pragmatism of the request: the witnesses have to come to  
15 Spokane at some point, so why pay for both sides’ counsel to travel to Europe and  
16 pay to conduct a deposition of German nationals in a consular facility under the  
17 Hague Convention?

18 20. I asked my then-associate Jeffrey R. Smith to bring the Motion to  
19 Compel, ECF No. 42, and to provide our evidence, including the sealed  
20 documents, ECF Nos. 43-5, 43-6 and 51-2. (Judge Smith now sits on the Spokane  
21 County District Court bench.)  
22

1           21. Sealed document ECF No. 43-5 is Elf-Man’s “explanation” of its  
2 relationship to its investigators. Elf-Man was ordered by the Court to prepare this  
3 narrative explanation. ECF No. 31. Sealed document ECF No. 43-6 is a letter from  
4 me to Ms. VanderMay attacking the “explanation” as untruthful, which it clearly  
5 is. Sealed document 51-2 is a letter from Ms. VanderMay elaborating on the  
6 “explanation,” re-affirming points known not to be true. These sealed documents  
7 relate directly to Elf-Man’s obfuscation of the identity of its investigators and their  
8 relationship to Elf-Man and Vision Films.

9           22. In the end, Mr. Lamberson’s Motion to Compel, ECF No. 42, was  
10 denied as moot. ECF No. 73. But the evidence relevant to the claimed relationship  
11 between Elf-Man and its purported investigators remains important to other falsely  
12 accused defendants trying to show, as CFJ suggests, that real parties in interest  
13 have not been identified to the Court.

14 **C. Mr. Lamberson’s Motion to Compel, ECF No. 59.**

15           23. This Court ordered Elf-Man to provide a narrative explanation of its  
16 relationship to its investigators. ECF No. 31. That explanation, summarized:

- 17           a. Elf-Man LLC of Maryland hired Vision Films of California as  
18 its sales agent.
- 19           b. Vision Films hired APMC of California to conduct an  
20 enforcement program.
- 21           c. Vision Films hired Crystal Bay Corporation of South Dakota to  
22 conduct the investigation.

1 d. Crystal Bay Corporation employed Daniel Macek of Germany  
2 or engaged him as a consultant to make observations.

3 e. Daniel Macek used proprietary software licensed to Crystal Bay  
4 Corporation by Excipio of Germany.

5 f. Excipio was assigned the proprietary software by its consultant,  
6 Michael Patzer of Germany.

7 24. Elf-Man provided documents as to points (a) and (b) above, but  
8 claimed there were no documents as to points (c), (d), (e), or (f). Mr. Lamberson  
9 served requests for production to produce any correspondence relating to those  
10 points. Elf-Man did not timely respond, and later served objections claiming  
11 attorney client privilege. None of the companies or people in points (b), (c), (d),  
12 (e), or (f) was the attorney or the client, so the objections were unfounded as well  
13 as late.

14 25. Elf-Man refused to withdraw the objections, or to provide the  
15 documents, or to provide a privilege log. At that point, Ms. VanderMay filed her  
16 Motion to Withdraw, ECF No. 55: "Issues have arisen between Plaintiff's  
17 representatives and counsel, the nature of which make it impossible for counsel to  
18 both continue with representation and comply with the governing rules of  
19 professional conduct."

20 26. I filed the Motion to Compel, ECF No. 57, as to these APMC  
21 documents. My declarations, ECF Nos. 58 and 65, were submitted to introduce  
22 evidence to support the Motion to Compel. Sealed document ECF No. 65-2 is the



1 purported sales agency agreement between Elf-Man LLC and Vision Films. This is  
2 the document for point (a) of paragraph 23 above and illustrates how the remainder  
3 of the explanation is preposterous.

4 27. In the end, Mr. Lamberson's Motion to Compel was denied as moot.  
5 ECF No. 73. But the evidence relating to Elf-Man's relationship to its investigators  
6 remains important to other falsely accused defendants because it shows that the  
7 investigators may be undisclosed real parties in interest, as CFJ suspects.

8 **D. Mr. Lamberson's Motions for Sanctions and Attorneys' Fees, ECF Nos.**  
9 **76, 78 and 80.**

10 28. After Ms. VanderMay's Motion to Withdraw, Mr. Lowe appeared for  
11 Elf-Man and moved to dismiss Elf-Man's case. ECF No. 59. The Court granted the  
12 motion. ECF No. 73.

13 29. Mr. Lamberson moved for an award of defense attorneys' fees, ECF  
14 No. 76. Given his ordeal as a falsely accused defendant who was lied to in  
15 discovery, Mr. Lamberson also moved for imposition of sanctions. ECF Nos. 78  
16 and 80.

17 30. Elf-Man opposed, submitting declarations of Ms. VanderMay, Mr.  
18 Lowe, Mr. Ubersax, Daniel Macek, Michael Patzer, and Patrick Paige.

19 31. Ms. VanderMay's declaration, attempts to justify her role in the case.  
20 Sealed Exhibit 85-2 is a long list of movies, music, and software in multiple  
21 languages. Ms. VanderMay represented it as works that Elf-Man's investigators  
22

1 claimed that Mr. Lamberson had also downloaded. The long list is ridiculous as  
2 Mr. Lamberson testified at the time. ECF No. 98.

3 32. Elf-Man’s “representatives” have used long lists of other purported  
4 “infringements” in other cases as a tool to persuade defendants to volunteer to give  
5 them money. *See, e.g., Malibu Media v. Doe*, No. 4:16-cv-2319 (S.D. Tex.  
6 June 21, 2017).

7 33. In the end, the Court denied to sanction Elf-Man, but did award  
8 certain defense attorneys’ fees and costs. ECF No. 99. The Court’s final judgment  
9 of \$101,187.44, plus post-judgment interest, against Elf-Man LLC was not  
10 incurred in the interest of Elf-Man LLC, nor, presumably, was it incurred at Elf-  
11 Man LLC’s direction. The sealed document relates directly to the illicit nature of  
12 the tactics employed by Elf-Man’s unidentified “representatives” and remains  
13 important to other falsely accused copyright defendants threatened with similar  
14 lists.

15 34. In summary, CFJ’s Motions and positions are well founded. Elf-Man  
16 LLC provided documents in discovery that were fabricated and submitted to  
17 support a fabricated narrative. Elf-Man used the declaration of a likely fabricated  
18 person “Darren M. Griffin” in multiple United States District Courts in furtherance  
19 of Motions to Waive the Federal Rules of Civil Procedure. Elf-Man’s sealed  
20 “explanation” and the other sealed documents ignore those “Darren M. Griffin”  
21 declarations. Many of the decisions made by Elf-Man LLC in the case made no  
22 rational economic sense and may have been directed by others. Unnamed

1 representatives forced Ms. VanderMay's withdrawal for unstated ethical reasons.  
2 CFJ is correct that this case is a rare and important opportunity to shine a light on  
3 illicit copyright trolling.

4  
5 EXECUTED this 14th day of November, 2017 at Spokane, Washington.

6  
7 By: s/ J. Christopher Lynch

8 J. Christopher Lynch, WSBA #17462

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12 *Attorney for Defendant Ryan Lamberson*

**CERTIFICATE OF SERVICE**

1  
2 I hereby certify that on the 14th day of November, 2017, I caused to be filed  
3 the foregoing with the Clerk of the Court using the CM/ECF system, which in turn  
4 automatically generated a Notice of Electronic Filing (NEF) to all parties in the case  
5 who are registered users of the CM/ECF system. The NEF for the foregoing  
6 specifically identifies recipients of electronic notice.

7  
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