

Honorable Thomas S. Zilly

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

VENICE PI, LLC,
Plaintiff,
v.
SEAN O’LEARY JR., et al.
Defendants.

Civil Action No. 17-cv-988TSZ

VENICE PI, LLC,
Plaintiff,
v.
JONATHAN DUTCZAK, et al.
Defendants.

Civil Action No. 17-cv-990TSZ

VENICE PI, LLC,
Plaintiff,
v.
MARTIN RAWLS, et al.
Defendants.

Civil Action No. 17-cv-991TSZ

VENICE PI, LLC,
Plaintiff,
v.
INA SICOTORSCHI, et al.
Defendants.

Civil Action No. 17-cv-1074TSZ



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VENICE PI, LLC,
Plaintiff,
v.
GREGORY SCOTT, et al.
Defendants.

Civil Action No. 17-cv-1075TSZ

VENICE PI, LLC,
Plaintiff,
v.
YELENA TKACHENKO, et al.
Defendants.

Civil Action No. 17-cv-1076TSZ

VENICE PI, LLC,
Plaintiff,
v.
CELINA POTTER, et al.
Defendants.

Civil Action No. 17-cv-1160TSZ

VENICE PI, LLC,
Plaintiff,
v.
TONJA LAIBLE, et al.
Defendants.

Civil Action No. 17-cv-1163TSZ

VENICE PI, LLC,
Plaintiff,
v.
VICTOR TADURAN, et al.
Defendants.

Civil Action No. 17-cv-1164TSZ



1 VENICE PI, LLC,
 2 Plaintiff,
 3 v.
 4 JESSE COOPER, et al.
 Defendants.

Civil Action No. 17-cv-1211TSZ

5 VENICE PI, LLC,
 6 Plaintiff,
 7 v.
 8 JASMINE PATTERSON, et al.
 9 Defendants.

Civil Action No. 17-cv-1219TSZ

10 VENICE PI, LLC,
 11 Plaintiff,
 12 v.
 13 DAVID MEINERT, et al.
 Defendants.

Civil Action No. 17-cv-1403TSZ

PLAINTIFF’S RESPONSE TO LYNCH DECLARATION

I. INTRODUCTION

16 Attorney Christopher Lynch’s (“Lynch”) declaration, filed in Case No. 17-cv-1403TSZ as
 17 Dkt. 45-1 but purportedly made applicable to all pending Venice PI cases, makes one thing clear:
 18 Mr. Lynch, in an effort to fuel conspiracy theories, has spent countless hours comparing hundreds
 19 of decade old declarations from different declarants which do not relate to the declarant, the
 20 Plaintiff, the defendants, or the infringements *in this case*. While Lynch’s declaration centers on
 21 conspiracy theories regarding old declarations, he provides no explanation for why, in the last nine
 22 years, neither he nor any of his clients ever dared to test or examine any infringement detection
 23 system used by Excipio or GuardaLey. Meanwhile, in the last several years, numerous plaintiffs
 24 who file BitTorrent cases have spent significant time and resources to retain independent experts
 25 who have *repeatedly* tested the system—each of which have found the system to be exactly what
 26

1 it purports to be and fully accurate. And, despite Mr. Lynch’s extensive research, he conveniently
2 fails to mention that some plaintiffs who have used GuardaLey’s or Excipio’s system have *proved*
3 infringement by locating the relevant copyrighted works on a defendant’s hard drive, *proved*
4 spoliation of the hard drive, or *proved* the falsification of travel records to cover up infringement.
5 One thing is clear: Plaintiff’s own research shows that many BitTorrent plaintiffs have fought an
6 uphill battle before numerous Courts across the country and rather than present mere speculation,
7 those plaintiffs have actually presented evidence to support their claims.

8 Mr. Lynch points to irrelevant declarants from cases with different plaintiffs, defendants,
9 and infringements in an effort to convince this Court to not trust Daniel Arheidt. In this case, the
10 accuracy of Mr. Arheidt’s declaration is all that matters and defense counsel is free to challenge
11 the accuracy of that declaration. Truthfully, even if Mr. Arheidt was untrustworthy (which he is
12 not), Plaintiff does not need him to prove the infringements here. Indeed, *anyone* can compare the
13 torrented version of the movie with the original control copy of the work—even Mr. Lynch
14 himself. And experts such as Benjamin Perino and Stephen Bunting can testify as to the content
15 of the PCAPs and infringement logs.

16 Notwithstanding the strength of the evidence and the accuracy of the infringement
17 detection system used, Plaintiff understands that Mr. Lynch has provided a deeply misguided
18 declaration that warrants a response. As such, Plaintiff provides the following response addressing
19 those concerns.

20 II. ARGUMENTS

21 A. Mr. Benjamin Perino’s Declaration Submitted to this Court is Accurate

22 Mr. Lynch’s claims that Benjamin Perino’s (“Perino”) declaration submitted to this Court
23 contains an inaccurate work history. (Dkt. 45-1, p. 6-8) He cites to a number of declarations dating
24 back to 2011 wherein Mr. Perino noted that he was a manager at U.S. Copyright Group (“USCG”).
25 The work history listed in Perino declaration before this Court is accurate. This is because it was
26 in Mr. Perino’s role as the CEO of GuardaLey that he managed USCG’s technical tasks dealing

1 with the infringement detection system. At the time, USCG considered Mr. Perino to be a part of
2 their management team since he was CEO of GuardaLey and GuardaLey was tasked with
3 managing and executing the technical projects related to the infringement detection system.
4 However, Mr. Perino was only paid by GuardaLey. He was never paid by USCG. (Perino Supp.
5 Dec. ¶ 5)

6 B. Mr. Patrick Achache's Declarations in Other Cases are Irrelevant

7 Mr. Lynch's declaration discusses the "10 years of experience" listed in Patrick Achache's
8 ("Mr. Achache") old declarations. (Dkt. 45-1, p. 8-9) Mr. Achache's declarations are irrelevant to
9 this case. These old declarations have been used in other cases, in other districts, or for other
10 plaintiffs, which concern completely different infringements. Mr. Achache's biography (can be
11 found here: <https://patrickachache.com/biography/>) states correctly that "He has been active in the
12 anti-piracy movement for more than 10 years now," while also working as a consultant for
13 companies such as Siemens, Mercedes-Benz and Anheuser Bush.

14 C. Mr. Perino Used His Electronic Signature to Sign Declarations Many Years Ago

15 Mr. Lynch's declaration discusses the various photographed signatures in a number of old
16 declarations signed by Messrs. Perino and Achache. (Dkt. 45-1, p. 9-10) Of these two declarants,
17 only Mr. Perino is relevant to the filings to date. Mr. Perino has hand signed every one of his
18 declarations submitted to this Court by printing, signing with a pen, and scanning the signature
19 page. Many years ago, in unrelated cases, Mr. Perino had a photographed signature that he used to
20 sign his declarations. This is a very common practice, and was used in that case to avoid the time-
21 consuming task printing and hand signing hundreds of documents while he was abroad.
22 Regardless, this photographed signature was Mr. Perino's hand-signed signature which he
23 authorized to be used to stamp into every approved declaration. While still a viable method of
24 utilizing a signature, Mr. Perino has not used this method to sign documents in many years. (Perino
25 Supp. Dec. ¶ 6)

1 D. GuardaLey is Not the Plaintiff in This Case or Any Pornography BitTorrent Case

2 Mr. Lynch calls Malibu Media, LLC¹ cases “GuardaLey’s pornography cases.” (Dkt. 45-1,
3 p. 11) However, GuardaLey is not the plaintiff in any federal BitTorrent copyright infringement
4 case in the United States. In a desperate attempt to draw a correlation between Plaintiff in this case
5 and Malibu Media, Lynch points to the metadata in one of undersigned’s filings in this case. This
6 argument borders on deceptive. The exhibit with Malibu Media metadata contains a *Malibu Media*
7 *transcript* and a court order from a *Malibu Media case*. Thus, it makes perfect sense that a portion
8 of the metadata would contain the term “Malibu Media.” To be clear, undersigned’s response to
9 this Court’s show cause order was not prepared by Malibu Media, LLC and the undersigned has
10 never represented Malibu Media, LLC. (Lowe Supp. Dec. ¶ 5)

11 Throughout his declaration, Mr. Lynch notes that several declarations across BitTorrent
12 plaintiffs appear to be similar. While Plaintiff has only limited knowledge about those who
13 currently work for GuardaLey, and virtually no knowledge of those who previously worked for
14 GuardaLey, Plaintiff believes these declarations are similar because these individuals have
15 performed the same or similar duties for other companies. Indeed, as previously stated, Tobias
16 Fieser works with both GuardaLey and IPP. And Daniel Arheidt works with both GuardaLey and
17 MaverickEye. They each perform similar duties involving the verifications of hash values, and the
18 accurate correlation of data to the infringement log files. Thus, it would make sense that those
19 declarations contain similar language. Further, the similarity of such declarations does not mean
20 that particular companies are all related to each other.

21 E. GuardaLey is Not Excubitor, Copyright Defenders, IP Squared Technologies, or
22 Crystal Bay

23 Mr. Lynch’s declaration states that in the spring of 2012, GuardaLey stopped filing
24 declarations, and instead declarations were filed by Excubitor, Copyright Defenders, IP Squared

25 _____
26 ¹ Malibu Media, LLC is a California company that produces adult content. Malibu Media, LLC is also a
plaintiff in other federal BitTorrent copyright infringement cases.

1 Technologies, and Crystal Bay. (Dkt. 45-1, p. 13-15) From this, Mr. Lynch draws the conclusion
 2 that GuardaLey is Excubitor, Copyright Defenders, IP Squared Technologies, and Crystal Bay. As
 3 support he again points to the similar language listed in different declarations filed by declarants
 4 from these companies. That support is debunked, as noted above. Moreover, neither GuardaLey
 5 or Mr. Perino has ever owned or worked with the foregoing companies. (Perino Supp. Dec. ¶ 7)
 6 Mr. Perino has stated that he believes that Excubitor and Copyright Defenders are companies
 7 formed by individuals who owned and operated Excipio. He also stated that he believes that IP
 8 Squared Technologies was owned and operated by Joshua Partridge and William Gorfein who
 9 briefly worked with GuardaLey. (Id.) Essentially, all that Mr. Lynch has pointed out is the
 10 irrelevant fact that other plaintiffs have used other data companies in their BitTorrent cases and
 11 subsequently used publically available declaration templates.² Respectfully, numerous BitTorrent
 12 litigation defense counsel file near identical motions to quash, declarations, and other court
 13 filings—when the subject matter is similar or other considerations so demand—and such practice
 14 does not impact the validity of the filings.

15 F. Mr. Lynch Argues about Semantics When Criticizing Undersigned’s Declaration

16 Mr. Lynch claims that Mr. Lowe misrepresented facts to this Court in his prior declaration.
 17 (Dkt. 45-1, p. 15) Such accusation is baseless and unprofessional. Mr. Lowe’s declaration states:

18
 19 I understand that Mr. Griffin is an individual who worked briefly for Crystal Bay
 20 Corporation in the 2012-2013 to verify infringement detection data licensed from
 21 Excipio. As explained in the Supplemental Declaration of Ben Perino, Excipio is a
 22 company to which parts of the GuardaLey infringement detection system were
 23 outsourced in the 2012-2015 time period (see K 16), and which in turn licensed the
 24 technology to others, believed to have included Crystal Bay. I have no personal
 25 knowledge about Crystal Bay, and never worked with that entity. The only
 26 information I can glean from that entity is obtained from the South Dakota
 Secretary of State website, attached as Exhibit A, which indicates that the entity

² The history between GuardaLey and Excipio is a complicated one. Indeed, while the companies worked together for a short time, GuardaLey and Excipio eventually ceased working together, and Excipio thereafter became GuardaLey’s competitor. Further, during the time when GuardaLey contracted work to Excipio, GuardaLey was not involved in detection of infringements, the verification of those infringements, or the declarations used to support the verification of infringements.

1 was formed in March 2012 and ceased existence in or around March 2015. [...] Mr.
2 Griffin apparently verified infringement detection data and submitted a number of
3 declarations in various jurisdictions confirming the data, similar to what has been
done in these cases by Mr. Arheidt. But I have never met or worked with Mr. Griffin
and, to the best of my knowledge and investigation, have never submitted a
declaration from him in any case in this jurisdiction.

4 (Dkt. 38, p. 4-5) Mr. Lynch asserts that undersigned “incorrectly claims that no declarations of
5 ‘Darren M. Griffin’ have been filed in this District.” (Dkt. 45-1, p. 25) However, this is not what
6 Mr. Lowe’s declaration stated. Rather, Mr. Lowe’s declaration makes clear that *he* has never
7 submitted a declaration from Darren Griffin in any case in this jurisdiction. (Dkt. 38, p. 4-5 (“But
8 I have never met or worked with Mr. Griffin and, to the best of my knowledge and investigation,
9 have never submitted a declaration from him in any case in this jurisdiction.”)). Claiming a
10 misrepresentation, Mr. Lynch cites to a string of cases which Mr. Lowe did not file, but which
11 were instead filed by other counsel for plaintiffs in those cases—which are completely irrelevant.
12 (Lowe Supp. Dec. ¶¶ 2-3)

13 In addition, Mr. Lowe’s earlier declaration states that he has never worked with Crystal
14 Bay, which is true. While the plaintiff in certain cases provided Mr. Lowe’s firm with investigator
15 declarations from individuals working with Crystal Bay at the time (e.g., Daniel Macek), Mr. Lowe
16 never had any occasion to interact with Crystal Bay directly. As accurately stated in Mr. Lowe’s
17 earlier declaration, he does not have knowledge of this entity apart from the noted association one
18 or more investigators apparently had with the entity at some point in time, and he has no knowledge
19 regarding the formation, maintenance, ownership or workings of this entity. Again, the only
20 information Mr. Lowe can glean from Crystal Bay is obtained from the South Dakota Secretary of
21 State website. (Id. ¶ 4)

22 Mr. Lynch states that “[f]ictitious declarant ‘Darren M. Griffin’ is literally connected to the
23 other declarants in Mr. Lowe’s cases.” This is a patently false and purely speculative assertion. In
24 support Mr. Lynch first notes that “the times of alleged observations by those declarants literally
25 overlap among declarants and their purported employers[.]” (Dkt. 45-1, p. 29) However, this
26 cannot possibly establish that Mr. Griffin is relevant to this case—where Plaintiff has provided

1 unrefuted evidence regarding the investigators actually used and declarations submitted therefrom.
2 Nor does it establish that Mr. Griffin is fictitious; just because Mr. Griffin and other irrelevant
3 declarants worked for a particular company many years ago and Plaintiff has not produced
4 Mr. Griffin's legal form of identification does not mean that Mr. Griffin does not exist.

5 While it remains irrelevant to any of these proceedings, simply to put this issue to rest,
6 Plaintiff has undertaken significant private efforts and investigation to locate Darren M. Griffin,
7 or otherwise confirm that he is a "real person" who (1) worked briefly for Crystal Bay Corporation
8 in the 2012-2013 to verify data licensed from Excipio; and (2) verified infringement detection data
9 and submitted a number of declarations in various jurisdictions confirming the data. Despite
10 considerable expense, Mr. Griffin has not been located. However, the declaration of Patrick
11 Achache, submitted herewith, confirms that Darren M. Griffin is a real person and performed the
12 work attributed to him as noted above. (Achache Dec. ¶ 4) Barring evidence to the contrary—as
13 opposed to any mere speculation by Mr. Lynch or others—this should once and for all put that
14 issue to rest, and any further speculative assertions by Mr. Lynch and his ilk should not be
15 countenanced by the courts.

16 G. The Similarity of Declarations from Individuals Hired to Perform Similar Duties Is
17 Acceptable

18 Lynch states that there is "[o]bservation overlap among declarants and companies"
19 (Dkt. 45-1, p. 30) and that "Mr. Arheidt's declaration is directly derived from 'Darren M. Griffin'
20 and the other Guardaley declarants." (Dkt. 45-1, p. 34) As previously addressed, during particular
21 points in time, different individuals simultaneously completed work for different companies. And
22 some companies have several employees doing the same or similar tasks. For example, as Plaintiff
23 previously noted, Mr. Arheidt works for GuardaLey and also completes similar work for
24 MaverickEye. Thus, it makes sense that their declarations would be similar. Lynch has not
25 explained how any of these overlaps show "(i) that the declarants are not making observations,
26 and (ii) the data is not being collected by differing entities." (Dkt. 41-1, p. 32) The opposite is in

1 fact true. Moreover, Mr. Lynch’s insinuation that somehow overlapping observations of the same
2 data affect the veracity of the investigation is wholly baseless. Plaintiff reasserts that in this case,
3 the data is collected by GuardaLey’s infringement detection system and that in these cases, at least,
4 Daniel Arheidt verified hash values and log files on behalf of MaverickEye UG. Mr. Lynch’s wild
5 speculation as to prior declarations of other individuals is completely irrelevant to the case at hand.

6 Mr. Lynch points to a limited example of certain digital signatures as basis for the
7 conspiracy theories. Specifically, he notes that the photographed signature of these declarants
8 contains a date that precedes the last date of infringement within the respective case. (Dkt. 41-1,
9 p. 22) However, as already noted, the signatures were digital signatures. And the inclusion of a
10 date preceding the last date of infringement is obviously a clerical error. This does nothing to
11 negate the fact that Daniel Arheidt—**the only relevant declarant in this case**—has and is willing
12 to attest to the verification of the infringements.

13 H. Mr. Arheidt uses the Charts to Complete the Verification Process

14 Lynch states that “[t]he typed up charts of alleged infringement cannot be direct output of
15 a computer program.” The infringement verification data is generated by a computer system. The
16 resulting data may be formatted to adjust the margins, font, borders, etc., but that does not diminish
17 in any way the veracity of the underlying data. The spreadsheets submitted in the various cases are
18 a part of the verification process that Daniel Arheidt completes. Indeed, part of Mr. Arheidt’s job
19 is to verify that the spreadsheets contain accurate data matching the data in the infringement
20 detection system’s logs—meaning he ensures that there has been no inadvertent changes to the
21 infringement data during the formatting process. In other words, the spreadsheets and the
22 declarations regarding the same are sent to Daniel Arheidt. Before Mr. Arheidt signs the
23 declaration, a computer program further checks the data in the spreadsheets against the original
24 records in the database. This ensures that the data in the exhibits to the complaints correctly list IP
25 addresses and infringement dates and times. Indeed, accuracy of this information is critical in
26 identifying a subscriber of an IP address. All that Mr. Lynch has established is that, regardless of



1 investigator or investigative company, each attorney has his or her own way of modifying the
2 format of the chart presented in their exhibits.

3 **III. CONCLUSION**

4 Plaintiff respectfully requests that this Court disregard Mr. Lynch’s declaration and
5 discharge its show cause and allow Plaintiff to exercise its right to enforce its federal copyright
6 against willful infringers in this District as any other federal copyright holder is entitled under law
7 to do.

8 RESPECTFULLY SUBMITTED May 25, 2018.

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15 Attorneys for Plaintiff

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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