IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

COUNTRYMAN NEVADA, LLC,	)	
	)	Case No.: 14-cv-1381
Plaintiff,	)	
	)	Judge John W. Darrah
v.	)	
	)	Magistrate Judge Arlander Keys
DOES 1 – 46,	)	
	)	
Defendants.	)	

PLAINTIFF'S RESPONSE TO MOTION OF DOE NO. 20 TO QUASH OR VACATE SUBPOENA

Plaintiff, Countryman Nevada, LLC, by and through its undersigned counsel, and in response to the motion of Defendant Doe Number 20 (hereinafter "Defendant") to Quash or Vacate Subpoena, states as follows:

I. Introduction

Plaintiff respectfully requests this Court to deny Defendant Doe Number 20's Motion to Quash or Vacate Subpoena ("Motion") [ECF No. 15]. This case involves a copyright owner's effort to protect its copyrighted mainstream movie "*Charlie Countryman* a/k/a *The Necessary Death of Charlie Countryman*" from numerous, unknown individuals, all of whom reside in this District, who illegally copied and distributed the work through the Internet. Plaintiff has been harmed as a result of this copyright infringement, and has no viable option to recover from those who have stolen the movie, or to prevent its further theft, other than to file suit.

Defendant's Motion essentially requests this Court to vacate the Court's Order of March 25, 2014 [Dkt. No. 11] granting Plaintiff's Motion for Leave to Take Discovery Prior to Rule 26(f) Conference ("Plaintiff's Discovery Motion") [Dkt. No. 8]. Federal Rule of Civil Procedure

45 requires a court to quash or modify a subpoena if it: (1) fails to allow a reasonable time for compliance; (2) "requires a person who is neither a party nor a party's officer to travel more than 100 miles;" (3) "requires disclosure of privileged or other protected matter, if no exception or waiver applies;" or (4) "subjects a person to undue burden." Fed R. Civ. P. 45(c)(3)(A). A party moving to quash bears the burden of demonstrating that the subpoena falls within one of these categories.

In this case, the subpoena does not fall within any of the above categories. Defendant's claims to the contrary [Motion, ¶4], the subpoena does not impose an undue burden on Defendant, or any other burden for that matter, because Defendant is not the party who must comply with the subpoena. See, e.g., *Purzel Video GmbH v. Does 1-108*, No. 13-cv-0792, 2013 WL 6797364, at *3 (N.D. Ill. December 19, 2013) (Gottschall, J.) (attached as Exhibit 1); *Malibu Media, LLC v. Reynolds*, No. 13-c-6672, 2013 WL 870618, at *6 (N.D. Ill. March 20, 2013) (Kendall, J.) (attached as Exhibit 2). The subpoena at issue is instead directed to Comcast, which has not objected. Because Defendant does not, and moreover cannot, show that the subpoena at issue falls into one of the categories outlined by Rule 45(c)(3)(A), Defendant has no legal basis to quash Plaintiff's subpoena to Comcast.

Instead, Defendant's alleged justification for quashing the subpoena is to claim that Defendant did not commit the file sharing, that his or her reputation will be hurt by involvement in this lawsuit, and that defending the lawsuit will cost him or her money. Motion, ¶5. These arguments (which, again, are not any of the bases for quashing a subpoena under Rule 45) have been repeatedly rejected by other Courts in this District. See: *Malibu Media, LLC v. John Doe*, No. 13-C-8484, 2014 WL 1228383, at *3 (N.D. Ill. March 24, 2014) (Ellis, J.) (attached as Exhibit 3) ("[E]ven if the person associated with Doe's IP address did not download the files at

issue in this suit, obtaining the person's information is the logical first step in identifying the correct party. [citing] *TCYK, LLC v. Does 1-44*, Case No. 13–cv–3825, 2014 WL 656786, *4 (N.D. Ill. February 20, 2014)"; r*eFX Audio Software, Inc. v. Does 1-111*, No. 13-C-1795, 2013 WL 3867656, at *2 (N.D. Ill. July 23, 2013) (Gettleman, J.) (attached as Exhibit 4) ("[The] argument that the subpoena should be quashed because the information sought will not itself identify the actual infringer demonstrates a lack of understanding of the basic scope of discovery under the federal rules."); *TCYK, LLC v. Doe*, No. 13-cv-6770, 2013 WL 273806, at *2 (N.D. Ill. January 24, 2014) (attached as Exhibit 5) (Kim, M.J.) ("[Plaintiff's] potential financial liability is irrelevant to the question of whether the subpoena comports with Rule 45.]"; *The Thompsons Film, LLC v. Does 1-60*, No. 13-C-02368, 2013 WL 4805021, at *3 (N.D. Ill. September 6, 2013) (Dow, J.) (attached as Exhibit 6) ("Insofar as IP address holders may contend that they were not the infringing parties, such arguments go to the merits of the action and are 'not relevant as to the validity or enforceability of a subpoena, but rather should be presented and contested once parties are brought properly into the suit.' [citing] *Hard Drive Prods. v. Does 1-48*, No. 11-C-9062, 2012 WL 2196038, at *4 (N.D. Ill. June 14, 2012)"; *Malibu Media, LLC v. John Does 1-49*, No. 12-CV-6676, 2013 WL 4501443, at *2 (N.D. Ill. 2013) (attached as Exhibit 7) ("It is not a wild assumption on Plaintiff's part that the subscriber may be the alleged infringer or may lead to the alleged infringer. Without connecting the IP address to a person, Plaintiff would have no way of prosecuting infringement of its claimed copyright.").

In sum, Defendant's protestations of innocence become relevant only after he or she has appeared and filed an answer in this case; they are not a basis for quashing a third-party subpoena.

Finally, without any basis in fact, Defendant resorts to insulting Plaintiff, calling it a "Troll" [Motion, ¶7] who "bull[ies] . . . low income and poor families" and who jeopardizes Defendant's "present and future employment for being falsely identified in a bogus Troll. [*sic*]" *Id*. In the words of Judge St. Eve, "Needless to say, calling [Plaintiff] a copyright troll and alleging that it is trying to extort a settlement does little to support Defendant's argument that [Plaintiff] did not establish good cause for the expedited discovery." *Zambezia Film Pty, Ltd. v. Does 1-65*, No. 13-C-1321, 2013 WL 4600385, at *2 (N.D. Ill. August 29, 2012) (St. Eve, J.) (attached as Exhibit 8). Accordingly, Defendant's pejorative and clichéd invectives against Plaintiff do not warrant this Court quashing the subpoena either. *Id*.

It also is worth noting here that *Charlie Countryman* is a mainstream motion picture. Complaint, Dkt. No. 1, ¶1. It was directed by Fredrik Bond, and stars Shia LaBeouf, Evan Rachel Wood, and Mads Mikkelsen, among others. *Id*., ¶2. *Charlie Countryman* premiered in the U.S. at the 2013 Sundance Film Festival, and was nominated for the Golden Bear Award at the 2013 Berlin International Film Festival. *Id*. There is litle danger to Defendant's reputation upon being named in a lawsuit for file-sharing a film of that kind. Thus, an alleged "effect on reputation" is not grounds for quashing the subpoena here.

CONCLUSION

In sum, Defendant has not offered any legal basis that would compel this Court to quash the subpoena, while there are several good reasons for denying the Motion. For the foregoing reasons, Plaintiff respectfully requests the Court to deny the Motion to Quash filed by Doe No. 20 in this matter.

Dated: June 6, 2014

Respectfully submitted,

COUNTRYMAN NEVADA, LLC

By: s/ Michael A. Hierl

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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true and correct copy of the foregoing Plaintiff's Response to Motion of Doe No. 20 to Quash or Vacate Subpoena was filed electronically with the Clerk of the Court and served on all counsel of record and interested parties via the CM/ECF system on June 6, 2014.

s/Michael A. Hierl