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Attorney for: Putative John Doe No. "X" in 3:12-cv-1475-CAB-WMC

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

PATRICK COLLINS, INC.
a California corporation,

Plaintiff,

v.

JOHN DOES 1 through 26,

Defendants.

CASE #: 3:12-cv-01371-JAH-BGS

Assigned to: Judge John A. Houston

Referred to: Magistrate Judge Bernard G. Skomal

JOHN DOE'S NOTICE OF RELATED CASES

PATRICK COLLINS, INC.
a California corporation,

Plaintiff,

v.

JOHN DOES 1 through 16,

Defendants.

CASE #: 3:12-cv-01373-MMA-BLM

Assigned to: Judge Michael M. Anello

Referred to: Magistrate Judge Barbara Lynn Major

PATRICK COLLINS, INC.
a California corporation,

Plaintiff,

v.

JOHN DOES 1 through 9,

Defendants.

CASE #: 3:12-cv-01436-H-MDD

Assigned to: Judge Marilyn L. Huff

Referred to: Magistrate Judge Mitchell D. Dembin

PATRICK COLLINS, INC.
a California corporation,

Plaintiff,

v.

JOHN DOES 1 through 9,
Defendants.

CASE #: 3:12-cv-01437-BTM-MDD

Assigned to: Judge Barry Ted Moskowitz
Referred to: Magistrate Judge Mitchell D. Dembin

PATRICK COLLINS, INC.
a California corporation,

Plaintiff,

v.

JOHN DOES 1 through 34,
Defendants.

CASE #: 3:12-cv-01474-WQH-DHB

Assigned to: Judge William Q. Hayes
Referred to: Magistrate Judge David H. Bartick

PATRICK COLLINS, INC.
a California corporation,

Plaintiff,

v.

JOHN DOES 1 through 12,
Defendants.

CASE #: 3:12-cv-01475-CAB-WMC

Assigned to: Judge Cathy Ann Bencivengo
Referred to: Magistrate Judge William McCurine,
Jr

MALIBU MEDIA, LLC, a California
limited liability company,

Plaintiff,

v.

JOHN DOES 1 through 25,
Defendants.

Case Number: 3:12-cv-0362-LAB-DHB

Assigned to: Judge Larry Alan Burns
Referred to: Magistrate Judge David H. Bartick

NOTICE OF RELATED CASES

The undersigned was recently retained to represent the putative John Doe identified on the caption above. All of the cases identified above, which were filed in this District this year are “part of a nationwide blizzard of civil actions brought by purveyors of pornographic films alleging copyright infringement by individuals utilizing a computer protocol known as BitTorrent.”¹

I. PATRICK COLLINS, INC. RELATED CASES

Between 2011 and 2012, Patrick Collins has filed nearly 250 of these mass copyright infringement cases nationwide. As noted above, in this in this District, it has filed six cases so far this year. It also filed two cases in this district last year and one back in February of this year, which are already terminated.² Just as with Malibu Media, when it files its many complaints, Patrick Collins, Inc., and its counsel—both “adult entertainment” companies are represented by the same attorneys—routinely ignore local rules that require it to also file a Notice of Related Cases.³ So, too, in this District: despite filing eight (8) highly similar cases so far this year in this District—two of which were filed as recently as June 18, 2012—Patrick Collins, Inc. has yet to file a single Notice of Related Cases. In essence, this is a form of forum shopping. Patrick Collins, Inc. neglects to file notices of related cases so it can try to fly under the radar and hedge its bets, in the hopes that some

¹ *In re: BitTorrent Adult Film Copyright Infringement Cases*, 2012 U.S. Dist. LEXIS 61447 (E.D.N.Y. May 1, 2012) Case No. CV-11-3995-DRH-GRB, Dkt. No. 39 (order and recommendation of Magistrate Gary Brown who was assigned all similar adult film copyright mass infringement cases then pending in the Eastern District of New York, including cases filed by Malibu Media, LLC and Patrick Collins, Inc.)

² Case Nos. 3:2011-cv-02135, 3:2011-cv-02143, and 3:2012-cv-00354.

³ *E.g.*, Central District of California, *see Malibu Media, LLC v. John Does 1-10*, 12-cv-3614, Dkt. No. 10, 6/29/12 (motion for sanctions for repeated violations of notice of related cases rule); and Eastern District of California, *Malibu Media, LLC v. John Does 1-10*, 12-cv-1260, Dkt. No. 16, 8/2/12 (Does’ Response to Malibu Media’s Notice of Related Cases, which Malibu Media initially refused to file, and then filed in a way that might have misled the Court).

Judges will allow plaintiff to take early discovery prior to considering plaintiff's dubious theory of "swarm joinder".⁴

II. MALIBU MEDIA, LLC RELATED CASES

Malibu Media has filed nearly 300 such cases nationwide so far in 2012. Plaintiff's attorneys in each of these nearly 600 cases have used cookie-cutter pleadings, including nearly identical complaints and requests to issue third party subpoenas prior to a Rule 26(f) conference. The factual allegations are the same, the same claims are presented and the same prayer for relief is made. The two "entities" even use the same "technical expert," and since February they have had the same attorney, Ms. Leemore Kushner. Ms. Kushner did not file any notices of related cases in the Central District of California for Malibu Media, and initially refused to file any Notices of Related Cases in the Eastern District of California. Further, Ms. Kushner, or her predecessor, also did not initially file Notices of Related Cases in the many cases she filed in the Central District of California on behalf of Patrick Collins, Inc. The general policy of Ms. Kushner's office, on behalf of both Patrick Collins and Malibu Media, appears to be to ignore Notice of Related Cases rules for as long as she and her clients can get away with it. This has resulted in multiple Judges across the State of California being assigned to highly similar Malibu Media and Patrick Collins cases.

III. RELATIONSHIP BETWEEN THE CASES: SAME PLAINTIFF, SAME CLAIMS, SAME FORM PLEADINGS, SAME ATTORNEY, SAME PROCEDURAL QUESTIONS, SAME TECHNICAL EXPERT

Key information on the six (6) pending cases Patrick Collins, Inc., and its counsel have filed in this District (the "**Related Cases**"), including filing dates, Judges assigned, copyrights at issue, can be found in the chart attached as Exhibit A.

⁴ *Hard Drive Prod's., Inc. v. Does 1-90*, N.D. Cal. Case No. 5:11-cv-3852-HRL ("simultaneous consideration of the application for early discovery and joinder has become the norm for courts in this district faced with similar cases. See, e.g., *Hard Drive Prods. v. Doe*, 2011 U.S. Dist. LEXIS 89858 (N.D. Cal. Aug. 12, 2011); *Boy Racer v. Does*, 2011 U.S. Dist. LEXIS 86746 (N.D. Cal. Aug. 5, 2011); *Diabolic Video Prods. v. Does 1-2099*, 2011 U.S. Dist. LEXIS 58351 (N.D. Cal. May 31, 2011)").

As a result of Patrick Collins, Inc.'s, failure to file Notices of Related Cases, and as demonstrated in Exhibit A, there are currently six (6) different Judicial Officers of this District—Judges Anello, Bencivengo, Hayes, Houston, Huff, and Moskowitz. Add to that the nine (9) Judicial Officers initially assigned in the Malibu Media cases (prior to many of those cases being transferred to Judge Burns after the undersigned filed a Notice of Related Cases in those action) and it appears that Ms. Kushner's office was content to have over 20 different Judicial Officers in this District assigned and referred to Malibu Media/Patrick Collins' approximately 25 highly similar lawsuits.

Beyond the obvious potential for duplication of judicial labor entailed in having so many different Judges assess the validity of the same copyrights, the different cases are identical and/or substantially similar in other key respects. In each case, the plaintiff has alleged the same claims (copyright infringement), on the same theories (infringement by the use of the BitTorrent peer-to-peer network), using the same form pleadings. In each case, the plaintiff moved for early discovery seeking to issue subpoenas to various Internet Service Providers (IPs) on the strength of essentially the same declaration from the same IT expert: one Mr. Tobias Fieser. In each case, the plaintiff is represented by the same attorney: Ms. Leemore Kushner of the Kushner Law Group. The main difference between the complaints are the IP addresses specified in Exhibit A to the complaints, as well as the mix of the copyrights at issue.

In sum, in each of the Related Cases: (1) the same plaintiffs have alleged identical claims for copyright infringement via BitTorrent (L.R. 40.1(g)(1)); (2) the same facts,⁵ namely alleged copyright infringement via BitTorrent, as well as the same legal question, namely whether early discovery should be granted, are also at issue (L.R. 40.1.(g)(3).

(a) Assignment to a Single District Judge Would Likely Effect a Saving of Judicial Effort as Well as Other Economies

⁵ It should be noted, however, the with respect to each individual Doe, the facts of his or her individual case, as well as the applicable legal defenses, and the circumstances of the alleged infringement (e.g., the infringement was committed by a neighbor on an unencrypted wireless network, or a minor child, etc.) will be different.

In light of all the foregoing, there can be no doubt that assignment of the Related Cases to a single pair of Judicial Officers would result in a substantial savings of Judicial effort as well as other economies. Indeed, after the undersigned insisted that Malibu Media file a Notice of Related Cases in the Central District of California (which Malibu Media categorically refused to do) the Courts of the Central District issued an order transferring all of the 30+ cases pending there to the same Judge and Magistrate. The transfer order specifically found that all of Malibu Media's cases in the Central District (which also involve the same copyrights and same form pleadings used here) should be transferred to the same Judge because it "would entail a substantial duplication of labor if heard by different judges," among other reasons. E.g., *Malibu Media v. John Does 1-10*, C.D. Cal. Case No. 12-3614, Dkt. No. 15, 7/10/12.⁶

In the Central District, after all of the cases were transferred to Judge Klausner, the Court issued an order vacating all prior orders authorizing early discovery, as well as all outstanding subpoenas. *Id.* at Dkt. No. 18, 7/10/12. The Court here might consider doing the same.

(b) The Arguments Malibu Media Uses to Defend Its Failure to File Notices of Related Cases Do Not Withstand Scrutiny

In the past, Malibu Media has defended its repeated failures and subsequent refusals to file Notices of Related Cases by arguing that it only needs to do so in cases involving the same unique file, as identified by 'hash tag.' Similarly, Malibu Media has argued that its attempts to check the "related box" on civil case cover sheets complies with its duty to file a Notice of Related Cases.⁷

A closer look at the facts, however, shows that these supposed explanations/excuses do not withstand scrutiny. As shown in the Exhibit B, which was originally filed by the

⁶ The undersigned also recently requested in the Central District that all of the cases filed by plaintiff's counsel Leemore Kushner on behalf of Patrick Collins, Inc. be assigned to the same Judicial Officers handling the Malibu Media cases in the Central District.

⁷ See, e.g., C.D. Cal. Case No. 12-cv-3614, Dkt. No 20, 7/6/12, p. 8 (hash tag argument), p. 9 (cover sheet argument).

undersigned in connection with the Notice of Related Cases filed in the Malibu Media Cases (12-cv-0362-LAB-DHB, ECF. No. 28-2) Ms. Kushner does *not*, in fact, attempt to relate *even cases involving the same hash tag*.⁸ There are two sets of two cases pending in the Southern District that were assigned to different Judges, despite the fact that the pairs involve the same unique hash file at issue. *See id.*; *cf.* 12-cv-1051-CAB-WMC with 12-cv-1357; *cf.* 12-cv-1061-BTM-JMA with 12-cv-1372-WQH-WMC. Similarly, despite this issue coming up multiple times between the undersigned and Ms. Kushner over the past two months, when Ms. Kushner filed a new complaint on July 27, 2012, she did not file a Notice of Related Cases, but rather checked the box on the civil case cover sheet in an attempt to have the new case assigned to Judge Burns with discovery referred to Judge Batrick. Simply put, this has happened before.

(c) Local Civil Rule 40.1(f) is Addressed to “Counsel” So the Undersigned May File a Notice of Related Cases

Unlike some other Districts which put the duty to file a Notice of Related Cases exclusively on the party filing an initial pleading, this District’s Notice of Related Cases is left open to all “counsel.” The rule provides, in relevant part,

“f. **Notice of Related Case, Duties of Counsel.** Whenever *counsel* has reason to believe that a pending action or proceeding on file or about to be filed is related to another pending action or proceeding on file in this or any other federal or state court (*whether pending, dismissed, or otherwise terminated*), counsel must promptly file and serve on all known parties to each related action or proceeding a notice of related case, stating the title, number and filing date of each action or proceeding believed to be related, together with a brief statement of their relationship and the reasons why assignment to a single district judge is or is not likely to effect a saving of judicial effort and other economies. The clerk will promptly notify the court

⁸ The same was also true in the Central District of California, and the Eastern District of California.

of such filing. This is a continuing duty that applies not only when counsel files a case with knowledge of a related action or proceeding but *also applies after the date of filing whenever counsel learns of a related action or proceeding.*” Local Civil Rule 40.1(f) (italics added).

Local Rule 40.1(i) further provides that “any actions determined to be related will be assigned to the district and magistrate judge to whom the lowest numbered case *was* assigned.” *Id.* at 40.1(i) (italics added to highlight use of past tense).

Since plaintiff’s counsel has repeatedly refused to comply with similar duties in other Districts the Putative Doe identified above will fulfill this duty.

(d) Conclusion

For the foregoing reasons, the Putative John Doe identified above respectfully requests, by this Notice of Related Cases, that the Court: (1) deem all of the Patrick Collins cases, as identified above, related to one another; and (2) deem all of the Patrick Collins cases related to *Malibu Media I*; and (3) transfer all of the Related Cases to Judge Burns (who is currently presiding over the active low-numbered Malibu Media case), or to Judge Houston (currently presiding over active low-numbered Patrick Collins case), per the low number rule, or to such other Judicial Officers as the Courts of this District deem appropriate.

Respectfully submitted,

DATED: September 21, 2012,

THE PIETZ LAW FIRM

/s/ Morgan E. Pietz

Morgan E. Pietz

THE PIETZ LAW FIRM

Attorney for Putative John Doe(s)

Appearing on Caption

CERTIFICATE OF SERVICE

I hereby certify that on September 21, 2012, the above document was submitted to the CM/ECF system, which sent notification of such filing(s) to the plaintiff Malibu Media, LLC, which is registered for electronic service.

Check if Applicable:

☐ Copies of these documents were also served via U.S. Mail, on this date, to the following parties, who are not registered for electronic service:

N/A

Respectfully submitted: September 21, 2012 THE PIETZ LAW FIRM

/s/ Morgan E. Pietz

Morgan E. Pietz

THE PIETZ LAW FIRM

Attorney for Putative John Doe(s)

Appearing on Caption

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