

Honorable Richard A. Jones

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON**

Dallas Buyers Club, LLC,

Plaintiff

v.

DOES 1-10,

Defendants.

Case No. 14-cv-1819-RAJ

Opposition To Plaintiff's Renewed
Motion For Leave To Take Third-
Party Discovery

COMES NOW, Jeff Pleake, an individual, by and through counsel, and hereby OPPOSES Plaintiff Dallas Buyers Club, LLC's (DBC's) renewed motion for leave to take third-party discovery.

I. INTRODUCTION

For a case without a single named defendant, this case has seen substantial litigation. This case was originally filed on November 26, 2014. There have been over 30 docket entries in this matter. Still, there is not one single named defendant.

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2 Although Plaintiff DBC originally sought leave to serve subpoenas on
3 subscribers in other, similar cases, DBC did not do so in this matter. See, e.g.,
4 Case No. 14-cv-1336, Dkt 25. This Court terminated those motions for failing
5 to properly set out exactly what discovery DBC was seeking. See Case No. 14-
6 cv-1336, Dkt 28.
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8 DBC did not serve a motion to seek third-party discovery in the instant
9 action. Regardless, DBC began serving third-party subpoenas on subscribers
10 in the instant action. Two subscribers are represented by the undersigned
11 attorney, and filed motions to quash. See Dkt Nos. 22, 24. This Court granted
12 those two motions and quashed the subpoenas served on all third parties
13 subject to limitations set out in the Court's order. See Dkt 26.
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16 In its order, the Court directed DBC to amend its complaint and name
17 any parties against which it intended to proceed within 30 days or explain
18 why it needed to proceed against any Doe parties. *Id.* Those 30 days have now
19 passed, and DBC has still not named a single defendant. Instead, DBC has
20 renewed its motion to seek third party discovery.
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23 II. DBC'S MOTION SHOULD BE DENIED

24 It is worth noting that DBC's motion affects no one other than the two
25 subscribers, represented by undersigned counsel, who filed motions to quash
26 subpoenas served on them. This matter was initiated against ten Doe
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1 defendants. Of those ten, seven have now been dismissed. See Dkt Nos. 12,
2 13, 15, 27, 28, 29, 30. That leaves only three currently-unnamed does: Does
3 No. 5, 6, and 9. Of those, DBC alleges that it is prepared to name Doe No. 5
4 now, although it offers no reasonable explanation why it has not done so. See
5 Dkt 31, page 3, line 12. The only two remaining doe defendants, Does No. 6
6 and 9, are Chloe Harris and Jeff Pleake; the two individuals who filed
7 motions to quash the unwarranted subpoenas served on them. See Dkt 23, 25.
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11 Ms. Harris and Mr. Pleake have denied any wrongdoing, and have
12 made that known to DBC. Nonetheless, DBC insists on pursuing this action
13 against them. As set out in their earlier motions, DBC's approach is obviously
14 an attempt to exert maximum pressure on these subscribers and force them
15 to incur unnecessary attorneys fees and costs, all the while remaining
16 immune from the inevitable fees motion that will inevitably result from being
17 improperly named.
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20 All Mr. Pleake asks for is a level playing field. Mr. Pleake knows he has
21 done nothing wrong. Mr. Pleake knows he will prevail in this matter if it were
22 to proceed against him. Accordingly, Mr. Pleake requests that the Court deny
23 DBC's motion to seek discovery against him. If DBC has a reasonable basis
24 upon which to proceed against Mr. Pleake, then it should not have any
25 reservations about moving forward. However, DBC's reservations no doubt
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1 stem from the reality that even if some accused subscribers committed the
2 acts of which they were accused, certainly not all of the accused subscribers
3 did. For example, even in this matter, a number of doe defendants were
4 dismissed because apparently DBC's initial investigation is flawed. See, e.g.,
5 Dkt 27 (dismissing Doe 1 because the subscriber information provided was
6 apparently flawed); Dkt 29 (dismissing Doe 4 because the IP address provided
7 by DBC apparently did not correspond to an infringer).

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11 Unless DBC names Mr. Pleake, he cannot recover attorneys fees as the
12 prevailing party. DBC is engaging in asymmetric litigation by forcing Mr.
13 Pleake to incur attorneys fees without the possibility of recovering those fees
14 as envisioned by the Copyright Act. Accordingly, Mr. Pleake respectfully
15 requests that the Court deny DBC's motion. DBC should be required to either
16 move forward or stop harassing innocent people.
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19 **III. REQUEST FOR COMPENSATION PURSUANT TO RULE 45**

20 Mr. Pleake has already set out the substantial hardship and expense
21 that will burden him if he is forced to respond to third-party discovery. See
22 Dkt 23. Nothing has changed.
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24 In the Ninth Circuit, where the costs imposed on a third-party for
25 complying with a subpoena are significant, as here, those costs must be
26 shifted to the requesting party. See *Legal Voice v. Stormans Inc.*, 738 F.3d
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2 1178, 1184 (9th Cir. 2013)(“Rule 45(d)(2)(B)(ii) requires the district court to
3 shift a non-party's costs of compliance with a subpoena, if those costs are
4 significant.”). The failure to shift costs under these circumstances constitutes
5 reversible error. *Legal Voice*, 738 at 1185 (9th Cir. 2013)(although sanctions
6 are discretionary, cost-shifting is mandatory).
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8 As set out earlier, Mr. Pleake estimates that his expenses for
9 compliance with the DBC subpoena as earlier served on him would total
10 approximately \$5,400. See Dkt 23. That sum is significant given Mr. Pleake’s
11 unique circumstances. Accordingly, should the Court be inclined to allow
12 DBC’s discovery to proceed, Mr. Pleake respectfully requests that the costs of
13 compliance with that subpoena be shifted to DBC.
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16 Dated: June 9, 2015

Respectfully submitted,

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19 /s/ John Whitaker

John Whitaker

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CERTIFICATE OF SERVICE

The undersigned attests that the foregoing document has been served on all parties of record via the Court's ECF service system on the date indicated below.

Dated: June 9, 2015

/s/ John Whitaker

John Whitaker