

HONORABLE THOMAS O. RICE

J. CHRISTOPHER LYNCH, WSBA #17462

JEFFREY R. SMITH, WSBA #37460

RHETT V. BARNEY, WSBA #44764

LEE & HAYES, PLLC

601 W. Riverside Avenue, Suite 1400

Spokane, WA 99201

Phone: (509) 324-9256

Fax: (509) 323-8979

Emails: [chris@leehayes.com](mailto:chris@leehayes.com)

[jeffreys@leehayes.com](mailto:jeffreys@leehayes.com)

[rhettb@leehayes.com](mailto:rhettb@leehayes.com)

*Counsel for Defendant Ryan Lamberson*

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

ELF-MAN, LLC,

Plaintiff,

vs.

RYAN LAMBERSON,

Defendant.

No. 2:13-CV-00395-TOR

DECLARATION OF J.  
CHRISTOPHER LYNCH IN  
SUPPORT OF DEFENDANT'S  
MOTION TO COMPEL

Hearing: July 14, 2014  
Time: 6:30 p.m.  
Without Oral Argument

I, J. Christopher Lynch, declare as follows:

1. I am over 18 years of age and am competent to testify. I make this declaration based on my own personal knowledge. I am one of the attorneys for Defendant, Ryan Lamberson (hereinafter, "Mr. Lamberson").

DECLARATION OF  
J. CHRISTOPHER LYNCH - 1

LEE & HAYES, PLLC  
601 West Riverside Avenue, Suite 1400  
Spokane, Washington 99201  
Telephone: (509)324-9256 Fax: (509)323-8979

1           2.     I certify that I have attempted in good faith to obtain the discovery  
2 sought prior to bringing this Motion to Compel. I have spoken with counsel for  
3 plaintiff Carl Crowell over the telephone and I have written multiple emails to Mr.  
4 Crowell and Ms. VanderMay demanding the requested documents, all to no avail.  
5 Plaintiff has shown no willingness to provide the documents, to debate the claimed  
6 privilege, or even to provide the required privilege log under Fed. R. Civ. P.  
7 26(b)(5)(A). Today, June 13, 2014, I spoke with attorney David Lowe of Seattle  
8 who told me he may become attorney for Elf-Man, LLC in this case. I informed  
9 him of the outstanding discovery and I was not informed that he had any authority  
10 to provide the documents or privilege logs.

11           3.     Attached as Exhibit A is a true and correct copy of the Second Set of  
12 Requests for Production and the Responses Thereto, including a copy of the  
13 envelope in which they were received. The Requests were served on April 22,  
14 2014. The responses were received on May 30, 2014, as seen by the copy received  
15 date stamp from my firm. The responses were postmarked May 28, 2014, as seen  
16 by the postmark on the envelope.

17           4.     On April 21, 2014, I wrote to counsel for plaintiff and informed her  
18 that we had discovered the Gerephil Molina presentation about APMC (“the  
19 APMC Presentation”) which is found at:

20                   [http://prezi.com/b\\_f7djco81ri/copy-of-themanako123/](http://prezi.com/b_f7djco81ri/copy-of-themanako123/).

21           5.     Because the APMC Presentation differs significantly from the  
22 explanation of the relationship of the plaintiff to the investigators provided by

1 plaintiff in response to Request for Production No. 15, and because the APMC  
2 Presentation indicates that APMC is not only the investigator, but the source of  
3 funding and of the strategy and pleadings in this matter, and because the APMC  
4 Presentation expressly references plaintiff's identified witness Mr. Macek, I  
5 prepared the three targeted Requests for Production about APMC that are the  
6 subject of this Motion to Compel.

7         6. My April 21, 2014, email to plaintiff's counsel forewarned her about  
8 the three new requests for production. I specifically addressed the APMC  
9 Presentation and how it leads to the conclusion there could be no privilege for  
10 APMC correspondence. I requested counsel for plaintiff to provide an explanation  
11 of privilege if there could be one. A copy of this email redacted to eliminate  
12 confidential material is attached as Exhibit B.

13         7. I wrote once more on the subject on April 22, 2014, serving the  
14 discovery and explaining why the requested material could not be privileged. We  
15 invited a dialogue on it, telling counsel we assumed her silence to indicate  
16 concurrence with our presumptions. A copy of this email redacted to eliminate  
17 confidential material is attached as Exhibit C.

18         8. Plaintiff's counsel responded to me the next day on April 23, 2014,  
19 refusing to address the issue of privilege and then foreshadowing the failure to  
20 produce discovery we predicted would come. Here is a quote from her April 23,  
21 2014 email on the point:

1 Please understand further that I am not at your beck and call and will  
2 respond to communications from your office as my calendar and other  
obligations permit.

3 With respect to additional discovery, the way this process works is  
4 that you should serve discovery requests pursuant to the Federal Rules  
5 of Civil Procedure and we will respond in a timely manner. To the  
6 extent that you seek material that is not subject to discovery, please  
7 expect us to file our objections. Any issues that cannot be resolved by  
counsel will proceed to Judge Rice. You can, of course, continue to  
try to circumvent this process but you will not succeed. We will  
respond to your second request for production in the ordinary course  
and following this process.

8  
9 9. Then, as predicted, no documents were produced. Additionally,  
10 although plaintiff's counsel indicated she would "respond in a timely manner" the  
11 "responses" were not received until May 30, 2014. If plaintiff desired a sincere  
12 discussion about the merits of its objections, it could have served the objections  
13 upon receipt of the discovery, but plaintiff chose to wait until past the last minute,  
again attempting to avoid an obligation to shine light on its cloaked investigators.

14  
15 10. I noticed that the discovery responses received on May 30, 2014, bore  
16 the May 28, 2014, postmark and that this was not consistent with the May 22,  
17 2014, Certificate of Service. I knew from my experience that failure to timely  
18 serve discovery is a waiver of objections in the Federal system, so I knew this  
discrepancy was substantively important.

19  
20 11. Consequently, on the date of receipt of these documents, I wrote to  
21 counsel for plaintiff and offered her an opportunity to correct the Certificate of  
22 Service, which seemed as if it must be in error, since causing something to be

1 served on May 22 would not result in a postmark of May 28. This email is attached  
2 as Exhibit D.

3 12. Counsel for plaintiff replied on May 30, 2014, and provided some  
4 hearsay that her assistant mailed the document as instructed on May 22, 2014, and  
5 that the fault must lie with the post office. This email is attached as Exhibit E.

6 13. This explanation did not persuade me that the service was completed  
7 on May 22. I checked other discovery mailed by plaintiff's counsel to my law firm.  
8 My firm "copy receive stamps" incoming pleadings so I compared other pleadings  
9 from plaintiff's counsel and found that none of them had an eight day delay from  
10 the stated Certificate of Service to the delivery date. I also checked and discovered  
11 that other discovery served by plaintiff had been simultaneously mailed and  
12 emailed to my firm with a Certificate of Service showing both methods of service,  
13 but this Second Set of Requests for Production had not been simultaneously  
14 emailed as it was mailed; in fact, it had not been emailed at all. This made me more  
15 suspicious that counsel for plaintiff might have wished that the responses were sent  
16 on May 22, but likely they were not. It occurred to me that one way to reconcile  
17 the discrepancy would be for the assistant that was the subject of the May 30  
18 hearsay explanation to provide his or her own declaration as to the events of  
19 May 22, so that the real circumstances of the service could be determined. I  
20 responded on that same day, May 30, pointing out the concerns we had with  
21 counsel's curt explanation that the fault lied with the post office. I noted the normal  
22 time to obtain mail from her offices was not eight days, and I noted that this

DECLARATION OF  
J. CHRISTOPHER LYNCH - 5

LEE & HAYES, PLLC  
601 West Riverside Avenue, Suite 1400  
Spokane, Washington 99201  
Telephone: (509)324-9256 Fax: (509)323-8979

1 discovery was not simultaneously emailed as other discovery had been. I requested  
2 that a sworn Declaration from the un-named assistant would go a long way toward  
3 us accepting the explanation as the truth. This email is attached at Exhibit F.

4 14. I assumed that the un-named assistant would either (i) be quite willing  
5 to provide a detailed declaration (assuming the document was actually served on  
6 May 22), or (ii) that the request would force the issue and expose that perhaps it  
7 was not actually served on May 22, and the assistant would not be willing to  
8 provide a detailed declaration to support Ms. VanderMay's purported May 22  
9 Certificate of Service.

10 15. If the document had actually been served on May 22, then I expected  
11 a declaration that included recollection of the attorney signing the document on  
12 that date, the envelope being prepared and stamped on that date, some explanation  
13 of how the firm's mail service worked, whether it was picked up by USPS or  
14 dropped off at USPS, and at what time. I assumed if it had actually been served on  
15 May 22 that this declaration would talk about the fate of other mail sent at the  
16 same time from this firm – i.e. presumably, if this document took six days to get a  
17 postmark, then others did too. In other words, I assumed there might be an  
18 explanation of what other mail from the VanderMay firm from May 22, 2014, met  
19 the same fate. Or if the fault were with a particular box or office, maybe there  
20 would have been other users of the same USPS box or office that experienced the  
21 fate of this six day delay. A six day delay in the mail could affect many people and  
22 important matters such as bills and contracts and rent and the like and might even

1 be local news in Salem. But no such declaration of the un-named assistant was  
2 provided.

3 16. On Monday, June 2, 2014, I received a telephone call from Carl  
4 Crowell, who stated he was “non-appearing” counsel for Elf-Man, LLC. I spoke  
5 with Mr. Crowell for 44 minutes. He told me that Ms. VanderMay was going to  
6 withdraw from the matter and that he would attend to the urgent issues which he  
7 asked me to identify for him. I identified the postmark discrepancy as one of the  
8 urgent issues. I identified that a Declaration of the person who actually served the  
9 document would be helpful in resolving the substantive discrepancy. Mr. Crowell  
10 wrote me an email after the call on June 2, 2014, and asked for a copy of my letter  
11 to counsel about the postmark issue “and I will see that it is addressed.”

12 17. On that same June 2, 2014, I replied to Mr. Crowell and provided my  
13 correspondence with Ms. VanderMay on the postmark issue as he requested. A  
14 copy of this email redacted to eliminate confidential material is attached as Exhibit  
15 G. This email explained the substantive importance of the Certificate of Service  
16 issue and demanded the discovery or the privilege logs:

17 The APMC discovery is important. Please review the “prezi”  
18 presentation of Mr. Gerephil Molina of APMC Cebu about which we  
19 became aware after counsel gave us the implausible explanation under  
20 RFP #15. This 700 page expose seems to explain the back office of  
21 these matters -- APMC doing the uploading, preparing the pleadings,  
22 doing the discovery, all from Germany or the Philippines. None of  
this can be privileged as plaintiff claims. And the May 22 Declaration  
of Service vs the May 28 postmark is critical on this point. If the  
objections are waived, then we expect the documents immediately. If  
the objections are not waived, then we expect the privilege log



1 immediately and our first order of business will be our required LR 37  
2 conference on the production.

3 Mr. Crowell has not again contacted me about the Elf-Man case to provide  
4 any explanation of the postmark or to discuss production of the documents or the  
5 privilege log. No Declaration of Ms. VanderMay's assistant has been provided.

6 18. Even though I had written to Mr. Crowell on June 2, 2014, Ms.  
7 VanderMay replied to me on June 3, 2014:

8 Our office practice for outgoing mail is as follows: mail that is ready  
9 by the time of our postal delivery is given to our mail carrier and mail  
10 that is ready later in the day is taken to a mailbox by one of our office  
11 staff. The location of the box varies depending upon what other  
12 delivery assignments the staff person has on a particular day.

13 No declaration of the un-named assistant was provided, and no details about  
14 the events (or non-events) of May 22 were provided, like what mailbox was used  
15 and what other mail met the similar fate. The requested privilege log was also not  
16 provided.

17 19. On that same date, June 3, 2014, Ms. VanderMay filed her Motion to  
18 Withdraw citing ethical differences with "plaintiff's representatives." ECF No. 55  
19 at page 2. Note that the identical language is used in the Motion to Withdraw in  
20 The Thompsons Film case, Case No. 2:13-cv-00126-TOR, ECF No. 103 at page 2,  
21 a case with an entirely different plaintiff. Who are these "plaintiff's  
22 representatives" with whom plaintiff's counsel has its ethical differences? How  
could any new lawyer take the case and not suffer the same ethical issues?



1           20. I remain unconvinced that the responses were served on May 22,  
2 2014, despite Ms. VanderMay's Certificate of Service to the contrary.

3           21. Today, June 13, 2014, I spoke with attorney David Lowe of Seattle  
4 who told me he may become attorney for Elf-Man, LLC in this case. We spoke for  
5 66 minutes. Mr. Lowe told me that the deposition of Mr. Lamberson scheduled for  
6 Thursday, June 19 would not happen because he could not make it. He also told me  
7 that the Fed. R. Civ. P. 30(b)(6) Deposition of Elf-Man, LLC would not happen on  
8 Friday, June 20, 2014, because Elf-Man, LLC could not make it. A copy of the  
9 30(b)(6) Notice is attached as Exhibit H.

10          22. I told Mr. Lowe it was no surprise that Elf-Man, LLC would not  
11 attend the noted 30(b)(6) deposition, and it was no surprise that plaintiff never  
12 noted Mr. Lamberson's deposition for the agreed June 19, 2014 date. It is no  
13 surprise because plaintiff has no real desire to participate in the merits of this  
14 matter, they are just pretending they wish to depose Mr. Lamberson and inspect his  
15 machine. This case was filed more than 14 months ago. There has been no sincere  
16 effort to take Mr. Lamberson's deposition, just a transparent request by plaintiff for  
17 a "discovery plan" to stop defendant from discovery while plaintiff pretends to  
18 want to take Mr. Lamberson's deposition. Recall the May 9, 2014, Discovery  
19 Conference Ms. VanderMay initiated with the Court wherein plaintiff requested  
20 that all discovery be stayed until plaintiff could depose Mr. Lamberson and inspect  
21 his machine. Defendant submitted an *in camera* letter dated May 8, 2014,  
22 explaining that Mr. Lamberson's employer required him to request time off work

1 in advance, but that we had done that and had offered several days for deposition,  
2 and that the parties had agreed to Thursday, June 19, 2014. Mr. Smith of my firm  
3 explained this to the Court in that May 9, 2014 hearing, expressly mentioning the  
4 Fed. R. Civ. P. 30(b)(6) deposition of Elf-Man, LLC for the next date. Recall that  
5 the Court denied the request to allow only plaintiff's discovery to go forward, and  
6 the Court acknowledged that taking the 30(b)(6) at the same time made sense. Now  
7 that plaintiff's "discovery plan" request has been denied by the court, it is no  
8 surprise that plaintiff has fallen silent on its representations that efficient  
9 administration of justice demands a prompt deposition of Mr. Lamberson. It is no  
10 surprise that Mr. Lowe has represented to me that Elf-Man, LLC will not appear  
11 for the noted deposition next Friday.

12 23. It appears plaintiff has an intractable problem: it has representatives  
13 that are apparently trying to force plaintiff's counsel into actions the counsel  
14 cannot undertake in good faith. Plaintiff has repeatedly failed to allow discovery  
15 of the basic facts of the case, and I cannot imagine how these representatives will  
16 ever "allow" such discovery in this "severed" case when there are lawsuits against  
17 hundreds of people in our state alone based on the same inadmissible evidence of  
18 an imperceptible bit harvested by an unlicensed investigator in another country  
19 from an IP address but with no corroboration that any identifiable person sent the  
20 imperceptible bit. For example, even if the Court were to grant our pending Motion  
21 to Compel the deposition of the German investigators in Spokane, ECF No. 50, we  
22 sincerely doubt the "plaintiff's representatives" would be cooperative about

1 compliance with the Order, given the reluctance to date to comply with discovery  
2 requests and the Court's Order, ECF No. 31, to explain the relationship with the  
3 investigators. On behalf of Mr. Lamberson, we respectfully request that the Court  
4 Order plaintiff to comply with discovery, award costs and attorneys fees. We also  
5 respectfully request that plaintiff's case be dismissed with prejudice, and that Mr.  
6 Lamberson be declared the prevailing party such that he can pursue costs,  
7 attorney's fees and monetary sanctions under 17 U.S.C. §505, 28 U.S.C. §1927,  
8 and Fed. R. Civ. P. 11.

9 I declare under penalty of perjury under the laws of the United States that  
10 the foregoing is true and correct.

11  
12 DATED this 13<sup>th</sup> day of June, 2014, in Spokane, Washington.

13 LEE & HAYES, PLLC

14  
15 By: s/ J. Christopher Lynch

16 J. Christopher Lynch, WSBA #17462  
17 601 W. Riverside Avenue, Suite 1400  
18 Spokane, WA 99201  
19 Phone: (509) 324-9256  
20 Fax: (509) 323-8979  
21 Email: [chris@leehayes.com](mailto:chris@leehayes.com)  
22

*Counsel for Defendant Ryan Lamberson*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 13<sup>th</sup> day of June, 2014, I caused to be electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Maureen C. VanderMay

[efile@vandermaylawfirm.com](mailto:efile@vandermaylawfirm.com)

LEE & HAYES, PLLC

By: s/ J. Christopher Lynch

J. Christopher Lynch, WSBA #17462

601 W. Riverside Avenue, Suite 1400

Spokane, WA 99201

Phone: (509) 324-9256

Email: [chris@leehayes.com](mailto:chris@leehayes.com)

# EXHIBIT A

1 Maureen C. VanderMay, WSBA No. 16742  
The VanderMay Law Firm PC  
2 2021 S. Jones Blvd.  
Las Vegas, Nevada 89146  
3 (702) 538-9300

RECEIVED

MAY 30 2014

LEE & HAYES, PLLC

4  
5  
6 UNITED STATES DISTRICT COURT  
7 EASTERN DISTRICT OF WASHINGTON

8 ELF-MAN, LLC,

9 Plaintiff,

10 v.

11 RYAN LAMBERSON,

12 Defendant.

Case No.: 2:13-CV-00395-TOR

PLAINTIFF ELF-MAN, LLC'S  
RESPONSE TO DEFENDANT  
LAMBERSON'S SECOND SET OF  
REQUESTS FOR PRODUCTION TO  
PLAINTIFF

13  
14 Plaintiff, Elf-Man, LLC, by and through its counsel of record Maureen C.  
15 VanderMay and The VanderMay Law Firm PC, responds to Defendant Ryan  
16 Lamberson's Second Set of Requests for Production to Plaintiff.

17 **PRELIMINARY OBJECTIONS**

18 Plaintiff, Elf-Man, LLC makes the following preliminary objections, whether  
19 or not such objections are separately set forth in response to each request.

20 1. Plaintiff objects to each definition, instruction, and request to the  
21 extent that it calls for the production of documents and information protected by  
22 the attorney-client privilege, the work product doctrine, or any other applicable  
23 privilege. Plaintiff does not intend to produce any such documents or information  
24 except as ordered by the Court, and does not waive any applicable privilege with  
25

26 PLAINTIFF ELF-MAN, LLC'S  
27 RESPONSE TO DEFENDANT  
28 LAMBERSON'S SECOND SET OF  
REQUESTS FOR PRODUCTION - Page 1



1 respect to any such documents or information that are inadvertently produced.

2 Plaintiff also reserves the right to redact documents that it produces to limit the  
3 disclosure of such information.

4       2.     Plaintiff objects to Defendant's Instructions, Definitions and Requests  
5 to the extent that they seek to expand the scope of Plaintiff's obligations under the  
6 controlling law, including the Federal Rules of Civil Procedure.

7       3.     Plaintiff objects to the definition of "document" as overly broad and  
8 unduly burdensome. Plaintiff will comply with this definition only to the extent  
9 that it is reasonable and consistent with the requirements of the Federal Rules of  
10 Civil Procedure.

11       4.     Plaintiff objects to Defendant's Instructions, Definitions and Requests  
12 to the extent that they seek information not in Plaintiff's possession, custody or  
13 control.

14       5.     Plaintiff objects to Defendant's Instructions, Definitions and Requests  
15 to the extent that they seek information that has been previously produced by  
16 Plaintiff.

17       6.     Plaintiff objects to Defendant's Instructions, Definitions and Requests  
18 to the extent that they seek information that may be obtained more easily and at a  
19 lower cost through other discovery methods or from sources that are equally  
20 accessible to Plaintiff and Defendant.

21       7.     Plaintiff objects to Defendant's Instructions, Definitions and Requests  
22 to the extent that they seek information that is not either relevant to the claims  
23 asserted in this action or reasonably calculated to lead to the discovery of  
24 admissible evidence.

25  
26 PLAINTIFF ELF-MAN, LLC'S  
27 RESPONSE TO DEFENDANT  
28 LAMBERSON'S SECOND SET OF  
REQUESTS FOR PRODUCTION - Page 2



1        8. Plaintiff reserves the right to supplement these responses as additional  
 2 information becomes available in this action, and to revise or correct these  
 3 responses as this action progresses.

4                    **RESPONSE TO SPECIFIC REQUESTS**

5                    **REQUEST FOR PRODUCTION NO. 29:** All correspondence (and  
 6 included attachments and links) of plaintiff company Elf-Man, LLC with (i.e. to  
 7 and from) APMC LLC regarding the investigation and prosecution of claims  
 8 against Mr. Lamberson.

9                    **RESPONSE TO REQUEST FOR PRODUCTION NO. 29:**

10        Plaintiff objects to this request on the ground that it is overly broad, not  
 11 likely to lead to discoverable evidence, and seeks material subject to the attorney-  
 12 client privilege and work product protections. Without waiving these objections,  
 13 Plaintiff responds to this request as follows: Defendant is aware from documents  
 14 previously produced in this action that Plaintiff, through its sales agent Vision  
 15 Films, Inc., has retained APMC LLC to manage its anti-piracy efforts, including  
 16 but not limited to this litigation. Plaintiff's communications with its agent that is  
 17 managing this litigation are privileged and not discoverable.

18                    **REQUEST FOR PRODUCTION NO. 30:** All correspondence (and  
 19 included attachments and links) of Elf-Man, LLC's purported agent Vision Films,  
 20 Inc. with (i.e. to and from) APMC LLC regarding the investigation and  
 21 prosecution of claims against Mr. Lamberson.

22                    **RESPONSE TO REQUEST FOR PRODUCTION NO. 30:**

23        Plaintiff objects to this request on the ground that it is overly broad, not  
 24 likely to lead to discoverable evidence, and seeks material subject to the attorney-  
 25

26 PLAINTIFF ELF-MAN, LLC'S  
 27 RESPONSE TO DEFENDANT  
 28 LAMBERSON'S SECOND SET OF  
 REQUESTS FOR PRODUCTION - Page 3

1 client privilege and work product protections. Without waiving these objections,  
2 Plaintiff responds to this request as follows: Defendant is aware from documents  
3 previously produced in this action that Plaintiff, through its sales agent Vision  
4 Films, Inc., has retained APMC LLC to manage its anti-piracy efforts, including  
5 but not limited to this litigation. Communications between Plaintiff's sales agent  
6 and the agent that is managing this litigation are privileged and not discoverable.

7 **REQUEST FOR PRODUCTION NO. 31:** All correspondence (and  
8 included attachments and links) of plaintiff's counsel with (i.e. to and from)  
9 APMC LLC regarding the investigation and prosecution of claims against Mr.  
10 Lamberson.

11 **RESPONSE TO REQUEST FOR PRODUCTION NO. 31:**

12 Plaintiff objects to this request on the ground that it is overly broad, not  
13 likely to lead to discoverable evidence, and seeks material subject to the attorney-  
14 client privilege and work product protections. Without waiving these objections,  
15 Plaintiff responds to this request as follows: Defendant is aware from documents  
16 previously produced in this action that Plaintiff, through its sales agent Vision  
17 Films, Inc., has retained APMC LLC to manage its anti-piracy efforts, including  
18 but not limited to this litigation. Plaintiff's counsel's communications with  
19 Plaintiff's agent that is managing this litigation are privileged and not discoverable.

20 ////

21 ////

22 ////

23 ////

24 ////

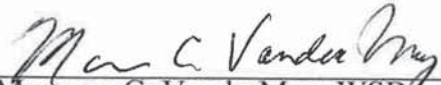
25  
26 PLAINTIFF ELF-MAN, LLC'S  
27 RESPONSE TO DEFENDANT  
28 LAMBERSON'S SECOND SET OF  
REQUESTS FOR PRODUCTION - Page 4

1 Plaintiff agrees to supplement and amend the above responses as new  
2 information becomes available.

3 DATED: May 22, 2014.

4 Respectfully submitted,

5 The VanderMay Law Firm PC

6  
7   
8 Maureen C. VanderMay, WSBA 16742  
9 elfmanwa@vandermaylawfirm.com  
10 The VanderMay Law Firm PC  
11 2021 S. Jones Blvd  
12 Las Vegas, Nevada 89146  
13 Of Attorneys for Plaintiff  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

26 PLAINTIFF ELF-MAN, LLC'S  
27 RESPONSE TO DEFENDANT  
28 LAMBERSON'S SECOND SET OF  
REQUESTS FOR PRODUCTION - Page 5

The VanderMay Law Firm  
2085 Commerical Street NE  
Salem, Oregon 97301

PORTLAND OR 970

28 MAY 2014 PM 4 L



John Christopher Lynch  
Lee & Hayes, PLLC  
601 W. Riverside Avenue, Suite 1400  
Spokane, Washington 99201

99201062750





HONORABLE THOMAS O. RICE

J. CHRISTOPHER LYNCH, WSBA #17462  
JEFFREY R. SMITH, WSBA #37460  
RHETT V. BARNEY, WSBA #44764  
LEE & HAYES, PLLC  
601 W. Riverside Avenue, Suite 1400  
Spokane, WA 99201  
Phone: (509) 324-9256  
Fax: (509) 323-8979  
Emails: [chris@leehayes.com](mailto:chris@leehayes.com)  
[jeffreys@leehayes.com](mailto:jeffreys@leehayes.com)  
[rhettb@leehayes.com](mailto:rhettb@leehayes.com)

*Counsel for Defendant Ryan Lamberson*

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

ELF-MAN, LLC,

Plaintiff,

vs.

RYAN LAMBERSON,

Defendant.

No. 2:13-CV-0395-TOR

DEFENDANT LAMBERSON'S  
SECOND SET OF REQUESTS FOR  
PRODUCTION TO PLAINTIFF

**Requesting Party:** RYAN LAMBERSON. (Hereinafter DEFENDANT)  
**Attorney for Requesting Party:** J. Christopher Lynch; Lee & Hayes, PLLC  
**Answering Party:** Elf-Man, LLC (Hereinafter PLAINTIFF)  
**Attorney for Answering Party:** Maureen VanderMay

DEFENDANT RYAN LAMBERSON'S  
SECOND REQUESTS FOR PRODUCTION  
TO PLAINTIFF- 1

**LEE & HAYES, PLLC**  
601 W. Riverside Avenue, Suite 1400  
Spokane, Washington 99201  
(509) 324-9256  
Fax: (509) 323-8979

**INSTRUCTIONS**

1. Production is requested in the offices of LEE & HAYES, PLLC, 601 W. Riverside Ave., Suite 1400, Spokane, Washington 99201, counsel for Ryan Lamberson, ("Defendant"), within 30 days of the date of service.

2. **Organization.** "Produce" means to provide responsive documents as they are kept in the usual course of business or organized and labeled to correspond with the categories in the request.

3. **Form of Production.** Pursuant to Rule 34(b)(2)(E), Federal Rules of Civil Procedure, Defendant requests that electronic data be produced in its native format. With regard to other documents not created or stored in electronic format, all pages shall be consecutively numbered, and produced in native format.

To the extent the information exists in both hard copy and electronic form, production is requested in each form ensuring that any metadata or embedded data is maintained intact in the electronic production. These requests expressly include any version, draft or edits made to the information or document requested. If you ordinarily maintain the information you are producing in a way that makes it searchable by electronic means, the information should not be produced in a form that removes or signification degrades this feature.

Information shall be produced in a manner which preserves its sequential relationship with other documents being produced and shall include the file folder, folder tabs and other organizational or identification aids associated with its file location. The specificity of any request or portion thereof shall not be construed as reducing the scope of any more generalized request or portion thereof.

4. **Destruction.** If any information responsive to one or more of the following requests has been destroyed, lost or misplaced, you are to state when and under what circumstances such document was destroyed, lost or misplaced.

5. **Continuing in Nature.** All requests shall be deemed continuing in nature so as to require supplemental production if further documents are obtained or discovered by Elf-Man, LLC ("Plaintiff") between the time it responds to these

DEFENDANT RYAN LAMBERSON'S  
SECOND REQUESTS FOR PRODUCTION  
TO PLAINTIFF- 2

**LEE & HAYES, PLLC**  
601 W. Riverside Avenue, Suite 1400  
Spokane, Washington 99201  
(509) 324-9256  
Fax: (509) 323-8979

1 requests and the time of trial. Such additional or supplemental information shall  
2 be furnished to Defendant's attorneys within a reasonable time after it becomes  
3 known or is obtained.

#### 4 **DEFINITIONS**

5 1. The answer to each request for production shall include all  
6 knowledge of Plaintiff that is within its custody, possession or control, including,  
7 but not limited to, knowledge and documents in its custody, possession, or control  
8 or that of associated, contractual, or related organizations or that of those under  
9 common control, predecessors in interest, consultants, accountants, attorneys,  
10 employees, and other agents. Where facts set forth in answer or portions thereof  
11 are supplied upon information and belief rather than actual knowledge, Plaintiff  
12 should so state and specifically describe or identify the source or sources of such  
information and belief. Should Plaintiff be unable to answer any request for  
production or portion thereof by either actual knowledge or upon information or  
belief, describe the effort to obtain such information.

13 2. The terms "information", "document" and "data" also include  
14 electronic data. Electronic data includes but is not limited to any electronically  
15 stored data or magnetic or optical storage media as an "active" file or files  
16 (readily readable by one or more computer applications or forensic software) and  
17 "deleted" but recoverable electronic files on said media; any electronic file  
18 fragments (files that have been deleted and partially overwritten with new data);  
19 emails; chat logs; webpages; word processing files; databases stored in the  
20 memory of computers; palm-top devices; magnetic disks (such as computer hard  
21 drives and floppy disks; optical disks (such as DVDs and CDs); and flash  
memory (such as "thumb" or "flash" drives); external drives; networks; and smart  
phones.

22 3. "Identify," as used in these requests, means to describe and define  
23 with particularity and precision.

24 4. "Person," as used in these requests, refers to any individual or entity,  
25 such as a corporation, partnership, or other organization.

26  
27  
28  
DEFENDANT RYAN LAMBERSON'S  
SECOND REQUESTS FOR PRODUCTION  
TO PLAINTIFF- 3

**LEE & HAYES, PLLC**  
601 W. Riverside Avenue, Suite 1400  
Spokane, Washington 99201  
(509) 324-9256  
Fax: (509) 323-8979



1        5. "Correspondence" means any written communications including  
2 letters, memoranda, emails, instant messages, text messages, or other written  
3 communication.

4        6. If Plaintiff contends that the answer to any request is privileged in  
5 whole or in part, or otherwise objects to any part of any request, or that an  
6 identified document would be excluded from production to Plaintiff or Defendant  
7 in discovery regardless of its relevance, state the reasons for each objection or  
8 ground for exclusion, and identify by title, subject matter and date, the document  
withheld, if any, and identify each person having knowledge of the factual basis,  
if any, on which the privilege or other ground is asserted.

9        7. "You" means Plaintiff (and, for purposes of requests for production  
10 of documents, your lawyers, accountants, agents, employees, investigators,  
11 distributors, and producers).

12        8. "Defendant" shall mean Ryan Lamberson.

13        9. "APMC LLC" as used herein means (i) APMC, LLC, a California  
14 LLC # 201111810070, and "APMC LLC" also includes (ii) APMC LLC's trade  
15 name Anti-Piracy Management Company, (iii) APMC LLC's aka APMC, Inc.,  
16 (iv) APMC's outsourced entity commonly known as BPO Cebu, located at  
17 CEBU, 5<sup>th</sup> Flr. BigFoot Building, F. Ramos St., Lungsod ng Cebu, Philippines (v)  
18 BPO Cebu's aka New Alchemy Limited, (vi) Crystal Bay Corporation, (vii)  
19 Crystal Bay Corporation's aka Crystal Bay, Inc. (viii) and any other entity not  
20 listed (because not yet known) but affiliated by ownership, directors, officers, or  
21 contract with such entities as relates to the investigation and prosecution of claims  
22 against Mr. Lamberson regarding  
23 SHA1:33E6C4D563C276F29A7A48502C6640191DE3DD72  
24  
25  
26  
27  
28

DEFENDANT RYAN LAMBERSON'S  
SECOND REQUESTS FOR PRODUCTION  
TO PLAINTIFF- 4

**LEE & HAYES, PLLC**  
601 W. Riverside Avenue, Suite 1400  
Spokane, Washington 99201  
(509) 324-9256  
Fax: (509) 323-8979

**REQUESTS FOR PRODUCTION**

**REQUEST FOR PRODUCTION NO. 29:** All correspondence (and included attachments and links) of plaintiff company Elf-Man, LLC with (i.e. to and from) APMC LLC regarding the investigation and prosecution of claims against Mr. Lamberson.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 30:** All correspondence (and included attachments and links) of Elf-Man, LLC's purported agent Vision Films, Inc. with (i.e. to and from) APMC LLC regarding the investigation and prosecution of claims against Mr. Lamberson.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 31:** All correspondence (and included attachments and links) of plaintiff's counsel with (i.e. to and from) APMC LLC regarding the investigation and prosecution of claims against Mr. Lamberson.

**RESPONSE:**

DEFENDANT RYAN LAMBERSON'S  
SECOND REQUESTS FOR PRODUCTION  
TO PLAINTIFF- 5

**LEE & HAYES, PLLC**  
601 W. Riverside Avenue, Suite 1400  
Spokane, Washington 99201  
(509) 324-9256  
Fax: (509) 323-8979

1 DATED this 22<sup>nd</sup> day of April, 2014.

2  
3 LEE & HAYES, PLLC

4  
5  
6 By: s/ J. Christopher Lynch

7 J. Christopher Lynch, WSBA #17462  
8 Jeffrey R. Smith, WSBA #37460  
9 Rhett V. Barney, WSBA #44764  
10 601 W. Riverside Avenue, Suite 1400  
11 Spokane, WA 99201  
12 Phone: (509) 324-9256  
13 Fax: (509) 323-8979  
14 Emails: [chris@leehayes.com](mailto:chris@leehayes.com)  
15 [jeffreys@leehayes.com](mailto:jeffreys@leehayes.com)  
16 [rhettb@leehayes.com](mailto:rhettb@leehayes.com)

17 *Counsel for Defendant Ryan Lamberson*  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

DEFENDANT RYAN LAMBERSON'S  
SECOND REQUESTS FOR PRODUCTION  
TO PLAINTIFF- 6

**LEE & HAYES, PLLC**  
601 W. Riverside Avenue, Suite 1400  
Spokane, Washington 99201  
(509) 324-9256  
Fax: (509) 323-8979

**ANSWERING PARTY TO COMPLETE:**

I certify and declare under penalty of perjury under the laws of the State of Washington that I have completed the above responses, know the contents thereof, and believe the same to be true. Except where I have specifically objected, I have provided true, correct, and complete copies or originals of all requested documents in my possession or control and all documents to which I have access.

The responses and objections comply with the requirements imposed by the Civil Rules and the local rules:

DATED: \_\_\_\_\_ CITY WHERE SIGNED: \_\_\_\_\_

\_\_\_\_\_  
Lawyer for Answering Party (Bar # \_\_\_\_\_)

DEFENDANT RYAN LAMBERSON'S  
SECOND REQUESTS FOR PRODUCTION  
TO PLAINTIFF- 7

**LEE & HAYES, PLLC**  
601 W. Riverside Avenue, Suite 1400  
Spokane, Washington 99201  
(509) 324-9256  
Fax: (509) 323-8979

**CERTIFICATE OF SERVICE**

I hereby certify that on the 22<sup>nd</sup> day of April, 2014, I caused to be mailed via First Class Mail as well as electronically served to the following:

Maureen C. VanderMay [elfmanwa@vandermaylawfirm.com](mailto:elfmanwa@vandermaylawfirm.com)  
The VanderMay Law Firm PC  
2021 S. Jones Blvd.  
Las Vegas, NV 89146

LEE & HAYES, PLLC

By: s/ J. Christopher Lynch

J. Christopher Lynch, WSBA #17462  
601 W. Riverside Avenue, Suite 1400  
Spokane, WA 99201  
Phone: (509) 324-9256  
Email: [chris@leehayes.com](mailto:chris@leehayes.com)

DEFENDANT RYAN LAMBERSON'S  
SECOND REQUESTS FOR PRODUCTION  
TO PLAINTIFF- 8

**LEE & HAYES, PLLC**  
601 W. Riverside Avenue, Suite 1400  
Spokane, Washington 99201  
(509) 324-9256  
Fax: (509) 323-8979

# EXHIBIT B

**From:** Chris Lynch  
**Sent:** Monday, April 21, 2014 3:09 PM  
**To:** Chris Lynch; elfmanwa@vandermaylawfirm.com  
**Subject:** [REDACTED]

Ms. VanderMay:

[REDACTED] Here is Mr. Molina's 700 page expose of APMC and its Philippines back office. We are surprised you are surprised, [REDACTED] Mr. Molina's explanation both appear to show that your firm may have been hired by APMC, not Elf-Man LLC. <http://prezi.com/au9es8zrsnm1/themanako123/>

Here are Mr. Lamberson's Amended Initial Disclosures to include Messrs Achache and Molina as witnesses (we already had Ms. Romanoff listed.) We have also provided these by USPS.

We also added two exhibits:

1. Mr. Molina's BPO Cebu explanation of APMC. Another of our favorite lines from Mr. Molina's explanation: "APMC stays in the background where they are invisible, but we [APMC] are the center (i.e. 'we make things happen.')
2. A list of the Vision Films movies uploaded to bittorrent by "Hero Master." Turns out the allegations at paragraph 45 of our Second Amended Answer, Affirmative Defenses and Counterclaims were just the tip of the iceberg. Not only did "Hero Master" initially seed *Elf-Man* and *Blood Money* before their public release, he/she also uploaded the majority of the Vision Films movies on the "APMC/Vision Films Schedule A" prior to their public release. So, it appears our suspicions are correct and coming to light: Vision Films uploads the movies and then Vision Films hires APMC to track and sue everyone who takes the bait. You said our allegations of "barratry" were scandalous, but it appears they are true.

We are still waiting for a revised explanation to the one provided regarding the relationship of the "investigators" to *Elf-Man*. Our letter dated April 16, 2014 in this regard is attached. You say we have presented "nothing" to support our claim, so maybe you missed the six numbered detailed points starting at number 3 on page 2 of the April 16 letter. Plus, now that we have Mr. Molina's BPO Cebu explanation, it seems your firm's April 14 explanation of the "paperless" engagements of Crystal Bay, Inc. (sic, actually Crystal Bay Corporation) and Mr. Macek must be inaccurate, especially since Mr. Molina's explanation indicates "the BPO Cebu office will be receiving these declarations from Daniel Macek." "These declarations" are the Declarations to Support Motions for Expedited Discovery – the ones Mr. Molina's explanation says are to be included in every case, but which are missing from the ED WA and WD WA *Elf-Man* cases. We think Elf-Man LLC is in a difficult position regarding the explanation provided the court, compared to Mr. Molina's explanation, especially since your firm will have to address the truth of the relationship in its reply brief re the



Noerr-Pennington issues (and the impending discovery.) We are prepared to move to submit Mr. Molina's entire explanation as a sur-reply.

Tomorrow, we will be sending a new set of discovery directed at the relationship/correspondence of APMC to the lawyers of record for the *Elf-Man* cases. If we understand Mr. Molina's explanation correctly, it appears that your law firm communicates directly with APMC's BPO Cebu. The corporate disclosure statement required by our court does not include any disclosure of APMC or BPO Cebu or Vision Films, so we cannot imagine how *Elf-Man* LLC could claim your law firm's communications with APMC and its BPO Cebu are privileged. Please be prepared that we will seek full discovery of your firm's communications (and the Crowell firm's communications) with APMC/BPO Cebu and its "legal team." If you have some explanation how these could be privileged communications, we would like to hear it now before we serve this discovery tomorrow.

Your client's house of cards has fallen. As Mr. Molina's explanation shows, APMC's entire business model is regrettably based on two faulty assumptions: (i) that capturing one uploaded packet from a swarm member equals evidence of infringement, even if uncorroborated, and (ii) that these single wispy captured packets can somehow be admissible evidence, despite the foreign un-licensed investigator's direct contingency interest in turning the data into a judgment. All of the rest – i.e. APMC's "sales team" trying to sell the data, APMC's litigation writing services from the Philippines, APMC's mistakes about the owners of the exclusive rights, APMC's lack of understanding of *Righthaven*, the sideline of South Dakota's delinquent Crystal Bay Corporation, etc. are just icing on the huge mess of a cake in which your client finds itself with the current state of our ongoing investigation.

We think Judge Rice will be quite interested in the truth of APMC's role in selling data and packaged defective lawsuits against thousands of innocent people. APMC's business model is not lawful, especially in the post-*Righthaven* world, and opacity about APMC's existence and its relationship to the supposed real party in interest does not make the situation any better.

[REDACTED]

[REDACTED] so please consider this information:

1. Mr. Lamberson didn't copy the work.
2. Your client has no admissible evidence that Mr. Lamberson copied anything. For example, we think the response to RFP #12 is a hoot: Apparently, Mr. Lamberson copied thousands of works from 11/25/12 to 12/23/12 – apparently, he volitionally sought and copied numerous works in German, and Dutch, and Mandarin, and French, and Korean, and Russian, and Spanish, and Italian, and Greek, and Japanese. Mr. Lamberson is an interesting person, but is not multi-lingual. We told you about Mr. Lamberson's computer in discovery, so it should come as no surprise that it lacks the storage capacity to handle even one day of the copying alleged in response to RFP #12 at an alleged rate of over 100Gb per day. Another amusing example, the geo-location of the PCAP data you gave us indicates the request by the "investigator" for the packet from the IP address associated with Mr. Lamberson shows that the investigator's request came from an office building in Amsterdam, and the list of works allegedly infringed includes "Netherlands Top 40." Mr. Lamberson loves music, but does not listen to the Netherlands Top 40 – but maybe the APMC person in Amsterdam does.
3. You don't know what was captured by the one-second upload – it might be the disclaimed portions of the work.
4. Vision Films appears to own the exclusive distribution rights – the right implicated by the investigator uploading the one bit. But the time to amend to add parties is passed.
5. Vision Films appears to be seeding its own work. Each (unknown, unpopular) work on Schedule A was uploaded by the same person (Hero Master) prior to its public release. We will undertake discovery as to this Hero Master once we see how Vision Films intends to comply with our first subpoena.

6. APMC is not “retaining” CBC under a paperless/termless relationship. The explanation makes no sense as our 4/16 letter demonstrates.
7. APMC may not have US licensed counsel preparing its pleadings.
8. APMC is selling testimony on a contingency that you say is “withdrawn” but without any explanation of what the relationship is or was.
9. We think the judge will force your client to present its witnesses in Spokane for deposition, and we cannot imagine the judge requiring us to pay these witnesses anything. Even if we never depose them, we cannot imagine how Messrs Patzer and/or Macek could ever offer any admissible evidence to our court when they do come to Spokane in the summer of 2015 for the jury trial.
10. Does your client(s) understand the risk of Fogerty v. Fantasy? We must admit we were a little worried at first when considering a money judgment against Elf-Man LLC that might not get paid, but now we see APMC behind the scenes. For example, we see APMC/New Alchemy has over 25 posted job listings in Cebu for technicians and administrative staff and the like, so it must have some resources to meet the inevitable defense attorneys fees and sanctions judgments it will face in this case.
11. Does your client(s) really want to undertake discovery on all of these entirely relevant points? I am certain you can sense our tenacity and that we have no reason to back down. [REDACTED] or we complete discovery, go to trial and win the fees. Why would your client choose the latter?
12. We could go on. If for some reason this “information” is not enough to help you formulate a settlement recommendation – just let us know and we can provide more.

We have tried to be patient as your law firm has avoided discovery and the merits of the lawsuit. But our patience is over. Mr. Lamberson is innocent and the canned Philippines lawsuit your client bought is not one that comports with the factual and legal investigatory requirements of Rule 11. Mr. Molina’s explanation exposes APMC’s entire suit-selling scam. Hero Master’s prolific but signature uploading exposes Vision Films’ reason for its APMC agreement. Elf-Man LLC may not have known of any of this, but someone did.

[REDACTED] unless you can explain how your client could possibly prevail, we intend to continue to engage in discovery to reveal the truth about this case.

[REDACTED]

[REDACTED]

Thank you.

# EXHIBIT C

**From:** Chris Lynch  
**Sent:** Tuesday, April 22, 2014 3:27 PM  
**To:** Chris Lynch; 'elfmanwa@vandermaylawfirm.com'  
**Subject:** Second Set of Requests for Production

Counsel: Since we have not heard an explanation as to privilege as our mail below invites, we assume you agree that your communications with APMC LLC and its affiliates are not protected. Also, of course, the communications (if any) by Elf-Man LLC or Vision Films with APMC would not be protected. Consequently, we have prepared three new RFP's as to communications by Elf-Man LLC, its agents, and counsel with APMC (and including any of the entities like CBC that might have paperless, termless agreements with APMC) regarding the case against Mr. Lamberson.

APMC acting as witness, expert, salesman, client, lawyer, and collection agent might make sense in an efficient utopia on another continent, but here in the United States there are fundamental walls between these entities and for good reason, including the policy of the operative ruling in *Righthaven* and [REDACTED]

We know APMC has some clever lawyers, but we doubt that it has any playbook explanations for this elaborate mess. APMC's model might work for its speculative invoicing program "pre-answer," but it was not designed to provide real evidence (or real discovery) for a real trial and there is no way now to torture the model into U.S. legal compliance.

We are interested in how your client intends to respond to the impending discovery. You may surprise us, and that would be welcome. But, we suspect the answers will require us to go back to the judge, requiring more time wasted trying to pull teeth to get your “client” to admit the truth, for example, that no one was actually “observed infringing.” The fees expended to pull those teeth will come right back at your client(s).

1. **Identify the main components of the system.** What are the key elements, modules, or subsystems that make up the system?

Thank you.

# EXHIBIT D

**From:** Chris Lynch  
**Sent:** Friday, May 30, 2014 12:31 PM  
**To:** 'elfmanwa@vandermaylawfirm.com'  
**Cc:** Rhett Barney; Jeffrey Smith; Lauren Van Winkle; Julie Sampson  
**Subject:** Declaration of Service

Counsel: We are in receipt of your response to our Second Set of requests for Production, received today by USPS.

We wanted to give you an opportunity to correct your Declaration of Service, under which you represent that the response was mailed Thursday May 22, when the postmark is Wednesday May 28, as seen on the attached photocopy of the envelope.

Please provide a correct Declaration of Service.

Thank you.

# EXHIBIT E



**From:** [elfmanwa@vandermaylawfirm.com](mailto:elfmanwa@vandermaylawfirm.com) [<mailto:elfmanwa@vandermaylawfirm.com>]

**Sent:** Friday, May 30, 2014 1:50 PM

**To:** Chris Lynch

**Subject:** Re: Declaration of Service

Chris, my office finalized the response on Thursday, May 22nd. I was in deposition that day and specifically instructed my assistant to be certain that the document went out in that day's mail from our Salem office. Upon reading your email I spoke with her and she confirmed that she recalled that conversation and that she did in fact get this out with our outgoing mail that day. I have, of course, no idea why the envelope arrived with the postmark that you describe. As far as I know, the problem lies with the USPS.

Maureen

- > Counsel: We are in receipt of your response to our Second Set of requests
- > for Production, received today by USPS.
- >
- > We wanted to give you an opportunity to correct your Declaration of
- > Service, under which you represent that the response was mailed Thursday
- > May 22, when the postmark is Wednesday May 28, as seen on the attached
- > photocopy of the envelope.
- >
- > Please provide a correct Declaration of Service.
- >
- > Thank you.
- >

# EXHIBIT F

**From:** Chris Lynch  
**Sent:** Friday, May 30, 2014 5:25 PM  
**To:** 'elfmanwa@vandermaylawfirm.com'  
**Subject:** RE: Declaration of Service

We see your explanation, but we do not agree that the problem "lies" with USPS.

Would you please provide a Declaration of this assistant as to these important points – who/when/where/how does your mail service work?

Every other pleading we have received from your office has arrived by email as well as USPS – but not this one.

Mail does not take eight days from Salem to Spokane – usually your mail arrives in 2 days, just like the postmark would indicate.

Apparently you have no personal knowledge that it was mailed 5/22, even though you have declared this to be the case. A sworn Declaration of the assistant would go a long way toward us accepting your explanation as the truth.

Also, please provide the required privilege log under Fed. R. Civ. P. 26(b)(5)(A) to support your claims of privilege/work-product. Then we can set our Rule 37 Conference.

Thank you.

---

**From:** [elfmanwa@vandermaylawfirm.com](mailto:elfmanwa@vandermaylawfirm.com) [<mailto:elfmanwa@vandermaylawfirm.com>]  
**Sent:** Friday, May 30, 2014 1:50 PM  
**To:** Chris Lynch  
**Subject:** Re: Declaration of Service

Chris, my office finalized the response on Thursday, May 22nd. I was in deposition that day and specifically instructed my assistant to be certain that the document went out in that day's mail from our Salem office. Upon reading your email I spoke with her and she confirmed that she recalled that conversation and that she did in fact get this out with our outgoing mail that day. I have, of course, no idea why the envelope arrived with the postmark that you describe. As far as I know, the problem lies with the USPS.

Maureen

- > Counsel: We are in receipt of your response to our Second Set of requests
- > for Production, received today by USPS.
- >
- > We wanted to give you an opportunity to correct your Declaration of
- > Service, under which you represent that the response was mailed Thursday
- > May 22, when the postmark is Wednesday May 28, as seen on the attached
- > photocopy of the envelope.

>  
> Please provide a correct Declaration of Service.  
>  
> Thank you.  
>

# EXHIBIT G

**From:** Chris Lynch  
**Sent:** Monday, June 02, 2014 5:46 PM  
**To:** Carl D Crowell  
**Cc:** Jeffrey Smith; Rhett Barney; Julie Sampson; Lauren Van Winkle  
**Subject:** RE: Elf-Man v. Lamberson -

I appreciate the time and consideration Carl. I am glad an experienced IP litigator is involved who presumably knows the significant risks under *Fogerty v Fantasy* that your client faces in pursuit of this case against an innocent person. We BEGGED Ms. VanderMay to take our client's deposition and to inspect his machine from the start of the case, but she never did. [REDACTED]

[REDACTED] -- but instead she declined to inspect the machine (presumably hoping the court would accept your Count #3 of strict IP address liability), and she asked us to Answer which we did. As we mentioned, after the answer, [REDACTED]

Please see our Motion to Compel re Patzer and Macek and Mr. Smith's declaration about it. German nationals cannot lawfully be deposed by telephone or skype. As I mentioned, we do not see any way these witnesses could ever testify in our 2015 trial since the witnesses were engaged in detecting evidence to be submitted to court, and thus the witnesses would be subject to the Washington State Private Investigator regulations at RCW 18.165, and of course APMC is not so licensed or bonded. We suggest you or your new counsel review this statutory scheme and consider how it affects Patzer and Macek as witnesses and the admissibility of their testimony. If you also conclude they cannot testify, we may drop the request for the deposition.

As far as our claims that the RFP #15 explanation is implausible, we have presented the explanation to the court under seal in opposition to your 12b6 motion (showing the applicability of the sham litigation exception) and it is also before the court re our motion to compel the Germans to Spokane. I could show you more if you are interested -- my favorite part is where your co-counsel goes out of her way to avoid any relationship with Guardaley, going so far as to claim Crystal Bay Corporation was APMC's investigator, even though Mr. Macek's phone number is answered "Guardaley" and even though Crystal Bay Corporation is a delinquent company

with a bogus address and a bogus registered agent. How could a defunct South Dakota company have a German national "working for" it? We did a search on the other corporations with the identical address of CBC and found over 400 bogus companies, all founded by disbarred attorney David DeLoach. We sincerely doubt CBC has a "technical department" as mystery witness Darren Griffin claims to work for. So, yes we can tell you more about the implausibility of the relationships from our investigation, but since you are counsel for Elf-Man in Oregon, we assume you already know the truth and will be willing to inform us about it as the Court ordered Ms. VanderMay to do.

The APMC discovery is important. Please review the "prezi" presentation of Mr. Gerephil Molina of APMC Cebu about which we became aware after counsel gave us the implausible explanation under RFP #15. This 700 page expose seems to explain the back office of these matters -- APMC doing the uploading, preparing the pleadings, doing the discovery, all from Germany or the Philippines. None of this can be privileged as plaintiff claims. And the May 22 Declaration of Service vs the May 28 postmark is critical on this point. If the objections are waived, then we expect the documents immediately. if the objections are not waived, then we expect the privilege log immediately and our first order of business will be our required LR 37 conference on the production.

I would encourage your local counsel candidates to carefully read the file and the correspondence before agreeing to take this case.

As to "hero master," we appreciate your suggestion to ask for the IP address of the uploader. As we noted, we see a pattern of Vision Films works being introduced to bittorrent before the public release date (just like we see for the bogus reviews of these movies in Amazon before the release date.) This is in our Counterclaim.

The bottom line is pretty simple: Mr. Lamberson is innocent, and thus, in the end, he will win. we tried from the very first letter to get your client to do the right thing and examine the facts and dismiss him, but your client chose to bet on strict liability and then proceeded on a discovery path of hiding everything. We are seriously considering asking the court to require your client to post a bond to cover the fees through trial if it continues to litigate this matter.

We understand why your client (or APMC) would prefer not to provide discovery on its methods, but we hope your client and APMC understand that we will continue to work to confirm our suspicions despite counsel's recalcitrance,

[REDACTED]

[REDACTED]

The first item of business: how to reconcile a May 22 Declaration of Service with a May 28 postmark.

I am willing to keep a dialogue open on this case and to discuss any of the issues.

Thank you.



# EXHIBIT H

HONORABLE THOMAS O. RICE

J. CHRISTOPHER LYNCH, WSBA #17462  
JEFFREY R. SMITH, WSBA #37460  
RHETT V. BARNEY, WSBA #44764  
LEE & HAYES, PLLC  
601 W. Riverside Avenue, Suite 1400  
Spokane, WA 99201  
Phone: (509) 324-9256  
Fax: (509) 323-8979  
Emails: [chris@leehayes.com](mailto:chris@leehayes.com)  
[jeffreys@leehayes.com](mailto:jeffreys@leehayes.com)  
[rhettb@leehayes.com](mailto:rhettb@leehayes.com)

*Counsel for Defendant Ryan Lamberson*

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

ELF-MAN, LLC,

Plaintiff,

vs.

RYAN LAMBERSON,

Defendant.

No. 2:13-CV-0395-TOR

NOTICE OF DEPOSITION OF ELF-MAN, LLC

Date: June 20, 2014

Time: 9:00 AM

Location: Lee & Hayes, pllc  
601 W Riverside Ave  
Ste 1400  
Spokane, WA 99201

**PLEASE TAKE NOTICE** that pursuant to Fed. R. Civ. P. 30(b)(6),  
Defendant Ryan Lamberson shall take the deposition upon oral examination of

NOTICE OF DEPOSITION  
OF ELF-MAN, LLC - 1

**LEE & HAYES, PLLC**  
601 W. Riverside Avenue, Suite 1400  
Spokane, Washington 99201  
(509) 324-9256  
Fax: (509) 323-8979

1 Elf-Man, LLC, at 601 W Riverside Ave, Suite 1400, Spokane, WA 99201  
 2 commencing at 9:00 AM, on June 20, 2014. The deposition shall continue from  
 3 day to day thereafter until completed. The deposition will be conducted under  
 4 oath and transcribed by stenographic and/or videographic means. Elf-Man, LLC  
 5 will be examined upon the topics described in Section A, below, and is required  
 6 to designate and produce one or more officers, directors, managing agents, or  
 7 other persons to testify on its behalf.  
 8  
 9

10 Notice is further given that, pursuant to Fed. R. Civ. P. 30(b)(2) and Fed. R.  
 11 Civ. P. 34, the deponent is required to produce at said deposition the documents  
 12 and tangible things identified in Section B herein.  
 13  
 14

#### 15 **Section A. Subjects of Examination**

16 Elf-Man, LLC will be examined upon each of the following subjects, for each  
 17 of which Elf-Man, LLC is required to designate and produce one or more officers,  
 18 directors, managing agents or other persons to testify on its behalf:  
 19

20 1. Information and evidence regarding the allegations in paragraphs 18-19  
 21 of the First Amended Complaint.  
 22

23 2. Information and evidence regarding the allegations in paragraphs 22-26  
 24 of the First Amended Complaint.  
 25

26 3. Information and evidence regarding the allegations in paragraphs 81-83  
 27  
 28

NOTICE OF DEPOSITION  
 OF ELF-MAN, LLC - 2

**LEE & HAYES, PLLC**  
 601 W. Riverside Avenue, Suite 1400  
 Spokane, Washington 99201  
 (509) 324-9256  
 Fax: (509) 323-8979

1 of the First Amended Complaint.

2 4. Information and evidence regarding the allegations in paragraph 113 of  
3 the First Amended Complaint.  
4

5 5. Information and evidence regarding the allegations in paragraphs 115-  
6 149 of the First Amended Complaint.  
7

8 6. Circumstances surrounding the execution of and compliance with the  
9 Sales Agency Agreement between Elf-Man, LLC and Vision Films, Inc.  
10

11 7. Circumstances surrounding the execution of and compliance with the  
12 Anti-Internet Piracy Service Agreement between Vision Films, Inc and APMC,  
13 Inc.  
14

15 8. Elf-Man, LLC's corporate structure, including past and present officers,  
16 directors, members, managers, and all other beneficial owners or other individuals  
17 with a pecuniary interest in the outcome of Elf-Man, LLC's BitTorrent litigation  
18 campaign;  
19

20 9. Creation and operation of Elf-Man, LLC, including principal business  
21 activities, initial capitalization, insurance, and day to day business operation.  
22

23 10. Elf-Man, LLC's revenues derived from the authorized licensing and  
24 distribution of *Elf-Man*.  
25

26 11. Elf-Man, LLC's revenues derived from BitTorrent copyright litigation  
27  
28

NOTICE OF DEPOSITION  
OF ELF-MAN, LLC - 3

**LEE & HAYES, PLLC**  
601 W. Riverside Avenue, Suite 1400  
Spokane, Washington 99201  
(509) 324-9256  
Fax: (509) 323-8979

1 related to the work, including obligations by third parties to provide any such  
2 monies.

3 12. Identity of all individuals with decision-making and settlement authority  
4 related to Elf-Man, LLC's BitTorrent copyright infringement litigation.  
5

6 13. Information related to Elf-Man, LLC's insurance policies and  
7 indemnification agreements that may impact the parties in this litigation or  
8 otherwise relate to Elf-Man, LLC's financial liability for adverse judgments.  
9

10 **Section B. Request for Production of Documents and Tangible Things**  
11

12 1. All agreements between Elf-Man, LLC and Vision Films, Inc. regarding  
13 the work at issue in the instant suit, including all licenses, assignments, or other  
14 agreements, however named, that affect the right of either signatory to exploit the  
15 work in any manner.  
16

17 2. All agreements between Elf-Man, LLC and any third party regarding  
18 the work at issue in the instant suit, including all licenses, assignments or other  
19 agreements, however named, that affect the right of any third party to exploit the  
20 work.  
21

22 3. All documents supporting Elf-Man, LLC's claims that Ryan Lamberson  
23 has infringed upon its copyrights, as described in the First Amended Complaint in  
24 this matter.  
25  
26  
27  
28

NOTICE OF DEPOSITION  
OF ELF-MAN, LLC - 4

**LEE & HAYES, PLLC**  
601 W. Riverside Avenue, Suite 1400  
Spokane, Washington 99201  
(509) 324-9256  
Fax: (509) 323-8979

1 4. All documents related to Elf-Man, LLC's decision to sue Ryan  
2 Lamberson as the infringer of the work.

3 5. Elf-Man, LLC's Articles of Incorporation or Organization, however  
4 named, as well as any by-laws, membership agreements, or other operating  
5 agreements describing the management and control of Elf-Man, LLC.  
6

7  
8 DATED this 21<sup>st</sup> day of May, 2014.  
9

10 LEE & HAYES, PLLC  
11

12  
13 By: s/ J. Christopher Lynch

14 J. Christopher Lynch, WSBA #17462

15 Jeffrey R. Smith, WSBA #37460

16 Rhett V. Barney, WSBA #44764

17 601 W. Riverside Avenue, Suite 1400

18 Spokane, WA 99201

19 Phone: (509) 324-9256

20 Fax: (509) 323-8979

21 Emails: [chris@leehayes.com](mailto:chris@leehayes.com)

22 [jeffreys@leehayes.com](mailto:jeffreys@leehayes.com)

23 [rhetb@leehayes.com](mailto:rhetb@leehayes.com)

24 *Counsel for Defendant Ryan Lamberson*  
25  
26  
27  
28

NOTICE OF DEPOSITION  
OF ELF-MAN, LLC - 5

**LEE & HAYES, PLLC**  
601 W. Riverside Avenue, Suite 1400  
Spokane, Washington 99201  
(509) 324-9256  
Fax: (509) 323-8979

**CERTIFICATE OF SERVICE**

I hereby certify that on the 21<sup>st</sup> day of May, 2014, I caused to be mailed via First Class Mail as well as electronically served the foregoing to the following:

Maureen C. VanderMay                      [elfmanwa@vandermaylawfirm.com](mailto:elfmanwa@vandermaylawfirm.com)  
The VanderMay Law Firm PC  
2021 S. Jones Blvd.  
Las Vegas, NV 89146

LEE & HAYES, PLLC

By: s/ J. Christopher Lynch  
J. Christopher Lynch, WSBA #17462  
601 W. Riverside Avenue, Suite 1400  
Spokane, WA 99201  
Phone: (509) 324-9256  
Email: [chris@leehayes.com](mailto:chris@leehayes.com)

NOTICE OF DEPOSITION  
OF ELF-MAN, LLC - 6

**LEE & HAYES, PLLC**  
601 W. Riverside Avenue, Suite 1400  
Spokane, Washington 99201  
(509) 324-9256  
Fax: (509) 323-8979