PUBLIC CITIZEN LITIGATION GROUP
1600 20TH STREET, N.W.
WASHINGTON, D.C. 20009-1001

(202) 588-1000

BY EMAIL (evan@wolfe-stone.com and lawoffice@wolfe-stone.com) AND BY OVERNIGHT DELIVERY[1]

January 26, 2011

Evan Stone, Esquire
624 W. University Drive, #386
Denton, Texas 76201

Re: *Mick Haig Productions v. Does 1-670*
No. 3:10-CV-1900-N

Dear Mr. Stone:

As you know, pursuant to an order of the Court, I have been appointed along with co-counsel Matt Zimmerman and Corynne McSherry as temporary attorneys ad litem for the 670 individuals whom you have sued for, allegedly, making your client's pornographic movie, *Der Gute Onkle*, available for downloading, which you allege violates your client's copyright. After Judge Godbey appointed us as counsel, we filed an opposition to your motion for leave to take early discovery. As of this writing, there has not yet been any ruling on that motion, other than Judge Godbey's order requiring the Internet Service Providers (ISP's) through whom the 670 defendants gain their Internet access to preserve such identifying information as they have.

I was quite surprised, therefore, to receive from one of our Doe clients a notice from Comcast, telling him that you have subpoenaed his identifying information and that, unless he moved to quash by February 9, Comcast was going to supply you with his name and address. At the beginning of this week, I received similar calls from lawyers who reached out to me on behalf of other Does who received notices of subpoena from Verizon as well as Comcast. One of these lawyers is prepared to defend his client on the merits pro bono if you succeed in obtaining his identity and refile the case in New Jersey, where you have a valid claim for personal jurisdiction against that Doe. However, he recognizes that he cannot do this in Texas, where you have deliberately filed your complaint to put the Does to disadvantage and where he does not have pro bono local counsel.

Indeed, without revealing the privileged contents of my communications with these clients

[1]Because of a snow emergency in DC, the overnight letter will be sent tomorrow.

and/or their representatives, the experience of talking with them simply confirmed the concern expressed on our brief that Does are likely to be terrified about the possibility that they could be publicly but falsely identified as being involved with the type of product that you client creates, regardless of whether they actually did so. It is precisely this potential for embarrassment on which you have preyed to get accused defendants to pay you thousands of dollars in settlement.

Inquiring further, I was able to obtain a copy of the subpoena that you sent to Comcast and of your cover letter, which concealed from Comcast the fact that Judge Godbey had never granted you permission to serve subpoenas in the case. Inquiring still further of other major ISP's, we have learned that you have served other subpoenas in the case, that the date required by one of the notices of subpoena for a response to avoid identification is January 31, and that some ISP's have provided you with identifying information.

We are very disturbed by this information. Because the rules of procedure do not allow you to take discovery at this phase of the lawsuit without express judicial permission, the subpoenas that you have issued to the ISP's that we have been able to contact to date essentially misrepresented that discovery was open in the case, and gave you access to information to which you are not entitled. It is, as well, arguably a serious abuse of process that may be independently actionable. Given the fact that your standard practice is to send settlement demand letters to Does once they are identified, we must acknowledge the possibility that you have been communicating with our clients. Yet, because those clients are represented by counsel (until the disposition of the discovery motion), your contacting them directly would be a serious violation of legal ethics, because we have never given you permission to contact our clients.

Moreover, you should be aware from our opposition to your motion for leave to take early discovery that we are making a claim of First Amendment privilege with respect to any information that might lead to the disclosure of our clients' identities, including but not limited to names, mailing addresses, telephone numbers, credit card account information, or IP addresses. However, because you have gone forward despite this claim, by this letter I am re-notifying you of the claim of privilege pursuant to Rules 26(b)(5)(B) and 45(d)(2)(B) of the Federal Rules of Civil Procedure. Both rules provide in relevant part as follows:

> After being notified [of a claim of privilege], a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim.

We trust that you and your client will comply promptly and fully with these obligations. Please inform any relevant third parties of our claim and request that they refrain from making any disclosures of identifying information until the claim is resolved.

I have called you twice to try to confer with you about this violation of our clients' rights, but got only your voicemail. Only your "assistant" has called back, and she told me that I could not speak to you personally. I should much prefer to speak with you personally about this problem, but until you are available in person this letter will have to do.

We intend to seek relief from the Court for your abuse of the discovery procedure, but to decide what remedies are appropriate, we need more information. We need copies of every subpoena that you have issued in the case, along with the cover letters to ISP's, and copies of any other written communications with ISP's; if you have had oral communications with ISP's in the case, we need a complete list of those communications. In addition, if any ISP's have produced information, we need copies of their production. If you have had any written or oral communications with any of the Does, we need a complete accounting of all of those communications. And if any of our clients have made any payments to you, we need to know how much each has paid, because at the very least we are going to ask the Court to order that those payments be refunded. I hope you will agree to withdraw the subpoenas and to provide the information above immediately; otherwise, we intend to ask the Court to order you to provide it.

Given the imminent deadline created by your illegitimate subpoenas, we need answers to these questions immediately, because we feel we need to move promptly for a ruling from Judge Godbey. We intend to ask Judge Godbey to order you to provide a sworn accounting of your actions as described above. And, in the meantime, we have in mind to ask the Court to order you to contact every ISP to whom you have sent a subpoena in this case to tell them that the subpoenas have been withdrawn, to order you to cease making use of any identifying information you have received, and to stop communicating with our clients unless we give you permission to do so or pending further order of the Court.

Please contact me immediately to tell me whether you will promptly withdraw the subpoenas, provide the information requested, and consent to this proposed order.

Sincerely yours,

Paul Alan Levy