Aaron K. McClellan - 197185
amcclellan@mpbf.com
Steven W. Yuen - 230768
syuen@mpbf.com
MURPHY, PEARSON, BRADLEY & FEENEY
88 Kearny Street, 10th Floor
San Francisco, CA 94108-5530
Tel: (415) 788-1900
Fax: (415) 393-8087

Attorneys for Plaintiff
LIUXIA WONG
In Case No. C 12-00469 HRL

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

HARD DRIVE PRODUCTIONS, INC.,

Plaintiff,

v.

DOES 1-48,

Defendants.

Case No.: C 11-01957 JCS
(C 11-05630 RS and C 11-05630 HRL)

ADMINISTRATIVE MOTION TO CONSIDER WHETHER CASES SHOULD BE RELATED AND ORDER DENYING MOTION

I. INTRODUCTION

Plaintiff Liuxia Wong in action number C 12-00469 HRL brings this administrative motion for the court to order that action number C 11-01957 JCS (now dismissed), and action numbers C 11-05630 RS and C 11-05630 HRL should be related and assigned to the Honorable Joseph C. Spero. Mrs. Wong brings this administrative motion as the refiling party, Hard Drive Productions, Inc. (hereafter "Hard Drive") failed to do so. Before bringing this motion, Mrs. Wong contacted Hard Drive to determine whether it would stipulate to having these cases related, and reassigned to Judge Spero, but have not received any response. (Declaration of Steven Yuen (hereafter "Yuen Decl.") at 1:24-2:6 (¶ 2).) Given Civil L.R. 3-12's requirement that a party "must promptly file in the earliest filed case" this motion, Mrs. Wong does so here.

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II. LEGAL ARGUMENT

A. Any Party, Especially the Refiling Party, is Required to File an Administrative Motion to Consider Whether Cases Should be Related

"If any civil action or claim of a civil action is dismissed and is subsequently refiled, the refiling party must file a Motion to Consider Whether Cases Should be Related pursuant to Civil L.R. 3-12." (Civil L.R. 3-3(c).) "An action is related to another when: [¶] (1) The actions concern substantially the same parties, property, transaction or event; and [¶] (2) It appears likely that there will be an unduly burdensome duplication of labor and expense or conflicting results if the cases are conducted before different Judges." (Id., at 3-12(a).)

Additionally, "[w]henever a party knows or learns that an action, filed in or removed to this district is (or the party believes that the action may be) related to an action which is or was pending in this District as defined in Civil L.R. 3-12(a), the party must promptly file in the earliest filed case an Administrative Motion to Consider Whether Cases Should be Related, pursuant to Civil L.R. 7-11." (Civil L.R. 3-12(b).)

"Upon a determination by a Judge that an action or claim pending before him or her is covered by this Local Rule, that Judge may transfer the refiled action to the Judge originally assigned to the action which had been dismissed." (Civil L.R. 3-3(c).) Notably, "[a]ny party who files an action in multiple divisions or dismisses an action and subsequently refiles it for the purpose of obtaining an assignment in contravention of Civil L.R. 3-3(b) shall be subject to appropriate sanctions." (Id.)

B. Action Numbers C 11-01957, C 11-05630, and C 12-00469 All Relate to Hard Drive's Copyright Infringement Claims and Mrs. Wong's Denials of Such Infringement

On April 22, 2011, Hard Drive filed an action titled Hard Drive Productions, Inc. v. Does 1-48, action number C 11-01957. (Exhibit A to Yuen Decl.) This action was assigned to the Honorable Joseph C. Spero based upon Hard Drive's consent to proceed before a Magistrate Judge. (Docket 5.) In this action, Hard Drive identified IP address 76.126.48.155 as a Doe Defendant who allegedly infringed its purported copyright. (Exhibit A at 7:23-8:2 (¶¶ 25-26) & Exhibit A to Yuen Decl.) On September 27, 2011, Hard Drive dismissed action number C 11-01957 without prejudice. (Docket 13.)

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On November 21, 2011, Hard Drive filed an action titled Hard Drive Productions, Inc. v. John Doe, action number C 11-05630, for copyright infringement which was subsequently reassigned to the Honorable Richard Seeborg on November 30, 2011. (Exhibit B at 1:26-27 (¶ 2) to Yuen Decl.) In this action, Hard Drive judicially admits that it had filed the previous action of C 11-01957 against a Doe defendant with IP address 76.126.48.155. (Exhibit B at 1:19-20 (¶ 1) to Yuen Decl.) Hard Drive further judicially admits that the account holder associated with IP address 76.126.48.155 is Liuxia Wong. (Id., at 1:22-23 (¶ 1) to Yuen Decl.)

On January 23, 2012, Liuxia Wong filed an action titled Liuxia Wong v. Hard Drive Productions, Inc. and Does 1-50, action number C 12-00469, and subsequently filed her first amended complaint on January 31, 2012 basically seeking declaratory relief of non-infringement of Hard Drive's purported copyright which was assigned to the Honorable Howard R. Lloyd. (Exhibit C at 11:24-13:4 (¶¶ 93-105) to Yuen Decl.) Mrs. Wong consented to proceed before a Magistrate Judge. (Docket 5.)

Hard Drive, as the refiling party in action number C 11-05630, failed to comply with the local rules by filing an administrative motion to consider whether cases should be related. As such, Mrs. Wong now promptly brings this motion per Civil L.R. 3-12.

All of these cases are related to Hard Drive's allegations that Liuxia Wong is liable for copyright infringement due to her being the account holder associated with IP address 76.126.48.155, and Mrs. Wong's claims that she is not liable to Hard Drive. (Exhibits A, B & C to Yuen Decl.) As such, it appears likely that there will be an unduly burdensome duplication of labor and expense, or conflicting results if Hard Drive's action number C 11-05630 and Mrs. Wong's action number C 12-00469 are conducted before different judges. Since Judge Spero was the first judge assigned to these three related cases, Mrs. Wong respectfully requests the court to order these cases related and assigned to Judge Spero.

III. CONCLUSION

Based on all the information stated herein and in her supporting papers, Mrs. Wong respectfully requests the court to order action numbers C 11-01957 JCS, C 11-05630 RS, and C 11-05630 HRL related, and assigned to Judge Spero.

DATED: February 3, 2012

MURPHY, PEARSON, BRADLEY & FEENEY

/s/ Steven W. Yuen

By _____
Steven W. Yuen
Attorneys for Plaintiff
LIUXIA WONG

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Dated: February 9, 2012

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
DENIED
Judge Joseph C. Spero