

Exhibit 1

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Only the Westlaw citation is currently available.

United States District Court, E.D. Pennsylvania.
Gordon Roy PARKER, a/k/a Ray Gordon Plaintiff,
v.

JOHN DOE # 1, a/k/a "Wintermute," and John
Does # 2-100, Defendants.
No. Civ.A. 02-7215.

Filed Sept. 10, 2002.
Nov. 21, 2002.

Plaintiff, suing anonymous Internet providers, moved for court ordered release of names, permission to serve subpoenas on Internet service providers by certified mail, for extension of time in which to serve complaints, and for temporary restraining order barring publication of one site. The District Court, Kelly, J., held that: (1) plaintiff was required to seek identity information through subpoenas served on Internet service providers; (2) subpoenas could not be served by certified mail; (3) time extension would not be granted; and (4) publication of website would not be enjoined.

Motion denied.

See, also, 2003 WL 21294962.

West Headnotes

[1] Witnesses 410 ↪16

410 Witnesses

410I In General

410k16 k. Subpoena Duces Tecum. Most Cited Cases

Plaintiff seeking court order compelling release of identities of John Doe Internet provider defendants would be required to serve subpoenas on Internet service providers, seeking identity disclosure, despite claim that subpoena process would be burdensome, due to number of service providers involved and likelihood that they would oppose subpoenas. Fed. Rules Civ. Proc., Rule 45(b)(2).

[2] Witnesses 410 ↪16

410 Witnesses

410I In General

410k16 k. Subpoena Duces Tecum. Most Cited Cases

Federal procedure rules did not permit plaintiff, seeking disclosure of names of Internet providers being sued, to serve subpoenas on Internet services providers by certified mail in lieu of personal service. Fed. Rules Civ. Proc., Rule 45(b)(2).

[3] Federal Civil Procedure 170A ↪417

170A Federal Civil Procedure

170AIII Process

170AIII(B) Service

170AIII(B)I In General

170Ak417 k. Time for Making. Most Cited Cases

Plaintiff would not be granted extension of 120 day period for service of complaint on Internet providers, despite delays occasioned in obtaining approval to proceed in forma pauperis and in obtaining identities of defendants. Fed. Rules Civ. Proc., Rule 4(m).

[4] Telecommunications 372 ↪1345

372 Telecommunications

372VIII Computer Communications

372k1339 Civil Liabilities; Illegal or Improper Purposes

372k1345 k. Damages and Other Relief.

Most Cited Cases

(Formerly 372k461.15)

Subject of Internet web site would not be granted temporary restraining order, barring continued publication of site, due to failure to show irreparable injury not compensable by money damages award; unsubstantiated allegations that continued publication would irreparably harm reputation, employment and investment prospects were insufficient. Fed. Rules Civ. Proc., Rule 45(b).

represented by Gordon Roy Parker, Philadelphia, PA, Plaintiff, pro se.

represented by John M. Myers, Montgomery McCracken, Walker & Rhoads LLP, Phila, PA, Lead Attorney, Attorney to be Noticed, for University of Pennsylvania, Respondent.

MEMORANDUM AND ORDER

KELLY, J.

*1 Presently before the Court are two motions filed by pro se Plaintiff Gordon Roy Parker ("Plaintiff"): (1) a Motion for Temporary Injunctive Relief Enjoining Publication of the RayFAQ Website and (2) a Motion for Court-Ordered Release of John Doe Identities by Internet Providers, for Permission to Serve Subpoenas Duces Tecum by Certified Mail, and for an Extension of Time to Serve the Amended Complaint. Defendants John Doe # 1 a/ k/a "Wintermute" and John Does # 2-100 (individually referred to as "John Doe # __," and collectively, the "Defendants") have not been served with Plaintiff's Motions as Plaintiff has failed to file any certificates of service, presumably, due to his lack of knowledge concerning the Defendants' identities. It is also for that reason that Plaintiff has filed his Motion for Court-Ordered Release of John Doe Identities.

For the following reasons, Plaintiff's Motions are DENIED.

I. DISCUSSION

As a preliminary matter, every pleading and motion filed with this Court must be served upon each of the parties to the action. Fed.R.Civ.P. 5(a). Plaintiff, however, alleges that service has not been effectuated of any paper filed thus far because he has yet to secure the identity of the Defendants. As Plaintiff's present Motions appear to address specifically this issue, among others, they will be discussed in turn below.^{FN1}

FN1. As Plaintiff is proceeding pro se and

is, ostensibly, neither an attorney nor well-versed in the law and procedure involved in pursuit of his claim, this Court recommends that he seek counsel before proceeding further in what appears to be a complex action.

A. Motion for Court-Ordered Release of John Doe Identities by Internet Providers, for Permission to Serve by Certified Mail, and for Extension of Time to Serve Amended Complaint

1. Court-Ordered Release of John Doe Identities

[1] Plaintiff seeks court-ordered release of the Defendants' identities, specifically, John Does # 1 through # 18, from certain Internet Service Providers ("ISPs"). Plaintiff alleges that ISPs such as America Online ("AOL"), Earthlink, Pacific Bell, RoadRunner Corporation, Comcast Cable, and secondary providers such as Yahoo! and Hotmail are in possession of information that will identify John Does # 1 through # 18. Citing AOL's subpoena policy and case law, Plaintiff argues that serving these ISPs with a subpoena and a copy of his Amended Complaint would be an ineffective and useless act towards securing any information about the Defendants' identities from the ISPs. Reserving comment on Plaintiff's characterization of the law, it is abundantly clear that Plaintiff has made no effort whatsoever to attempt to secure, in accordance with the applicable law and procedure, the information he seeks, and now asks that this Court intervene on his behalf.

Rule 45 of the Federal Rules of Civil Procedure sets forth the form, issuance, service and compliance procedures for subpoenas. Fed.R.Civ.P. 45.Rule 45 also establishes territorial restrictions on service of subpoenas:

a subpoena may be served at any place within the district of the court by which it is issued, or at any place without the district, that is within 100 miles of the place of the deposition, hearing, trial, pro-

duction, or inspection specified in the subpoena or at any place within the state where a state statute or rule of court permits service of a subpoena issued by a state court of general jurisdiction sitting in the place of the deposition, hearing, trial, production, or inspection specified in the subpoena.

*2 Fed.R.Civ.P. 45(b)(2). Plaintiff offers no evidence, except to the contrary, that he has even attempted to secure information about the Defendants' identities in accordance with Rule 45. Rather, Plaintiff summarily dismisses the subpoena process as ineffective because there are uncertainties about receiving the precise information he seeks from the ISPs, and because he may be exposed to additional financial responsibilities in defending against proceedings to quash the subpoenas. Plaintiff is correct to the extent that such risks and responsibilities may befall Plaintiff, however, they are customary when pursuing federal court litigation of the magnitude contemplated by Plaintiff. Furthermore, this Court is neither inclined nor authorized to do for Plaintiff what he himself has failed to effectuate. Nevertheless, Plaintiff should also note the territorial limitations on service of subpoenas as set forth above. Accordingly, Plaintiff's motion for court-ordered release of the Defendants' identities is denied.

2. Service of Subpoenas By Certified Mail

[2] Plaintiff also requests that this Court permit Plaintiff to serve his subpoenas by certified mail as he has named numerous defendants in this case and the cost of personal service is prohibitive and beyond Plaintiff's means.

Pursuant to Rule 45 of the Federal Rules of Civil Procedure, service of a subpoena is effected by delivering a copy of the subpoena to the person named within by an adult non-party person:

A subpoena may be served by any person who is not a party and is not less than 18 years of age. Service of a subpoena upon a person named therein

shall be made by delivering a copy thereof to such person....

Fed.R.Civ.P. 45(b)(1). A majority of courts have held that Rule 45 requires personal service of subpoenas. *FTC v. Compagnie De Saint-Gobain-Pont-A-Mousson*, 636 F.2d 1300, 1312-1313 (D.C.Cir.1980) (holding that rule does not permit any form of mail service and that compulsory process may be served upon an unwilling witness only in person); *Terre Haute Warehousing Serv., Inc. v. Grinnell Fire Protection Sys. Co.*, 193 F.R.D. 561, 563 (S.D.Ind.1999) (holding that certified mail is insufficient method of service); *Smith v. Midland Brake, Inc.*, 162 F.R.D. 683, 686 (D.Kan.1995) (same); *In re Nathurst*, 183 B.R. 953, 954-955 (Bankr.M.D.Fla.1995) (same); *In re Smith*, 126 F.R.D. 461, 462 (E.D.N.Y.1989) (holding that district court lacked discretion under rule to permit alternative service); *In re Johnson & Johnson*, 59 F.R.D. 174, 177 (D.Del.1973) (determining that personal service of individuals required).

Notwithstanding the force of authority requiring personal service under Rule 45, Plaintiff has not demonstrated that he has expended any effort whatsoever to identify the Defendants or to serve the subpoenas upon the ISPs and, thus, his assertion that the costs are prohibitive and beyond his means is mere speculation. Nevertheless, Rule 45 requires personal service of subpoenas and, for that reason, Plaintiff's motion for leave to serve subpoenas by certified mail is denied.

3. Extension of Time to Serve Amended Complaint

*3 [3] Finally, Plaintiff requests that this Court grant him an extension of time to serve his Amended Complaint, which was filed on October 24, 2002. Among Plaintiff's asserted causes for delay are the alleged two weeks it took for Plaintiff to learn of the ruling on his Motion for Leave to Proceed In Forma Pauperis ("IFP"), speculative delays in obtaining the identities of the Defendants from the ISPs and any motion practice relevant

thereto (including the present motions and anticipated proceedings to quash the subpoenas), and Plaintiff's alleged inability to hire necessary process servers within the allotted time period.

Rule 4 of the Federal Rules of Civil Procedure provides that service of a summons and complaint must be made upon a defendant within 120 days of the filing of the complaint to avoid dismissal of the action. Fed.R.Civ.P. 4(m). An extension of time for service may be granted, however, if good cause is shown. *Id.*; *Petrucelli v. Bohringer & Ratzinger*, 46 F.3d 1298, 1305 (3d Cir.1995). Having already noted that Plaintiff has yet to take appropriate action to secure the Defendants' identities, his other proffered reasons do not amount to good cause sufficient to grant an extension of time to serve his Amended Complaint. Specifically, Plaintiff's excuse that he did not learn of this Court's ruling for two weeks on his IFP motion is disingenuous. According to this Court's docket report, Plaintiff's IFP motion was filed on September 10, 2002, decided on September 12, 2002, and the order mailed to him on September 16, 2002. On September 18, 2002, just eight (8) days after Plaintiff filed his IFP motion, Plaintiff submitted his \$150.00 filing fee to the Clerk of Court, presumably in response to this Court's denial of his IFP motion. Plaintiff misrepresents the alleged delay, as the docket report clearly indicates that he knew of the decision prior to the passage of two weeks' time. In addition, Plaintiff offers no evidence of any difficulty in hiring process servers within the allotted time period. Thus, Plaintiff's proffered reasons do not rise to good cause sufficient to grant an extension of time, and until such time that Plaintiff can demonstrate that he has engaged in significant legal measures, at the very least, to attempt to secure the Defendants' identities, this Court will deny Plaintiff's motion for an extension of time to serve his Amended Complaint.

Accordingly, Plaintiff's Motion for Court-Ordered Release of John Doe Identities by Internet Providers, for Permission to Serve Subpoenas Duces

Tecum by Certified Mail, and for an Extension of Time to Serve the Amended Complaint is DENIED.

B. Motion for Temporary Injunctive Relief Enjoining Publication of the RayFAQ Website

[4] Plaintiff also seeks temporary injunctive relief to enjoin John Doe # 4 from the continued publication of the "RayFAQ" website, which can be found at www.ray-gordon.com, for its allegedly false and defamatory statements concerning Plaintiff. In support of his factual allegations, Plaintiff provides a sampling of statements contained on the RayFAQ website, including: (1) a statement that Plaintiff is running an illegal bookmaking operation in Pennsylvania; (2) a statement to the effect that there is "no such thing as civil RICO [Racketeer Influenced and Corrupt Organizations Act]," which, Plaintiff alleges, encourages website visitors to violate Plaintiff's rights; (3) an inference from John Doe # 1 that Plaintiff would be a security risk for a job at the University of Pennsylvania; FN2 and (4) a list of links to area law enforcement and mental health agencies that, Plaintiff alleges, encourages visitors to the RayFAQ website to report Plaintiff to such agencies. Plaintiff also alleges that, each time Plaintiff posts a message to an internet discussion forum, mechanisms known as "bots" are triggered to generate an automatic and anonymous response directing participants in the internet discussion group to the RayFAQ website. Plaintiff characterizes these statements as "outrageous" and "blatantly false," and as encouraging "third parties to initiate legal and administrative process against Plaintiff." Plaintiff presented this Court with a "Motion for Temporary Injunctive Relief," and we assume that Plaintiff is requesting a temporary restraining order ("TRO") in accordance with Rule 65(b) of the Federal Rules of Civil Procedure, as this is the only form of provisional relief that may be granted ex parte.

FN2. Plaintiff alleges that John Doe # 1 is a student at the University of Pennsylvania and that Plaintiff has a separate discrimina-

tion claim pending against the university in the Eastern District.

*4 Injunctive relief is an extraordinary remedy that should be granted only in limited circumstances. *Instant Air Freight Co. v. C.F. Air Freight, Inc.*, 882 F.2d 797, 800 (3d Cir.1989). To succeed under Rule 65(b), it must clearly appear "from *specific facts* shown ... that immediate and irreparable injury, loss or damage will result to the applicant." Fed.R.Civ.P. 65(b) (emphasis added). An extraordinary remedy, the duration of a TRO may not exceed ten (10) days. *See id.* To qualify for a TRO, the movant must demonstrate: (1) a likelihood of success on the merits; (2) the probability of irreparable harm if the relief is not granted; (3) that granting injunctive relief will not result in even greater harm to the other party; and (4) that granting relief will be in the public interest. *Frank's GMC Truck Center, Inc. v. General Motors Corp.*, 847 F.2d 100, 102 (3d Cir.1988); *Ecri v. McGraw-Hill, Inc.*, 809 F.2d 223, 226 (3d Cir.1987). In demonstrating irreparable harm, it is not enough to allege a risk of irreparable harm, rather, there must be a clear showing of immediate irreparable injury. *Ecri*, 809 F.2d at 226 (citations omitted). Nor is it enough for the harm to be serious or substantial, rather, it must be so peculiar in nature that money cannot compensate for the harm. *Id.* (citations omitted).

In response to this heavy burden, Plaintiff offers no specific facts to make a clear showing of immediate, irreparable injury that is so peculiar that money cannot compensate for it. Nor does Plaintiff cite to any law to support his legal assertion that he is entitled to a TRO. Rather, Plaintiff offers one mere conclusory statement that he is likely to prevail on the merits of his claim and that the continued publication of the RayFAQ website will cause irreparable harm to Plaintiff, not limited to damage to his reputation, employment and investment prospects. Without more than mere conclusions, this Court cannot consider and weigh the factors necessary for the issuance of a TRO. Accordingly, Plaintiff's Mo-

tion for Temporary Injunctive Relief is DENIED.

II. CONCLUSION

For the foregoing reasons, Plaintiff's Motion for Court-Ordered Release of John Doe Identities by Internet Providers, for Permission to Serve Subpoenas Duces Tecum by Certified Mail, and for an Extension of Time to Serve the Amended Complaint is DENIED, and Plaintiff's Motion for Temporary Injunctive Relief Enjoining Publication of the RayFAQ Website is DENIED.

ORDER

AND NOW, this day of November, 2002, in consideration of the Motion for Temporary Injunctive Relief Enjoining Publication of the RayFAQ Website (Doc. No. 5) and the Motion for Court-Ordered Release of John Doe Identities by Internet Providers, for Permission to Serve Subpoenas Duces Tecum by Certified Mail, and for an Extension of Time to Serve the Amended Complaint (Doc. No. 6) filed by Plaintiff Gordon Roy Parker ("Plaintiff"), it is ORDERED that both of Plaintiff's Motions are DENIED.

E.D.Pa., 2002.

Parker v. John Doe #1

Not Reported in F.Supp.2d, 2002 WL 32107937 (E.D.Pa.)

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Exhibit 2

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Only the Westlaw citation is currently available.

United States District Court, E.D. Pennsylvania.
Bonnie FIELDS, in her own right and as Parent and
Natural Guardian of Kristina Vellafane

v.

BUCKS COUNTY CHILDREN AND YOUTH SO-
CIAL SERVICE AGENCY, et al.
No. Civ.A. 03-01019-JF.

June 8, 2005.

Craig B. Bluestein, Silverman and Bluestein, Jenk-
intown, PA, for Bonnie Fields, In her own right and
as Parent and Natural Guardian of Kristina Vella-
fane.

Jeffrey L. Pettit, Phelan Pettit & Biedrzycki, Don-
ald I. Wall, Richard W. Yost, Yost and Tretta, Phil-
adelphia, PA, Brad M. Jackman, Doylestown, PA,
for Bucks County Children and Youth Social Ser-
vice Agency, et al.

Marc Hagood, Philadelphia, PA, pro se.

John Herb, Philadelphia, PA, pro se.

Sandra Herb, Philadelphia, PA, pro se.

Sam Craft, Philadelphia, PA, pro se.

MEMORANDUM AND ORDER

FULLAM, J.

*1 Defendants have filed a motion "to compel cus-
todians of records to produce records of treatment
of plaintiff-minor." Apparently, defendants are
seeking records from a treatment center in Florida
and a behavioral health center in Pennsylvania,
neither of which is a party to this litigation. I say
"apparently" because, although the motion refers to
certain attached exhibits as subpoenas, in fact no
exhibits of any kind are attached to the motion.

The plaintiff, whose records are sought, has al-
legedly consented to their production, so there is no
statutory impediment to their release by the treat-
ment facilities. But I am not aware of any basis on
which this court could now simply order their pro-

duction: while non-parties may, of course, voluntar-
ily produce documents, the only other way to obtain
such production would be issuing and serving valid
subpoenas, whereupon, if the recipient of the sub-
poena were within this court's jurisdiction, it might
be possible to enforce the subpoena.

The institution in Florida is obviously not within
the subpoena power of this court. The record does
not disclose the location of the other institution
from which defendants seek records. Defense coun-
sel would be well advised to re-visit the procedural
rules. The current motion will be denied.

An Order follows.

ORDER

AND NOW, this 8th day of June 2005, upon con-
sideration of defendant's motion "to compel cus-
todians of records to produce records of treatment
of plaintiff-minor," IT IS ORDERED:

The motion is DENIED, without prejudice.

E.D.Pa.,2005.

Fields ex rel. Vellafane v. Bucks County Children
and Youth Social Service Agency
Not Reported in F.Supp.2d, 2005 WL 1388009
(E.D.Pa.)

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