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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

AF Holdings, LLC, a St. Kitts and Nevis
limited liability company,

Plaintiff,

v.

David Harris,

Defendant.

No. CV-12-02144-PHX-GMS
ORDER

Pending before the Court are Defendant’s Motion to Dismiss Plaintiff’s Claims for Improper Change of Venue (Doc. 90), Plaintiff’s Response to Defendant’s Motion to Dismiss and Cross-Motion to Dismiss Defendant’s Counterclaims for Failure to Prosecute (Doc. 94), Defendant’s Motion for Judicial Ruling on Defendant’s Motion to Dismiss and Plaintiff’s Cross Motion to Dismiss (Doc. 99) and Non-Parties’ Motion for Attorneys’ Fees (Doc. 88). For the following reasons, the Motion to Dismiss and Cross-Motion to Dismiss are granted and the Motion for Judicial Ruling is denied as moot. The Motion for Attorneys’ Fees is also denied.

This case is based on allegations that Defendant David Harris used a file sharing protocol, BitTorrent, to infringe on Plaintiff AF Holdings’ copyrighted video. (Doc. 1.) Plaintiff alleges copyright infringement, civil conspiracy, and negligence. (*Id.*) Defendant Harris filed a counterclaim against Plaintiff, alleging malicious prosecution, a violation of his state constitutional right to privacy, defamation, and infliction of emotional distress. (Doc. 14.)

1 Defendant moves to dismiss Plaintiff's claims (Doc. 90), and Defendant consents
2 to that dismissal (Doc. 94.) Therefore, Plaintiff's claims are dismissed.

3 Next, Plaintiff cross-moves to dismiss Defendant's counterclaims (Doc. 94), and
4 Defendant consents to both that dismissal and to the denial of his request for leave to
5 amend his counterclaim (Doc. 95). As such, Defendant's request for leave to amend his
6 counterclaim is denied and Defendant's counterclaims are dismissed.

7 Finally, Defendant's Motion for Judicial Ruling on Defendant's Motion to
8 Dismiss and Plaintiff's Cross Motion to Dismiss (Doc. 99) is denied as it is now moot.

9 The Non-Parties' Motion for Attorneys' Fees (Doc. 88) is denied because as the
10 Court set forth in its Order of August 20, 2013 (Doc. 92), Plaintiff never identified the IP
11 addresses of the computers for which it sought to subpoena ownership information.
12 Therefore, it is not clear to the Court that the information of the Non-Parties was ever
13 sought in conjunction with the subpoena. Further, although Plaintiff's position that
14 participation in a BitTorrent swarm is sufficient, under Arizona law, to constitute a
15 conspiracy to infringe is aggressive, in light of the fact that the subpoena never sought IP
16 addresses, the Court cannot and need not assess whether the subpoena was in bad faith
17 with respect to the moving non-parties.

18 **IT IS THEREFORE ORDERED** that Defendant's Motion to Dismiss (Doc. 90)
19 is **granted**.

20 **IT IS FURTHER ORDERED** that Plaintiff's Cross-Motion to Dismiss
21 Defendant's Counterclaim (Doc. 94) is **granted**.

22 **IT IS FURTHER ORDERED** that Defendant's Motion for Judicial Ruling (Doc.
23 99) is **denied** as moot.

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