

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

HARD DRIVE PRODUCTIONS, INC.,)

Plaintiff,)

v.)

DOES 1 – 1495,)

Defendants.)

Case No. 1:11-cv-01741-JDB-JMF-SBP

**PLAINTIFF’S MEMORANDUM OF LAW IN OPPOSITION TO THE MOTION OF
AMICUS CURIAE ELECTRONIC FRONTIER FOUNDATION FOR EMERGENCY
STAY OF MAGISTRATE JUDGE’S DECEMBER 21, 2011 ORDER**

Plaintiff Hard Drive Productions, Inc. submits this opposition to the motion made by the non-party Electronic Frontier Foundation (“EFF”) for an emergency stay (the “Motion for Stay”) of the Magistrate Judge’s December 21, 2011 Order (the “Order”) for purposes of allowing the EFF an opportunity to ask for reconsideration of the Order. Plaintiff previously filed a brief on January 30, 2012 opposing the EFF’s motion for leave to appear as an *amicus curiae*, in which it established that the EFF should not be allowed to participate in this case. Although Plaintiff made clear in that opposition that it opposes any participation on the part of the EFF in this case, which extends to any attempt to stay proceedings, Plaintiff submits this brief to avoid any uncertainty that it also vigorously opposes the EFF’s Motion for Stay.

The Magistrate Judge’s December 21, 2011 Order generally set forth the procedural and timing requirements for individuals seeking to file motions to quash subpoenas that Plaintiff issued. (Electronic Docket Entry (“Dkt.”) # 18.) EFF asks that that Order be stayed to avoid public filing of motions to quash filed under seal. *See* Dkt. #30, Motion to Stay. The EFF claims that “no one currently before this Court represents the interests of most of the Doe defendants” in

this case, and that the Court will realize several “benefits” from reading an EFF brief seeking reconsideration of the Order. *Id.*

The EFF has not referenced any valid basis to seek or obtain a stay in this proceeding. It is not a party to this case. It has not appeared as the attorney of a party in this case. EFF’s Motion to Stay is thus a blatant attempt to interfere with Plaintiff’s rights as a litigant. And there is nothing to suggest that EFF will offer any new or unique argument on this issue. As of today, four (4) Doe Defendants have already filed motions to quash subpoenas publicly on the Court’s docket for this case (Dkt. #19, 20, 21, 22). The EFF does not establish how its motion to quash would be unique or substantively different from what those Defendants have filed. And the December 21 Order gave all ample opportunity for Defendants who had filed a motion to quash under seal to file publicly and have their motions considered.

The EFF has failed to set forth a valid basis as to why a non-party who is not counsel of record should be allowed to unilaterally delay this case from moving forward, based upon arguments that have either been made and rejected by the Court, or which are pending in motions to quash filed by the actual parties to this case. As set in Plaintiff’s opposition to the *amicus curiae* motion, EFF is an anti-intellectual property group which appears in the present action merely in order to obstruct or delay Plaintiff’s copyright infringement litigation. Allowing the non-party EFF to stall this proceeding would likely serve no purpose but to delay the administration of justice. The Court should reject the EFF’s offer to “benefit” the Court with a motion to reconsider the December 21, 2011 Order, and deny the Motion to Stay.

CONCLUSION

For all of the foregoing reasons, the Court should deny the motion of the EFF for to stay enforcement of the December 21, 2011 Order, and grant Plaintiff any and all further relief that it deems to be reasonable and appropriate.

Respectfully submitted,

HARD DRIVE PRODUCTIONS, INC.

DATED: February 9, 2012

By: /s/ Paul Duffy
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on February 9, 2012, I have caused a true copy of the foregoing to be served up the following individuals by U.S. Mail First Class, postage prepaid:

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