

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

CELL FILM HOLDINGS, LLC,

Case No. 3:17-cv-00239-SB

Plaintiff,

OPINION AND ORDER

v.

DOE-71.59.166.56,

Defendant.

BECKERMAN, Magistrate Judge.

Plaintiff Cell Film Holdings, LLC (“Plaintiff”) moves, pursuant to [FED. R. CIV. P. 45\(g\)](#) (“Rule 45”), for an order sanctioning non-party Shannon Halvorson (“Halvorson”) for failing to attend and testify at a Rule 45 deposition. As discussed below, the Court finds that Halvorson violated a court order when (s)he failed to attend and testify at the Rule 45 deposition, and should therefore be sanctioned. Accordingly, the Court orders Halvorson to pay to Plaintiff its attorney’s fees and costs resulting from Halvorson’s failure to appear.

BACKGROUND

On February 11, 2017, Plaintiff filed a Complaint against a Doe defendant identified only by an Internet Protocol (“IP”) address. Plaintiff’s investigators observed the IP address

distributing Plaintiff's motion picture, *Cell*, via a public BitTorrent network. Thereafter, Plaintiff issued a subpoena to Internet Service Provider Comcast, pursuant to Standing Order 2016-8, seeking the identity of the IP address subscriber. Comcast returned a subpoena identifying Halvorson as the subscriber.

On April 23, 2017, after Halvorson failed to respond to letters from Plaintiff's counsel, Plaintiff personally served Halvorson with, among other things, a Rule 45 subpoena, providing notice of a deposition scheduled for May 23, 2017. Halvorson did not appear for the deposition or otherwise respond to the Rule 45 subpoena.

On June 2, 2017, Plaintiff filed a Motion for Order to Show Cause, asking the Court to find Halvorson in contempt for failing to appear and testify at the deposition, and to impose sanctions. On July 13, 2017, the Court ordered Halvorson to appear for a show cause hearing, and advised Halvorson that if (s)he did not participate in the hearing, (s)he would be subject to financial sanctions, including payment of Plaintiff's attorney's fees and costs, for failing to appear at the deposition and for failing to participate in the hearing. On July 28, 2017, a show cause hearing was held, and Halvorson failed to appear at the hearing, show cause, or respond in any way.

ANALYSIS

I. LEGAL STANDARD

As explained in *LHF Prods., Inc. v. Doe*, No. 3:16-CV-00716-AC, 2016 WL 6208269 (D. Or. Oct. 21, 2016), a district court "may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it." *Id.* at *2 (citation omitted). In order to initiate a civil contempt proceeding, a district court "must issue an order to show cause as to why a contemnor should not be held in contempt, as well as a notice of a date for the hearing." *Id.* At the hearing, the moving party must establish, by clear and convincing

evidence, that the non-party violated a specific and definite court order. *Id.* Sanctions, such as attorney's fees and costs, may be warranted when a non-party fails to comply with a subpoena.

Id.

II. DISCUSSION

Plaintiff has established, by clear and convincing evidence, that Halvorson violated a specific and definite court order. Plaintiff's Rule 45 subpoena, which was issued pursuant to Standing Order 2016-8, "constitutes a court order for which [Halvorson's] failure to comply could result in a finding of civil contempt." *LHF Prods., 2016 WL 6208269*, at *2 (citations omitted). Plaintiff personally served Halvorson with the Rule 45 subpoena, compelling Halvorson's appearance at a deposition. By failing to appear at the deposition, Halvorson violated a court order. *See id.* (holding the same). Halvorson also failed to: (1) respond to Plaintiff's motion to show cause; (2) comply with the Court's order to appear for a show cause hearing; (3) respond to court-appointed counsel's communications; or (4) provide any explanation for this noncompliance. On the basis of these events, the Court concludes that sanctions are warranted here.

Individuals like Halvorson may disagree with copyright law as applied to BitTorrent use, and may view this type of litigation as unsavory, unfair, or an abuse of judicial process. Nevertheless, the law is the law, and a court order is a court order. If a non-party receives a Rule 45 subpoena, that non-party *must* appear for the scheduled deposition, or contact Plaintiff's counsel to reschedule the deposition. Failure to appear for the deposition is a violation of a court order, and will be sanctioned by this Court.

If the non-party appears for deposition and is not the infringing party, the non-party's involvement in the case is likely over. If the non-party appears for the deposition and accepts

responsibility for the alleged infringement, this Court's statutory damage award will, in almost all cases, be less than the sanction for not appearing at the deposition in the first place. This Court gave Halvorson every opportunity to participate in this litigation while protecting Halvorson's rights, and Halvorson chose to ignore the Court. The functioning of our justice system requires respect for, and strict adherence with, court orders. Halvorson's flagrant disregard for this Court's orders is a serious matter deserving of the sanctions the Court imposes today.

CONCLUSION

For the foregoing reasons, the Court finds that Halvorson violated a court order. Accordingly, Plaintiff is entitled to recover its costs and attorney's fees incurred as a result of the failed deposition, the motion for order to show cause, and the show cause hearing. The Court orders Plaintiff to provide, at the appropriate time, an itemization of the costs and attorney's fees discussed herein.

DATED this 31st day of July, 2017.



STACIE F. BECKERMAN
United States Magistrate Judge