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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

WORLD WRESTLING
ENTERTAINMENT, INC,

Plaintiff,

v.

JOHN AND JANE DOES, et al.,

Defendants.

Case No. [15-cv-01263-VC](#)
SEALED

**ORDER GRANTING IN PART
PLAINTIFF'S APPLICATION FOR A
TEMPORARY RESTRAINING ORDER**

Re: Dkt. No. 6

World Wrestling Entertainment ("WWE") is hosting a series of events in Santa Clara County beginning Wednesday, March 25, 2015. It has filed an *ex parte* application for an order under the Lanham Act, 15 U.S.C. § 1116(d), to restrain people from selling counterfeit products (such as t-shirts, hats and masks) within five miles of the events, and to authorize the seizure of any such products.

WWE has satisfied the requirements for an order, but the proposed order it has submitted is too broad. It would authorize off-duty law enforcement officers, along with anyone acting under the supervision of the off-duty officers, to seize the products. The pertinent language of the proposed order reads: "Any federal, state or local law on-duty or off-duty enforcement officer, and/or persons acting under the supervision and control thereof (collectively 'Enforcement Officials') are hereby authorized and directed to seize and maintain in their custody and control any and all Enjoined Goods and counterfeit marks" (typo in original). But the statute authorizes seizure only by "a [f]ederal law enforcement officer" or a "[s]tate or local law enforcement officer." 15 U.S.C. § 1116(d)(9). This clearly does not include private parties "acting under the supervision" of law enforcement officers. *See also* Ex. 1, S. Rep. No. 98-526 at 17 ("[I]t is important that law enforcement officials, and not private citizens, enforce seizure

1 orders."); Ex. 2, H.R. Rep. No. 98-997 at 23 (The statute "permits either a United States marshal
2 or another law enforcement officer to carry out the seizure. The Committee strongly prefers that
3 the seizure be carried out by a Federal marshal . . ."); *World Wrestling Entm't, Inc. v.*
4 *Unidentified Parties*, 770 F.3d 1143, 1145-46 (5th Cir. 2014); *Warner Bros. Inc v. Dae Rim*
5 *Trading, Inc.*, 877 F.2d 1120, 1125-26 (2d. Cir. 1989); *Time Warner Entm't Co., L.P. v. Does Nos.*
6 *1-2*, 876 F.Supp. 407, 412 (E.D.N.Y. 1994).

7 Nor does the statute appear to include law enforcement officers who are off-duty. After a
8 hearing on the *ex parte* application, the Court requested further briefing on whether an off-duty
9 police officer working as a private security guard for WWE could be considered a "local law
10 enforcement officer" within the meaning of section 1116(d)(9). WWE's supplemental brief, if
11 anything, confirms the suspicion that this would be an overbroad reading of the statute, because it
12 confirms that police officers generally do not act as law enforcement officers when they work as
13 private security guards during their off time, at least in California. Subject to an exception created
14 by statute, "police officers do *not* act as peace officers when privately employed and paid as
15 security guards." *Melendez v. City of Los Angeles*, 73 Cal. Rptr. 2d 469, 477 (Ct. App. 1998)
16 (emphasis in original). The exception is when the officers are in uniform, the private work is
17 approved by the law enforcement agency where the officer is employed, the agency approves the
18 use of the uniform during the private employment, and the officer is subject to reasonable rules
19 and regulations of the agency. Cal. Penal Code § 70(d)(1). And if these conditions are met, the
20 law enforcement agency remains liable for the conduct of the off-duty officer. Cal. Penal Code §
21 70(d)(2).

22 WWE acknowledges that its off-duty officers will not be wearing uniforms. *See* Supp.
23 Brief at 2, n.1. Therefore, its off-duty officers will not be acting as actual police officers. And if a
24 person is not acting in his capacity as an actual police officer, it seems unlikely he could be
25 deemed a "local law enforcement officer" within the meaning of section 1116(d)(9). Certainly the
26 Court is not prepared to reach the opposite conclusion on such a short timeline and absent some
27 showing by WWE that Congress intended it.

28 The discussion in *Melendez* helps show why any doubt about the meaning of "law


1 enforcement officer" in section 1116(d)(9) should be resolved in favor of a narrower construction
2 that includes only on-duty officers (or off-duty officers who, under state law, are acting in their
3 capacity as police officers when working as private security guards). In *Melendez*, off-duty
4 officers working as private security guards shot a bystander in the back when a melee erupted, in
5 part because it was not clear to the melee participants that the off-duty officers were actually
6 police officers. 73 Cal. Rptr. 2d at 471. The same concern could present itself at a crowded
7 WWE event, with the seller of counterfeit products questioning the authority of apparent civilians
8 to seize those products. Moreover, if any off-duty police officer could serve as a "law
9 enforcement officer" within the meaning of section 1116(d)(9), what is the safeguard against
10 companies using off-duty officers who have a history of excessive force incidents? Cf. *Melendez*,
11 73 Cal. Rptr. 2d at 476 (explaining that giving the agency control over who may act as a police
12 officer while working as a private security guard may cause the agency to "allow some [officers]
13 to do so while declining permission to others who have a doubtful record in connection with
14 excessive force").

15 To be sure, there is nothing in the record to indicate that violence is likely to erupt between
16 security guards and bootleggers at the WWE events, nor is there anything to suggest that WWE is
17 using off-duty officers with questionable records. But these concerns support a narrow reading of
18 the statute in the first place – a reading that does not allow off-duty officers acting in a private
19 capacity as security guards to seize counterfeit products under section 1116(d)(9).

20 Accordingly, the Court will issue WWE's proposed order after changing the applicable
21 language to read as follows: "Any on-duty federal, state or local law enforcement officer is hereby
22 authorized to seize and maintain in their custody and control any and all Enjoined Goods and
23 counterfeit marks"

24 **IT IS SO ORDERED.**

25 Dated: March 24, 2015

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27 _____
28 VINCE CHHABRIA
United States District Judge