Guava, LLC,	:	PHILADELPHIA COUNTY
	:	COURT OF COMMON PLEAS
Plaintiff,	:	CIVIL DIVISION
	:	
v.	:	December Term, 2012
	:	
John Does 1-40,	:	No.: 03387
	:	
Defendants.	:	
	:	

ORDER

AND NOW, this ____ day of _____, 2013 upon consideration of the Motion to Quash and for a Protective Order by Verizon Online, LLC and Memorandum of Law Supporting Motion to Quash and for a Protective Order by Verizon Online, LLC, and any response thereto, it is hereby ORDERED and DECREED that said Motion is GRANTED.

Compliance with the Subpoena to Produce Documents or Things issued by plaintiff on January 30, 2013, and served on Verizon Online, LLC on February 7, 2013, will not be required.

BY THE COURT:

_____
J.

BY: Marc Durant (PA BAR No. 15813)
K. Thomas Jonsson (PA BAR No. 309922)
DURANT & DURANT, LLP
325 Chestnut Street, Suite 1116
Philadelphia, PA 19106
Telephone: 215.592.1818
Facsimile: 215.689.3996
mdurant@durantlaw.com
tjonsson@durantlaw.com

Of Counsel:
Benjamin J. Fox
Giancarlo Urey
MORRISON & FOERSTER LLP
555 West Fifth Street
Los Angeles, California 90013-1024
Telephone: 213.892.5200
Facsimile: 213.892.5454
BFox@mofo.com
GUrey@mofo.com

Attorneys for Subpoenaed
Non-Party Verizon Online, LLC

Guava, LLC,	:	PHILADELPHIA COUNTY
	:	COURT OF COMMON PLEAS
Plaintiff,	:	CIVIL DIVISION
	:	
v.	:	December Term, 2012
	:	
John Does 1-40,	:	No.: 03387
	:	
Defendants.	:	
	:	

MOTION TO QUASH AND FOR A PROTECTIVE ORDER BY VERIZON ONLINE, LLC

Verizon Online, LLC (Verizon) respectfully moves to quash the subpoena issued by plaintiff Guava LLC pursuant to Rule 234.4(b) of the Pennsylvania Rules of Civil Procedure and this Court's order dated January 25, 2013 specifying the time frame for this motion to quash. In support of its motion, Verizon states as follows:

I. INTRODUCTION AND SUMMARY

1. This action is one among many hundreds of recently filed multi-"Doe" defendant actions in which pornography companies seek from Internet Service Providers (ISPs) the personal information for Internet subscribers. *See Judges Limiting Subpoenas in Porn-Downloading Suits*, The Legal Intelligencer (Mar. 5, 2013) (Urey Decl. Ex. A). The information is then used to serve mass "settlement" demands on the subscribers, threatening to name them in lawsuits for accessing pornography without paying for it unless they pay $2,000-$4,000. The lawsuits are having wide-ranging ill effects, including imposing unreasonable burdens on the ISPs, the judiciary, and the public. Courts familiar with this phenomenon are increasingly rejecting Plaintiffs' requests to take discovery and quashing subpoenas served on the ISPs.

2. The subpoena issued to Verizon should be quashed because the action cannot proceed on its merits and therefore is improper under controlling law and imposes an unreasonable burden on Verizon. Pa. R.C.P. 4011; *Cooper v. Frankford Health Care Sys., Inc.*, 960 A.2d 134, 140 (Pa. Sup. 2008). As the accompanying Memorandum of Law explains, the "Does" are misjoined in this litigation; Plaintiff's claims are preempted by the Copyright Act; and serious questions exist as to whether Plaintiff could submit any evidence to support its claims, given that its in-house counsel is the subject of an Order to Show Cause in a federal court in which substantial sanctions and incarceration have been threatened. *AF Holdings LLC v. Doe*, 2013 U.S. Dist. LEXIS 16924 (C.D. Cal. Feb. 7, 2013).

II. FACTUAL AND PROCEDURAL BACKGROUND

3. Verizon is an Internet Service Provider that provides Internet access to subscribers in locations throughout the country. Verizon has been the recipient of at least 600 subpoenas in multi-"Doe" lawsuits involving pornography, including a large number of

subpoenas from the Prenda law firm and its counsel, Brett Gibbs, which have been the subject of substantial press coverage. (*See* Moriarty Decl. ¶¶ 2-5; Urey Decl. Exs. A-C.)

Plaintiff's Moving Papers and the Information Sought from Verizon

4. On January 2, 2013, Plaintiff filed its Motion for Leave to Take Pre-Complaint Discovery under Pa. R. Civ. P. 4003.8. Plaintiff's Memorandum of Law described Guava as "a pornography company" that "maintains a website by and through which individuals who pay a monthly subscription fee can view its adult content." (Memo. of Law at 3.) Plaintiff's papers say nothing about the state or country in which Guava exists, who owns or operates Guava, or how its (unspecified) "computer systems" are "protected" or operate. Nor does Plaintiff even identify the pornographic website or websites that the Does are accused of accessing. (*Id*.) Plaintiff did not submit any client verification to support its motion.

5. The information sought by Plaintiff (names, addresses and telephone number of Verizon subscribers) is typically entered into a national database of subscriber information for the purpose of making pre-service-of-process "settlement" demands on the subscribers, threatening to name them in a lawsuit for viewing pornography without paying for it. (*See, e.g.*, Urey Decl. Ex. C; *Hard Drive Prods. v. Doe*, 2012 U.S. Dist. LEXIS 45509, at *16 (N.D. Cal. Mar. 16, 2012) ("At the hearing, plaintiff's counsel disclosed that the information received in response to subpoenas to ISPs is sent to a database where all subscriber information discovered in all of plaintiff's lawsuits is maintained.").)

6. Plaintiff's motion says nothing about *where* the Doe defendants reside or *when* they supposedly accessed Guava's pornography, although this information is readily available through Internet-based "geo-location" services and routinely submitted to courts in multi-Doe suits involving pornography. *See, e.g.*, *Next Phase Distrib., Inc. v. Does 1-27*, 284 F.R.D. 165,

167 (S.D.N.Y. 2012) (plaintiff alleged "that, based on geo-location technology, each John Doe is within the geographic jurisdiction of the Court"; court denied discovery except as to Doe 1).

Background re: Plaintiff Guava LLC and Pending Related Litigation

7. Plaintiff Guava has been involved in other multi-Doe lawsuits, and has used subscriber information obtained in them to send pre-service-of-process demands for "settlement" payments to subscribers. A demand letter from Guava dated January 30, 2013 identifies Brett Gibbs of the Prenda law firm as "in-house counsel for Guava LLC." (Urey Decl. Ex. C; *see also AF Holdings*, 2013 U.S. Dist. LEXIS 16924 [identifying Mr. Gibbs as "Counsel, Prenda Law"].) Plaintiff's letter demands that the Internet subscriber send $4,000 to Guava LLC at 2100 M Street Northwest, Suite 170-407, Washington, D.C. 20037, to avoid being named in a lawsuit for unlawful downloading of pornography. (Urey Decl. Ex. C.) Guava's listed address appears to be the address for a UPS Store in Washington, D.C. — an address shared with Livewire Holdings, LLC, which also promotes or makes pornography. (Urey Decl. Exs. D-E.)[1]

8. Guava's "in-house counsel," Mr. Gibbs, is the subject of a pending Order to Show Cause for sanctions in *AF Holdings v. Doe* and *Ingenuity13 v. Doe*, where the U.S. District Court for the Central District of California has received declarations stating that Mr. Gibbs' firm, Prenda Law, has relied upon false signatures on copyright assignments to support its multi-Doe lawsuits—apparently by creating fictitious persons, including "Alan Cooper," the name of a former caretaker of John Steele, a Prenda lawyer. (Urey Decl. Exs. F-H.) A subsequent order

[1] Guava's "Payment Authorization Form," submitted to the targets of its multi-Doe lawsuits, identifies Guava as an affiliate of "Livewire Holdings," a pornography company represented by members of the Prenda law firm, which has been involved in literally hundreds of multi-Doe suits involving pornography. (Urey Decl. Ex. C; *see also* Urey Decl. Ex. J, Response by Prenda law to Order to Show Cause in *AF Holdings v. Does 1-135*, N.D. Cal. No. 11-cv-3336, identifying 118 multi-Doe suits filed in federal courts in which no defendant had been served.)

requires other representatives of plaintiff Guava's umbrella company, Livewire Holdings, to appear with Mr. Gibbs on the Order to Show Cause on March 10, 2013. (Urey Decl. Ex. I.)

The order authorizing pre-complaint discovery and Guava's subpoena

9. Plaintiff did not disclose to this Court its involvement in other multi-Doe lawsuits or serve Verizon with a copy of the moving papers filed here. On January 25, 2013, the Court signed Plaintiff's proposed order without opposition. The order provides that Verizon should respond or move to quash the subpoena within "30 days from the date of service." (Order dated Jan. 25, 2013, at 2.)

10. On February 7, 2013, Plaintiff served its subpoena on Verizon; the subpoena stated erroneously that a response is due "within twenty (20) days after the service" of the subpoena. (Urey Decl. Ex. K.) Verizon, concerned with the pattern that has emerged in multi-Doe pornographic lawsuits, notified Guava's counsel of record of Verizon's intent to move to quash the subpoena, and asked for information about the ownership and operations of Guava, and whether any person associated with the Prenda law firm was involved with Guava or this lawsuit. (Urey Decl. Ex. I.) Guava's counsel did not respond. (Urey Decl. ¶ 13.)

III. LEGAL ARGUMENT: REASONS FOR QUASHING THE SUBPOENA

A. *Applicable Legal Standards*: Pre-Complaint Discovery Is Proper Only Where the Lawsuit Would Survive a Demurrer and the Information Sought Will Be Used for a Proper Purpose.

11. Where "the purpose of a discovery request is to gather information for use in proceedings other than the pending suit, discovery properly is denied." *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 353 (1978). "[A] court is not required to blind itself to the purpose for which a party seeks information." *Id.*

12. Under Pennsylvania's pre-complaint procedure, the discovery sought must be solely to "support a cognizable cause of action." *Cooper v. Frankford Health Care Sys., Inc.*,

960 A.2d 134, 140 (Pa. Sup. 2008) (citing and quoting *McNeil v. Jordan*, 894 A.2d 1260, 1276 (Pa. 2006); *McNeil v. Jordan* ("*McNeil II*"), 934 A.2d 739, 742 (Pa. Sup. 2007)). Accordingly, Plaintiff's proposed complaint must be "capable of surviving a demurrer" to support a pre-complaint discovery request. *Id.* (quoting *McNeil*, 894 A.2d at 1279). "[M]erely stating that … information sought in [pre-complaint] discovery is 'material and necessary' to draft a legally sufficient Complaint'" is insufficient. *Id.* at 142 (quoting *McNeil II*, 934 A.2d at 742). The Court must also consider whether jurisdiction exists over the Plaintiff's claims. *McNeil*, 894 A.2d at 1265 ("Before reaching the merits of … pre-complaint discovery," a court "must consider [] issues raised … contesting [] jurisdiction.").

13. The following sections and Verizon's accompanying Memorandum of Law explain that Plaintiff has not satisfied the standards for pursuing pre-complaint discovery here.

B. Courts Familiar With the Multi-Doe Pornographic Lawsuit Phenomenon Increasingly Are Recognizing That these Lawsuits Are Improper and Constitute an Abuse of the Judicial Process.

14. As many courts have explained, the information sought by Plaintiff is not a reliable indicator of the identities of the "Does" who allegedly viewed Plaintiff's pornography without paying for it:

> [T]he [sought-after] subscriber information is not a reliable indicator of the actual infringer's identity. Due to the proliferation of wireless internet and wireless-enabled mobile computing (laptops, smartphones, and tablet computers), it is commonplace for internet users to share the same internet connection, and thus, share the same IP address. Family members, roommates, employees, or guests may all share a single IP address ….

Malibu Media, LLC v. Does 1-10, 2012 U.S. Dist. LEXIS 152500, at *8-9 (C.D. Cal. Oct. 10, 2012) (denying leave to take discovery after coordination of 33 lawsuits); *In re BitTorrent Adult Film Copyright Infringement Cases*, 2012 U.S. Dist. LEXIS 61447, at *8 (E.D.N.Y. May 1,

2012) ("[T]he assumption that the person who pays for Internet access at a given location is the same individual who allegedly downloaded a single sexually explicit film is tenuous, and one that has grown more so over time."). Additional authority cited in Memorandum of Law.

15. The prevalence of unsecured Internet connections in subscribers' homes, and computer viruses that permit Internet users to download content without a subscriber's consent, have not, however, discouraged plaintiffs from demanding pre-service-of-process "settlement" payments via form letters, followed by phone calls to the targeted subscribers. (Urey Decl. Ex. C.) *Compare Hard Drive Prods. v. Does 1-30*, 2011 U.S. Dist. LEXIS 119333, at *9 (E.D. Va. Oct. 17, 2011) (describing the pattern, including the "threatening phone call … by John Steele" from the Prenda law firm). This prospect for abuse has caused courts to deny discovery outright, explaining that "courts are not cogs in a plaintiff's copyright-enforcement business model." *Malibu Media v. Does 1-10, supra*, 2012 U.S. Dist. LEXIS 89286, at *8-9.

16. Plaintiffs' approach of indiscriminately demanding payments before naming any defendant means that "[t]he individual—whether guilty of copyright infringement or not—would then have to decide whether to pay money to retain legal assistance to fight the claim that he or she illegally downloaded sexually explicit materials, or pay the money demanded. This creates great potential for a coercive and unjust 'settlement.'" *Hard Drive Prods. v. Does 1-130*, 2011 U.S. Dist. LEXIS 132449, at *9 (N.D. Cal. Nov. 16, 2011); *Malibu Media, LLC v. Does 1-5*, 2012 U.S. Dist. LEXIS 77469, at *4 (S.D.N.Y. June 1, 2012) ("This court shares the growing concern about unscrupulous tactics used by certain plaintiffs, particularly in the adult films industry, to shake down the owners of specific IP addresses from which copyrighted adult films were allegedly downloaded.").

17. The accompanying Memorandum of Law explains that Plaintiff is pursuing discovery in this Court because federal judges are aligning to deny plaintiff Guava and other similar plaintiffs operating under the "Livewire Holdings" umbrella the discovery sought here.

C. The Targeted "Doe" Defendants Are Misjoined in this Action.

18. Pennsylvania's rule governing joinder of multiple defendants is modeled on Federal Rule of Civil Procedure 20; both statutes require that the defendants' acts be part of the "same series of transactions or occurrences" for joinder to be proper. Pa. R. Civ. P. 2229(b); Fed. R. Civ. P. 20; *Mallesky v. Stevens*, 427 Pa. 352, 357 (1967) (reference to federal decisions is appropriate where a state rule tracks the federal); *Siranovich v. Butkovich*, 366 Pa. 56, 63 (1950).

19. Plaintiff Guava has not made any real attempt to establish that the "Does" were acting as part of the same "series of transactions" or occurrences: No evidence or information is provided regarding the times or dates on which the Does are alleged to have accessed Guava's pornography, nor does Plaintiff even allege that the same pornographic content or website was accessed by each of the Does.

20. District courts, applying the parallel federal rule, increasingly are requiring Does to be sued separately, or if multiple Does are joined in a single action, at minimum a case-specific evidentiary showing that the Does were online at or around the same time and collaborated in an active way. *See, e.g.*, *Patrick Collins, Inc. v. Does*, 2012 U.S. Dist. LEXIS 165764, at *24 (E.D.N.Y. Nov. 20, 2012) ("Plaintiff and their counsel are directed that any future actions of a similar nature in this district be filed as separate actions against each John Doe defendant, so as to avoid unfair outcomes, improper joinder and waste of judicial resources, and to ensure the proper payment of filing fees."); *Zero Tolerance Entm't, Inc. v. Doe*, 2012 U.S. Dist. LEXIS 78834 (S.D.N.Y. June 6, 2012); *Digital Sins, Inc. v. Doe*, 2012 U.S. Dist. LEXIS 69286 (S.D.N.Y. May 15, 2012). Additional authority cited in Memorandum of Law.

21. Plaintiff's vague reference to the Does "hacking" unspecified "computer systems" does nothing to alter the analysis. Despite alleging that Guava has obtained a list of IP Addresses that connected to the Internet to access Guava's website(s) (Mtn. at 1), Guava has not stated when its websites (or "computer systems") were accessed, nor has it alleged any facts to suggest that the Internet subscribers knew one another or were acting in concert. (Mtn. at 1-3.)

22. Given Plaintiff's business model, deferring a decision on joinder until after discovery, by contrast,

> effectively precludes consideration of joinder issues at a later point in the proceedings. By not naming or serving a single defendant, [Plaintiff] ensures that this case will not progress beyond its infant stages and therefore, the court will never have the opportunity to evaluate joinder. Deferring a ruling on joinder, then, would "encourage[] [p]laintiffs … to join (or misjoin) as many doe defendants as possible…."

McGIP, LLC v. Does 1-149, 2011 U.S. Dist. LEXIS 108109, at *10 (N.D. Cal. Sept. 16, 2011).

D. Plaintiff's Claims Are Preempted by the Copyright Act

23. The Copyright Act contains a broad, express preemption provision:

> All legal or equitable rights that are equivalent to any of the exclusive rights within the general scope of copyright as specified by section 106 [of the Copyright Act] in works of authorship that are fixed in a tangible medium of expression and come within the subject matter of copyright as specified by sections 102 and 103 . . . are governed exclusively by this title.

17 U.S.C. § 301(a).

24. Plaintiff's state-law claim for "hacking" into unspecified websites or "computer systems" is preempted because Plaintiff has not "plead[ed] specific *facts* giving rise to a plausible inference of larceny, false pretenses, embezzlement," or another element that are needed to prove an offense that differs materially from a claim for unauthorized viewing of a pornographic film or photos. *Cvent, Inc. v. Eventbrite, Inc.*, 739 F. Supp. 2d 927, 933-34 (E.D.

Va. 2010); *see also Rosciszewski v. Arete Assocs.*, 1 F.3d 225, 230 (4th Cir. 1993) (same; the allegation that a person accessed or viewed a computer "without authority" does not differ qualitatively from the scope of rights governed exclusively by copyright law).

25. Plaintiff has not alleged any facts that would add the required "extra element" or transform the nature of the action from one governed exclusively by copyright—the gravamen of this suit is that the Does viewed or downloaded pornography without paying for it.

26. Given the serious questions that exist as to the ownership (and, potentially, the existence) of plaintiff Guava, it appears doubtful that any representative for Guava could come forward and provide facts showing that the Does acted through fraud or some other actionable misconduct to access Guava's pornography.

E. Serious Questions Exist as to Whether Guava Is a Real Entity That Could Submit Admissible Evidence to Support Its Claims

27. The absence of any client verification submitted by Guava in this Court, coupled with evidence in the federal Order to Show Cause proceedings directed at Guava's "in-house" counsel, Brett Gibbs, and other lawyers affiliated with the Prenda firm, raises additional serious questions about the propriety of this lawsuit.

28. Court records in the *AF Holdings* and *Ingenuity 13* cases in the Central District of California (consolidated case no. 12-cv-8333), and in *Sunlust Pictures v. Nguyen* in the Middle District of Florida (case no. 12-cv-1685) contain substantial evidence indicating that plaintiffs affiliated with Livewire Holdings have used fake names in court filings to support corporate ownership or rights to the pornography-in-suit, including "Salt Marsh," based on "Anthony Saltmarsh" (allegedly a boyfriend of attorney John Steele's sister); "Alan Moay," a/k/a "Alan Mony," a/k/a "Allen Mooney" (who purportedly signed a verification for Guava in an Illinois

case); and "Allen Cooper" (a former caretaker of attorney John Steele's, who has accused Prenda representatives of identity theft). (*See* Urey Decl. Exs. F-H.)

29. Guava's counsel of record owes a duty of candor to this Court and a duty of fairness to Verizon. Pa. R. Prof. Conduct 3.3, 3.4; *Eigen v. Textron Lycoming Reciprocating Engine Div.*, 874 A.2d 1179, 1188-89 (Pa. Sup. 2005) ("An attorney's reputation is judged not only by his effectiveness in representing a client, but also by his candor, trustworthiness and respect to opponents and to the tribunal."). Despite requests, Guava's counsel has not responded to straightforward questions about Guava:

> 1. What pay website, computer systems or business specifically does Guava, LLC own or operate, and how does it make use of the unspecified "computer systems" that allegedly have been hacked or "converted" by the Doe defendants? Where do these computer systems reside? We would appreciate your providing supporting documentation, including any Secretary of State filings for Guava.
>
> 2. Have you seen and can you provide copyright registrations, copyright assignments, or other documents demonstrating Guava's ownership of the content, information or films that was allegedly hacked?
>
> 3. Who are Guava's owners and members, and will any of them be prepared to testify in a follow-on action regarding the alleged misuse of Guava's computer systems or films? Who will verify documents that need to be submitted to the Court (either in this action or a subsequent one following discovery from Verizon)?
>
> 4. Do you serve as the sole counsel for Guava or are you working together with another law firm, including the Prenda firm?

(Urey Decl. Ex. L & ¶ 13.)

30. If this action is not dismissed outright, Verizon respectfully requests leave to serve discovery on Guava to determine the answers to the questions above, and the extent to which the information sought through pre-complaint discovery would be used in the national

effort by the Prenda firm or other similar entities to extract pre-suit "settlement" payments from subscribers.

F. The Multi-Doe Pornography Cases Flooding the Courts Present an Unreasonable Burden on Verizon, the Judiciary and the Public

31. The burdens imposed on Verizon by subpoenas in pornographic multi-Doe cases are substantial and, taken alone or together, are an unreasonable burden on Verizon. Pa. R.C.P. 4011; *Stahl v. First Penn. Banking & Trust Co.*, 411 Pa. 121, 127 (1963); *Northwestern Mem'l Hosp. v. Ashcroft*, 362 F.3d 923, 928-29 (7th Cir. 2004) (rejecting argument that a subpoena causes no undue burden merely because "the administrative hardship of compliance would be modest," but considering instead "the rash of suits around the country" and the publicity); *Pac. Century*, 282 F.R.D. at 197 (noting the burdens these subpoenas impose on the ISPs, and explaining that "it is difficult for the ISPs to object before the approval of early discovery, given that they likely will not learn of such cases until they are served with a subpoena").

32. In the last three years, Verizon has received approximately 600 subpoenas from pornography companies seeking personal identifying information for Internet subscribers. (Moriarty Decl. ¶ 4.) Given the nature of the underlying allegations and the concerns expressed by subscribers, the ISPs take requests for the subscribers' personal information very seriously. (*Id.* ¶ 3.) These subpoenas take an inordinate amount of employees and attorneys' time to review, evaluate and process—and they pose competing demands for employees who have responsibility for responding to requests for information from law enforcement (in matters unrelated to pornography).

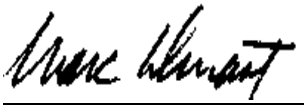
IV. CONCLUSION

WHEREFORE, Verizon respectfully requests that the Court issue an order quashing the subpoena to Verizon, and for such further relief as the Court deems proper.

In the alternative, Verizon requests leave to conduct discovery of plaintiff Guava as described in Paragraphs 29 and 30 above.

Dated: March 8, 2012

Respectfully submitted,



Marc Durant (PA BAR No. 15813)
DURANT & DURANT, LLP
325 Chestnut Street, Suite 1116
Philadelphia, PA 19106
215-592-1818

Of Counsel:
Benjamin J. Fox
Giancarlo Urey
MORRISON & FOERSTER LLP
555 West Fifth Street
Los Angeles, California 90013-1024
Telephone: 213.892.5200
Facsimile: 213.892.5454
BFox@mofo.com
GUrey@mofo.com

Attorneys for VERIZON ONLINE, LLC

BY: Marc Durant (PA BAR No. 15813)
K. Thomas Jonsson (PA BAR No. 309922)
DURANT & DURANT, LLP
325 Chestnut Street, Suite 1116
Philadelphia, PA 19106
Telephone: 215.592.1818
Facsimile: 215.689.3996
mdurant@durantlaw.com
tjonsson@durantlaw.com

Of Counsel:
Benjamin J. Fox
Giancarlo Urey
MORRISON & FOERSTER LLP
555 West Fifth Street
Los Angeles, California 90013-1024
Telephone: 213.892.5200
Facsimile: 213.892.5454
BFox@mofo.com
GUrey@mofo.com

Attorneys for Subpoenaed
Non-Party Verizon Online, LLC

Guava, LLC,	:	PHILADELPHIA COUNTY
	:	COURT OF COMMON PLEAS
Plaintiff,	:	CIVIL DIVISION
	:	
v.	:	December Term, 2012
	:	
John Does 1-40,	:	No.: 03387
	:	
Defendants.	:	
	:	

MEMORANDUM OF LAW SUPPORTING MOTION TO QUASH SUBPOENA AND FOR A PROTECTIVE ORDER FILED BY VERIZON ONLINE, LLC

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

CASES

TABLE OF AUTHORITIES
(*continued*)

Page(s)

CASES (CONT'D)

TABLE OF AUTHORITIES
(*continued*)

Page(s)

CASES (CONT'D)

STATUTES

TABLE OF AUTHORITIES
(*continued*)

Page(s)

STATUTES (CONT'D)

OTHER AUTHORITIES

INTRODUCTION

The subpoena and multi-Doe defendant filing currently before this Court are among literally hundreds of recent court filings by owners of pornographic films, seeking information from Internet Service Providers (ISPs) about the ISPs' subscribers. The cases typically target several to several thousand "Does" per action, and follow "a common arc":

> (1) a plaintiff sues anywhere from a few to thousands of Doe defendants for copyright infringement in one action; (2) the plaintiff seeks leave to take early discovery; (3) once the plaintiff obtains the identities of the IP subscribers through early discovery, it serves the subscribers with a settlement demand; (4) the subscribers, often embarrassed about the prospect of being named in a suit involving pornographic movies, settle…. Thus, these mass copyright infringement cases have emerged as a strong tool for leveraging settlements—a tool whose efficiency is largely derived from the plaintiffs' success in avoiding the filing fees for multiple suits and gaining early access en masse to the identities of alleged infringers.[1]

Courts are increasingly wary that the information sought in these multi-Doe lawsuits may be used for an improper purpose—with courts denying leave to take discovery, reconsidering earlier ex parte orders that had authorized discovery from the ISPs, or dismissing the actions outright once their scope and true purpose become known. *See, e.g.*, *Judges Limiting Subpoenas in Porn-Downloading Suits*, The Legal Intelligencer (Mar. 5, 2013) (Urey Decl. Ex. A); *Patrick Collins, Inc. v. Does*, 2012 U.S. Dist. LEXIS 165764, at *24 (E.D.N.Y. Nov. 20, 2012) ("Plaintiff and their counsel are directed that any future actions of a similar nature in this district be filed as separate actions against each John Doe defendant, so as to avoid unfair outcomes, improper joinder and waste of judicial resources, and to ensure the proper payment of filing fees."); *Third Degree Films, Inc. v. John Does 1-110*, 2013 U.S. Dist. LEXIS 27273, at *3-6 (D. N.J. Jan. 17, 2013); *Next Phase Distrib., Inc. v. Does 1-27*, 284 F.R.D. 165, 169-172 (S.D.N.Y.

[1] *McGIP, LLC v. Does 1-149*, 2011 U.S. Dist. LEXIS 108109, at *11 n.5 (N.D. Cal. Sept. 16, 2011) (citations omitted).

2012). Plaintiff should be well aware based on its own experience and news articles that courts are increasingly scrutinizing—and rejecting—requests for multi-Doe discovery of the ISPs in pornography cases. *See, e.g., Guava LLC v. Doe*, 2103 U.S. Dist. LEXIS 1989 (S.D. Ala. Jan. 7, 2013); *Angry Judge Calls Porn Troll's Bluff, Orders Entire Firm to Court*, arstechnica.com (Mar. 6, 2013) (Urey Decl. Ex. B).

As this brief explains, plaintiff Guava LLC now seeks to do through state-law procedures what federal courts across the country are increasingly declining to permit in multi-Doe lawsuits: Plaintiffs obtaining the largest amount of Internet subscribers' information as possible, at the lowest cost, for the purpose of sending pre-suit "settlement" demands *en masse* to subscribers.

Due to unsecured and shared Internet connections in subscribers' homes, the contact information that Plaintiff seeks is not a reliable indicator of the true identities of the "Does" who allegedly accessed Plaintiff's pornography without paying for it.[2] Yet the record that has developed in the many prior cases shows that the information sought is being used primarily to compile a mailing list for demanding "settlement" payments (typically ranging from $2,000-$4,000) from *each* Internet subscriber identified in discovery, with few of these cases resulting in defendants actually being named and served in the underlying lawsuits. Accordingly, these cases present a substantial risk that Verizon will be required to disclose innocent subscribers' information pursuant to lawsuits that rarely, if ever, are tested on their merits.

Plaintiff Guava's subpoena to Verizon is improper and should be quashed for multiple reasons. *First*, the 40 "Does" are not properly joined in this litigation, which makes this action unlikely to go forward on its merits and the request to take "pre-complaint" discovery as to all

[2] *In re BitTorrent Adult Film Copyright Infringement Cases*, 2012 U.S. Dist. LEXIS 61447, at *8 (E.D.N.Y. May 1, 2012) ("[T]he assumption that the person who pays for Internet access at a given location is the same individual who allegedly downloaded a single sexually explicit film is tenuous, and one that has grown more so over time.").

Does therefore improper. *Second*, Plaintiff's claims are preempted by the Copyright Act. *Third*, serious questions exist as to whether this Plaintiff could submit evidence to support its underlying claims, given the absence of any verification submitted to this Court that would support the charges of "hacking," and an Order to Show Cause re: Sanctions pending against Guava's in-house counsel in a federal court related to false signatures and a potentially "sham" entity established for the purpose of coercing payments from Internet subscribers. *AF Holdings LLC v. Doe*, 2013 U.S. Dist. LEXIS 16924 (C.D. Cal. Feb. 7, 2013). *Fourth*, these multi-Doe lawsuits, taken alone or together, impose an undue burden on Verizon and the judicial system.

For the reasons explained herein, Verizon respectfully requests that the Court issue an order quashing the subpoena served by Guava in this action.

FACTUAL BACKGROUND

Plaintiff's moving papers. On January 2, 2013, Plaintiff filed its Motion for Leave to Take Pre-Complaint Discovery under Pa. R. Civ. P. 4003.8. Plaintiff's supporting Memorandum of Law described Guava as "a pornography company" that "maintains a website by and through which individuals who pay a monthly subscription fee can view its adult content." (Memo. of Law at 3.) Plaintiff's papers say nothing about the state or country in which Guava exists, who owns or operates Guava, or how its (unspecified) "computer systems" are "protected" or operate. Nor does Plaintiff even identify the pornographic website or websites that the Does are accused of accessing. (*Id*.) Plaintiff did not submit any client verification to support its motion.

Plaintiff's motion also says nothing about *where* the Does reside or *when* they supposedly accessed Guava's pornography, although this information is readily available through free, Internet-based "geo-location" services and routinely submitted to courts in multi-Doe suits involving pornography. *See, e.g., Next Phase Distrib.*, 284 F.R.D. at 167 (plaintiff alleged "that, based on geo-location technology, each John Doe is within the geographic jurisdiction of the

Court"; court denied discovery except as to Doe 1); *compare Berlin Media Art v. Does 1-654*, 2011 U.S. Dist. LEXIS 120257, at *4-6 (N.D. Cal. Oct. 18, 2011) (explaining that "with minimal effort, the Court was able to utilize one of many free and publicly available services to look up the locations affiliated with IP addresses for which Plaintiff seeks discovery").

Background regarding Guava. Plaintiff Guava has been involved in other multi-Doe lawsuits, and has used subscriber information obtained in them to send pre-service-of-process demands for "settlement" payments to subscribers. (*See, e.g.*, Urey Decl. Ex. C.) For example, a demand letter from Guava dated January 30, 2013 identifies Brett Gibbs of the Prenda law firm as "in-house counsel for Guava LLC." (*Id.*; *see also AF Holdings*, 2013 U.S. Dist. LEXIS 16924 [identifying Mr. Gibbs as "Counsel, Prenda Law"].) Plaintiff's letter demands that the Internet subscriber send $4,000 to Guava LLC at 2100 M Street Northwest, Suite 170-407, Washington, D.C. 20037, to avoid being named in a lawsuit for unlawful downloading of pornography. (Urey Decl. Ex. C.) Guava's listed address appears to be the address for a UPS Store in Washington, D.C. — an address shared with Livewire Holdings, LLC, which also promotes or makes pornography. (Urey Decl. Exs. D-E.)[3]

Guava's identified "in-house counsel," Mr. Gibbs, is the subject of a pending Order to Show Cause for sanctions in *AF Holdings v. Doe* and *Ingenuity13 v. Doe*, where the U.S. District Court for the Central District of California has received declarations stating that Mr. Gibbs' firm, Prenda Law, has relied upon false signatures on copyright assignments to support its multi-Doe lawsuits—apparently by creating fictitious persons, including "Alan Cooper," the name of a

[3] Guava's "Payment Authorization Form," submitted to the targets of its multi-Doe lawsuits, identifies Guava as an affiliate of "Livewire Holdings," a pornography company represented by members of the Prenda law firm, which has been involved in literally hundreds of multi-Doe suits involving pornography. (Urey Decl. Ex. C; *see also* Urey Decl. Ex. J, Response by Prenda law to Order to Show Cause in *AF Holdings v. Does 1-135*, N.D. Cal. No. 11-cv-3336, identifying 118 multi-Doe suits filed in federal courts in which no defendant had been served.)

former caretaker of John Steele, a Prenda lawyer. (Urey Decl. Exs. F-H.) A subsequent order requires other representatives of plaintiff Guava's umbrella company, Livewire Holdings, to appear with Mr. Gibbs on the Order to Show Cause on March 10, 2013. (Urey Decl. Ex. I.)

The order authorizing pre-complaint discovery and Guava's subpoena. Plaintiff did not disclose to this Court its involvement in other multi-Doe lawsuits or serve Verizon with a copy of the moving papers filed here. On January 25, 2013, the Court signed Plaintiff's proposed order without opposition. The order provides that Verizon should respond or move to quash the subpoena within "30 days from the date of service." (Order dated Jan. 25, 2013, at 2.)

On February 7, 2013, Plaintiff served its subpoena on Verizon; the subpoena stated erroneously that a response is due "within twenty (20) days after the service" of the subpoena. (Urey Decl. Ex. K.) Verizon, concerned with the pattern that has emerged in multi-Doe pornographic lawsuits, notified Guava's counsel of record of Verizon's intent to move to quash the subpoena, and asked for information about the ownership and operations of Guava, and whether any person associated with the Prenda law firm was involved with Guava or this lawsuit. (Urey Decl. Ex. I.) Guava's counsel did not respond. (Urey Decl. ¶ 13.)

LEGAL ARGUMENT

1. *Legal Backdrop*: Pornographers' Requests for Multi-Doe Discovery Are Being Rejected by a Growing Majority of Courts Familiar with the "Doe" Phenomenon.

In evaluating discovery requests, "'a court is not required to blind itself to the purpose for which a party seeks information.'" *Pac. Century Int'l, Ltd. v. Does 1-37*, 282 F.R.D. 189 (N.D. Ill. 2012) (quoting *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 353 (1978)). Courts are recognizing with increasing frequency that Plaintiff's requested discovery is "not 'very likely'" to lead to Plaintiff identifying, suing by name, and serving the Does, and thus is improper:

> [T]he [sought-after] subscriber information is not a reliable indicator of the actual infringer's identity. Due to the proliferation of wireless internet and wireless-enabled mobile computing (laptops, smartphones, and tablet computers), it is commonplace for internet users to share the same internet connection, and thus, share the same IP address. Family members, roommates, employees, or guests may all share a single IP address ….

Malibu Media, LLC v. Does 1-10, 2012 U.S. Dist. LEXIS 152500, at *8-9 (C.D. Cal. Oct. 10, 2012) (denying leave to take discovery after coordination of 33 lawsuits); *see also Adult Film Copyright Cases*, 2012 U.S. Dist. LEXIS 61447, at *8 ("[T]he assumption that the person who pays for Internet access at a given location is the same individual who allegedly downloaded a single sexually explicit film is tenuous, and one that has grown more so over time.").[4]

The prevalence of unsecured Internet connections in subscribers' homes, and computer viruses that permit Internet users to download content without a subscriber's consent, have not, however, discouraged plaintiffs from demanding pre-service-of-process "settlement" payments via form letters, followed by phone calls to the targeted subscribers. (Urey Decl. Ex. C.) *Compare Hard Drive Prods. v. Does 1-30*, 2011 U.S. Dist. LEXIS 119333, at *9 (E.D. Va. Oct. 17, 2011) (describing the pattern, including the "threatening phone call … by John Steele" from the Prenda law firm). This prospect for abuse has caused courts to deny discovery outright, explaining that "courts are not cogs in a plaintiff's copyright-enforcement business model." *Malibu Media v. Does 1-10*, *supra*, 2012 U.S. Dist. LEXIS 89286, at *8-9.

[4] Other courts have noted the problem of "false positives" from Plaintiffs' requested discovery: The targeted Does necessarily "encompass not only those who allegedly committed copyright infringement— proper defendants to Plaintiff's claims—but ISP 'Subscriber[s]' over whose internet connection the Work allegedly was downloaded." *Hard Drive Prods. v. Does 1-130*, 2011 U.S. Dist. LEXIS 132449, at *6-7 (N.D. Cal. Nov. 16, 2011); *Digital Sin, Inc. v. Does 1-176*, 279 F.R.D. 229, 242 (S.D.N.Y. 2012) (same); *Malibu Media, LLC v. Does 1-28*, 2012 U.S. Dist. LEXIS 144501, at *9 (D. Colo. Oct. 25, 2012) (same); *AF Holdings LLC v. Does 1-96*, 2011 U.S. Dist. LEXIS 109816 (N.D. Cal. Sept. 27, 2011) (same).

> The court is familiar with lawsuits like this one. . . . plaintiff owns a copyright to a pornographic movie; plaintiff sues numerous John Does in a single action for using BitTorrent to pirate the movie; plaintiff subpoenas the ISPs to obtain the identities of these Does; if successful, plaintiff will send out demand letters to the Does; because of embarrassment, many Does will send back a nuisance-value check to the plaintiff. The cost to the plaintiff: a single filing fee, a bit of discovery, and stamps. The rewards: potentially hundreds of thousands of dollars. *Rarely do these cases reach the merits*.

Id. at *8-9; *see also* Urey Decl. Ex. J (response to Order to Show Cause by Prenda law in an AF Holdings action, identifying 188 multi-Doe lawsuits in which no defendant has been served).

Plaintiff's approach of indiscriminately demanding payments before naming any defendant means that "[t]he individual—whether guilty of copyright infringement or not—would then have to decide whether to pay money to retain legal assistance to fight the claim that he or she illegally downloaded sexually explicit materials, or pay the money demanded. This creates great potential for a coercive and unjust 'settlement.'" *Hard Drive Prods. v. Does 1-130*, *supra*, 2011 U.S. Dist. LEXIS 132449, at *9; *Malibu Media, LLC v. Does 1-5*, 2012 U.S. Dist. LEXIS 77469, at *4 (S.D.N.Y. June 1, 2012) ("This court shares the growing concern about unscrupulous tactics used by certain plaintiffs, particularly in the adult films industry, to shake down the owners of specific IP addresses from which copyrighted adult films were allegedly downloaded."); *Zero Tolerance Entm't, Inc. v. Doe*, 2012 U.S. Dist. LEXIS 78834 (S.D.N.Y. June 6, 2012); *Digital Sins, Inc. v. Doe*, 2012 U.S. Dist. LEXIS 69286 (S.D.N.Y. May 15, 2012).

The purposes for which Plaintiff intends to use the information sought from Verizon must be considered in connection with the burdens that these many subpoenas place on Verizon and the courts, which are substantial. (*See, e.g.*, Moriarty Decl. ¶¶ 2-5.) Indeed, the media coverage that these cases have generated (*see, e.g.*, Urey Decl. Ex. A-B) shows that the cases are having wide-ranging ill effects: They cause outrage among innocent subscribers who are the targets of

Plaintiffs' demand letters (and who, in turn, contact Verizon with requests for assistance in responding to Plaintiffs) and they impose substantial administrative burdens on Verizon. The Court may properly consider all of these effects. *See, e.g.*, *Northwestern Mem'l Hosp. v. Ashcroft*, 362 F.3d 923, 928-29 (7th Cir. 2004) (rejecting argument that a subpoena causes no undue burden merely because "the administrative hardship of compliance would be modest," but considering instead "the rash of suits around the country" and the publicity generated).

As the following sections explain, the analysis and result reached by the federal decisions cited above apply with equal force under Pennsylvania's pre-complaint discovery procedure.

2. *Applicable Legal Standards*: Pre-Complaint Discovery Is Proper Only Where the Lawsuit Would Survive a Demurrer and the Information Sought Will Be Used for a Proper Purpose.

As the Supreme Court has explained, where "the purpose of a discovery request is to gather information for use in proceedings other than the pending suit, discovery properly is denied." *Oppenheimer Fund*, 437 U.S. at 353. Under the pre-complaint procedure invoked by Plaintiff, the discovery sought must be solely to "support a cognizable cause of action." *Cooper v. Frankford Health Care Sys., Inc.*, 960 A.2d 134, 140 (Pa. Sup. 2008) (citing and quoting *McNeil v. Jordan*, 894 A.2d 1260, 1276 (Pa. 2006); *McNeil v. Jordan* ("*McNeil II*"), 934 A.2d 739, 742 (Pa. Sup. 2007)). Accordingly, Plaintiff's proposed complaint must be "capable of surviving a demurrer" to support a pre-complaint discovery request. *Id.* (quoting *McNeil*, 894 A.2d at 1279). "[M]erely stating that … information sought in [pre-complaint] discovery is 'material and necessary' to draft a legally sufficient Complaint'" is insufficient. *Id.* at 142 (quoting *McNeil II*, 934 A.2d at 742). The Court must also consider whether jurisdiction exists over the Plaintiff's claims. *McNeil*, 894 A.2d at 1265 ("Before reaching the merits of … pre-complaint discovery," a court "must consider [] issues raised … contesting [] jurisdiction.").

The following sections explain that Plaintiff has not satisfied these standards.

3. Plaintiff Has Failed to Demonstrate That the Sought-After Discovery Will Be Used to Support a Cognizable Cause of Action Against the Does in this Court.

a. The targeted "Doe" defendants are misjoined in this action, as a growing majority of courts have held in applying the parallel federal rule.

Pennsylvania's rule governing joinder of multiple defendants is modeled on the federal rule and provides:

> A plaintiff may join as defendants persons against whom the plaintiff asserts any right to relief jointly, severally, separately or in the alternative, in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences if any common question of law or fact affecting the liabilities of all such persons will arise in the action.

Pa. R. Civ. P. 2229(b); *compare* Fed. R. Civ. P. 20; *see Mallesky v. Stevens*, 427 Pa. 352, 357 (1967) (stating that where a Pennsylvania Rule of Civil Procedure is "in all material particulars identical to [a rule] of the Federal Rules of Civil Procedure … [r]eference to federal cases is therefore appropriate"); *Siranovich v. Butkovich*, 366 Pa. 56, 63 (1950) ("[t]he permissive joinder rule was an adaptation of Rule 20(a) of the Federal Rules of Civil Procedure").

Guava's pre-complaint petition and memorandum of law do not make any real attempt to establish that the "Does" were acting as part of the same "series of transactions" or occurrences: No evidence or information is provided regarding the times or dates on which the Does are alleged to have accessed Guava's pornography, nor does Plaintiff even allege that the same pornographic content or website was accessed by each of the Does. (Mtn. at 1-3.) Indeed, given that this lawsuit targets Verizon subscribers only, it appears that the action was formulated solely for the purpose of serving a single subpoena on Verizon and gathering 40 names and addresses as gristle for the Prenda law firm's "settlement" database. *Hard Drive Prods. v. Doe*, 2012 U.S. Dist. LEXIS 45509, at *16 (N.D. Cal. Mar. 16, 2012) ("At the hearing, plaintiff's counsel

disclosed that the information received in response to subpoenas to ISPs is sent to a database where all subscriber information discovered in all of plaintiff's lawsuits is maintained.").

District courts, applying the parallel federal rule for joinder, increasingly are requiring Does to be sued separately, or if multiple Does are joined in a single action, at minimum a case-specific evidentiary showing that the Does were online at or around the same time and collaborated in an active way. *See, e.g., Zero Tolerance Entm't, Inc. v. Doe*, 2012 U.S. Dist. LEXIS 78834 (S.D.N.Y. June 6, 2012); *Digital Sins, Inc. v. Doe*, 2012 U.S. Dist. LEXIS 69286 (S.D.N.Y. May 15, 2012).[5] Following a rash of similar suits, the Eastern District of New York recently ordered that "Plaintiff and their counsel are directed that any future actions of a similar nature in this district be filed as separate actions against each John Doe defendant, so as to avoid unfair outcomes, improper joinder and waste of judicial resources, and to ensure the proper payment of filing fees." *Patrick Collins*, 2012 U.S. Dist. LEXIS 165764, at *24.

Plaintiff's vague reference to the Does "hacking" unspecified "computer systems" does nothing to alter the analysis. Again, despite alleging that Guava has obtained a list of IP Addresses that connected to the Internet to access Guava's website(s) (Mtn. at 1), Guava has not stated when its websites (or "computer systems") were accessed, nor has it alleged any facts to suggest that the Internet subscribers knew one another or were acting in concert. (Mtn. at 1-3.)

[5] *See also SBO Pictures, Inc. v. Does 1-57*, 2012 U.S. Dist. LEXIS 56578, at *5-6 (D. Md. Apr. 19, 2012) (citing the split of authority and concluding that "the better-reasoned decisions have held that where a plaintiff has not plead that any defendant shared file pieces directly with one another, the first prong of the permissive joinder is not satisfied"); *Malibu Media, LLC v. John Does 1-23*, 2012 U.S. Dist. LEXIS 58860, at *9-10 (E.D. Va. May 30, 2012) (finding that "a plaintiff must allege facts that permit the court at least to infer some actual, concerted exchange of data between those defendants."); *BitTorrent Adult Film Copyright Infringement Cases*, 2012 U.S. Dist. LEXIS 61447, at *33 (same); *AF Holdings, LLC v. Does 1-97*, 2011 U.S. Dist. LEXIS 126225(N.D. Cal. Nov. 1, 2011) (finding misjoinder where 97 defendants accessed the Internet at different times and were not alleged to know one another or to have been collaborating in some active way); *Boy Racer, Inc. v. Does 1-60*, 2011 U.S. Dist. LEXIS 92994 (N.D. Cal. Aug. 19, 2011) (same); *McGIP*, 2011 U.S. Dist. LEXIS 108109, at *8 (same).

The allegations are woefully deficient to support joining the 40 Does. *See* cases cited directly above and in fn. 5. Deferring a decision on joinder, by contrast,

> effectively precludes consideration of joinder issues at a later point in the proceedings. By not naming or serving a single defendant, [Plaintiff] ensures that this case will not progress beyond its infant stages and therefore, the court will never have the opportunity to evaluate joinder. Deferring a ruling on joinder, then, would "encourage[] [p]laintiffs … to join (or misjoin) as many doe defendants as possible…."

McGIP, 2011 U.S. Dist. LEXIS 108109, at *10 (citation omitted).

For these reasons alone, Guava's subpoena that seeks personal information for 40 Verizon subscribers is improper and should be quashed.

b. Plaintiff's claims are preempted by the Copyright Act.

The Copyright Act contains a broad, express preemption provision:

> All legal or equitable rights that are *equivalent to any of the exclusive rights within the general scope of copyright* as specified by section 106 [of the Copyright Act] in works of authorship that are fixed in a tangible medium of expression and *come within the subject matter of copyright* as specified by sections 102 and 103 . . . ***are governed exclusively by this title.***

17 U.S.C. § 301(a) (emphasis added).

The content of Guava's websites "come[s] within the subject matter of copyright." *Cvent, Inc. v. Eventbrite, Inc.*, 739 F. Supp. 2d 927, 934 (E.D. Va. 2010); *see also Stromback v. New Line Cinema*, 384 F.3d 283, 300 (6th Cir. 2004) ("for purposes of preemption, the scope of the Copyright Act's subject matter is broader than the scope of its protection"). As such, the state-law claim for "hacking" into a website is preempted unless Plaintiff can "plead specific *facts* giving rise to a plausible inference of larceny, false pretenses, embezzlement," or other elements that are needed to prove an offense that differs materially from a claim for unauthorized viewing or downloading of a film or photographic photos. *Cvent*, 739 F. Supp. 2d at 934-34

(state-law claim for "hacking" under the Virginia Computer Crimes Act was preempted by the Copyright Act); *see also Rosciszewski v. Arete Assocs.*, 1 F.3d 225, 230 (4th Cir. 1993) (same; the allegation that a person accessed or viewed a computer "without authority" does not differ qualitatively from the scope of rights governed exclusively by copyright law).

Plaintiff has not alleged any facts that would add the required "extra element" or transform the nature of the action from one governed exclusively by copyright—the gravamen of this suit is that the Does viewed or downloaded pornography without paying for it. (*See* Memo of Law at 6 [referring to "claims for conversation" [sic] to be pursued against Does for misuse of Guava's pornographic content].) Indeed, given the serious questions that exist as to the ownership (and, potentially, the existence) of Guava, it appears doubtful that any representative for Guava could come forward and provide facts showing that the Does acted through fraud or some other actionable misconduct to access Guava's pornography. (*See* Section C, *post*.)

c. Serious questions exist as to whether Guava is a real entity or a shell run by persons affiliated with the Prenda law firm, which underscores that Plaintiff may be unable to submit admissible evidence supporting its claims.

Finally, the pending proceedings in federal courts in California and Florida involving entities that come under the "Livewire Holdings" umbrella raise serious additional questions as to whether this case has been filed for a proper purpose, or merely to extract Internet subscriber's personal information for a far-reaching Internet subscriber shakedown operation.[6]

Court records in the *AF Holdings* and *Ingenuity 13* cases in the Central District of California (consolidated case no. 12-cv-8333), and in *Sunlust Pictures v. Nguyen* in the Middle District of Florida (case no. 12-cv-1685) contain substantial evidence indicating that plaintiffs affiliated with Livewire Holdings have used fake names in court filings to support corporate

[6] Similar circumstances have caused at least one court to question "whether [the pornography] was produced for commercial purposes or for purposes of generating litigation and settlements." *On the Cheap, LLC v. Does 1-5011*, 280 F.R.D. 500, 504 n.6 (N.D. Cal. 2011).

ownership or rights to the pornography-in-suit, including "Salt Marsh," based on "Anthony Saltmarsh" (allegedly a boyfriend of attorney John Steele's sister); "Alan Moay," a/k/a "Alan Mony," a/k/a "Allen Mooney" (who purportedly signed a verification for Guava in an Illinois case); and "Allen Cooper" (a former caretaker of attorney John Steele's, who has accused Prenda representatives of identity theft). (*See* Urey Decl. Exs. F-H.)[7] The federal court's March 5 order in the *AF Holdings* and *Ingenuity 13* cases requires *two* "Allen Coopers" to appear at the Order to Show Cause hearing on March 10, 2013. (Urey Decl. Ex. I.)

Independent of the shell games being played by the Prenda firm (including by Mr. Gibbs, who signed a demand letter for Guava as its "in-house counsel," *see* Urey Decl. C), Guava's counsel of record, Mr. Shepner, owes a duty of candor to this Court and a duty of fairness to Verizon. Pa. R. Prof. Conduct 3.3, 3.4; *Eigen v. Textron Lycoming Reciprocating Engine Div.*, 874 A.2d 1179, 1188-89 (Pa. Sup. 2005) ("An attorney's reputation is judged not only by his effectiveness in representing a client, but also by his candor, trustworthiness and respect to opponents and to the tribunal."). Despite requests, Guava's counsel of record has not responded to straightforward questions:

> 1. What pay website, computer systems or business specifically does Guava, LLC own or operate, and how does it make use of the unspecified "computer systems" that allegedly have been hacked or "converted" by the Doe defendants? Where do these computer systems reside? We would appreciate your providing supporting documentation, including any Secretary of State filings for Guava.
>
> 2. Have you seen and can you provide copyright registrations, copyright assignments, or other documents demonstrating Guava's ownership of the content, information or films that was allegedly hacked?

[7] The court files are publicly available on the federal courts' PACER website <www.pacer.gov>. Sample materials have been submitted with the Declaration of Giancarlo Urey. *See also* the "Urgent Renewed Motion for Withdrawal of Counsel" by plaintiff's counsel of record in *Sunlust v. Nguyen*, U.S. Dist. M.D. Fla. Case No. 12-cv-1685 (Dkt. 43, filed Dec. 20, 2012).

> 3. Who are Guava's owners and members, and will any of them be prepared to testify in a follow-on action regarding the alleged misuse of Guava's computer systems or films? Who will verify documents that need to be submitted to the Court (either in this action or a subsequent one following discovery from Verizon)?
>
> 4. Do you serve as the sole counsel for Guava or are you working together with another law firm, including the Prenda firm?

(Urey Decl. Ex. L & ¶ 13.) The silence in response to these questions is deafening.

If this action is not dismissed outright, Verizon respectfully requests leave to serve discovery on Guava to determine the answers to the questions above, and the extent to which the information sought through pre-complaint discovery would be used in the national effort by the Prenda firm or other similar entities to extract pre-suit "settlement" payments from subscribers.

4. The Multi-Doe Pornography Cases Flooding the Courts Present an Undue Burden on Internet Service Providers, the Judiciary and the Public.

As noted above, the burdens imposed on Verizon by subpoenas in pornographic multi-Doe cases are substantial and, taken alone or together, are an unreasonable burden on Verizon. Pa. R.C.P. 4011; *Stahl v. First Penn. Banking & Trust Co.*, 411 Pa. 121, 127 (1963); *see also Northwestern Mem'l Hosp.*, 362 F.3d at 928-29 (rejecting argument that a subpoena causes no undue burden merely because "the administrative hardship of compliance would be modest," but considering instead "the rash of suits around the country" and the publicity); *Pac. Century*, 282 F.R.D. at 197 (noting the burdens these subpoenas impose on the ISPs, and explaining that "it is difficult for the ISPs to object before the approval of early discovery, given that they likely will not learn of such cases until they are served with a subpoena"); *W. Coast Prods. v. Does 1-1,434*, 2012 U.S. Dist. LEXIS 110847, at *3 (D.D.C. Aug. 6, 2012) (citing the "extraordinary burdens on the courts and the Internet Service Providers" imposed by these cases).

In the last three years, Verizon has received approximately 600 subpoenas from pornography companies seeking personal identifying information for Internet subscribers. (Moriarty Decl. ¶ 4.) Given the nature of the underlying allegations and the concerns expressed by subscribers, the ISPs take requests for the subscribers' personal information very seriously. (*Id.* ¶ 3.) These subpoenas take an inordinate amount of employees and attorneys' time to review, evaluate and process—and they pose competing demands for employees who have responsibility for responding to requests for information from law enforcement (in matters unrelated to pornography). All of these burdens are imposed for "Doe" cases that rarely, if ever, reach a litigated judgment. The Court may properly consider all of these ill effects.

CONCLUSION

For the reasons stated herein, Verizon respectfully requests that the Court issue an order quashing the subpoena to Verizon, and for such further relief as the Court deems proper.

In the alternative, Verizon requests leave to conduct discovery of Guava as described in Section 3(c) above.

Respectfully submitted,

Dated: March 8, 2012

Marc Durant (PA BAR No. 15813)
DURANT & DURANT, LLP
325 Chestnut Street, Suite 1116
Philadelphia, PA 19106
215-592-1818

Of Counsel:
Benjamin J. Fox
Giancarlo Urey
MORRISON & FOERSTER LLP
555 West Fifth Street
Los Angeles, California 90013-1024

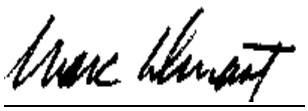
Telephone: 213.892.5200
Facsimile: 213.892.5454
BFox@mofo.com
GUrey@mofo.com

Attorneys for VERIZON ONLINE, LLC

CERTIFICATE OF SERVICE

I hereby certify that on March 8, 2013 a copy of the foregoing Motion to Quash and for a Protective Order by Verizon Online, LLC and Memorandum of Law Supporting Motion to Quash and for a Protective Order by Verizon Online, LLC and all documents and exhibits attached thereto were electronically filed and served via ECF upon the following counsel of record for Plaintiff:

Isaac F. Slepner, Esq.
Law Office of Isaac F. Slepner
2424 E. York Street, Suite #309
Philadelphia, PA 19125



Marc Durant

BY: Marc Durant (PA BAR No. 15813)
K. Thomas Jonsson (PA BAR No. 309922)
DURANT & DURANT, LLP
325 Chestnut Street, Suite 1116
Philadelphia, PA 19106
Telephone: 215.592.1818
Facsimile: 215.689.3996
mdurant@durantlaw.com
tjonsson@durantlaw.com

Of Counsel:
Benjamin J. Fox
Giancarlo Urey
MORRISON & FOERSTER LLP
555 West Fifth Street
Los Angeles, California 90013-1024
Telephone: 213.892.5200
Facsimile: 213.892.5454
BFox@mofo.com
GUrey@mofo.com

Attorneys for Subpoenaed
Non-Party Verizon Online, LLC

Guava, LLC,	:	PHILADELPHIA COUNTY
	:	COURT OF COMMON PLEAS
Plaintiff,	:	CIVIL DIVISION
	:	
v.	:	December Term, 2012
	:	
John Does 1-40,	:	No.: 03387
	:	
Defendants.	:	
	:	

VERIFICATION OF SEAN MORIARITY IN SUPPORT OF MOTION TO QUASH AND FOR A PROTECTIVE ORDER BY VERIZON ONLINE, LLC

VERIFICATION

I, Sean Moriarity, pursuant to 18 Pa.C.S.A. §4904, hereby state as follows:

1. I am a Manager of IP Legal Compliance for Verizon Online LLC and Verizon Communications, Inc. (together, "Verizon"), and have served in that capacity since 2008. I have personal knowledge of the facts stated herein, and if called upon to do so, I could testify competently to them.

2. My job responsibilities include assisting Verizon in responding to third-party subpoenas issued in civil litigation. During the last three years, a significant portion of my time has been devoted to responding to subpoenas issued by plaintiffs who allege to be owners of sexually explicit films and are seeking the personal identifying information for Verizon's Internet subscribers based on a list of IP Addresses. Several other employees in my group have spent a substantial portion of their time responding to these subpoenas. Other Verizon employees (including in-house counsel and other staff) also have been required to expend significant time and effort in responding to these types of subpoenas and the legal and privacy issues that they raise.

3. Verizon also has received numerous phone calls, emails and other communications from Internet subscribers who have been the targets of discovery in pornographic "Doe" defendant copyright lawsuits. Subscribers have expressed great concern with allegations that someone had accessed pornographic material through their Internet connections, and often claim that they had nothing to do with the alleged downloading of pornography. Given the nature of the concerns expressed by the subscribers, responding to these types of communications from Internet subscribers takes time and careful attention.

4. During the past three years, Verizon has received more than 600 subpoenas in lawsuits involving sexually explicit film titles. These subpoenas, taken together, have sought identifying information for many tens of thousands of subscribers. The subpoenas have imposed (and continue to impose) a substantial administrative burden on Verizon.

I, Sean Moriarity, hereby verify that the foregoing statements are true and correct to the best of my knowledge, information and belief. I understand that the statements are made subject to the penalties of 18 Pa.C.S.A. § 4904, relating to unsworn falsification to authorities.

March 7, 2013
DATE

Sean Moriarity

BY: Marc Durant (PA BAR No. 15813)
K. Thomas Jonsson (PA BAR No. 309922)
DURANT & DURANT, LLP
325 Chestnut Street, Suite 1116
Philadelphia, PA 19106
Telephone: 215.592.1818
Facsimile: 215.689.3996
mdurant@durantlaw.com
tjonsson@durantlaw.com

Of Counsel:
Benjamin J. Fox
Giancarlo Urey
MORRISON & FOERSTER LLP
555 West Fifth Street
Los Angeles, California 90013-1024
Telephone: 213.892.5200
Facsimile: 213.892.5454
BFox@mofo.com
GUrey@mofo.com

Attorneys for Subpoenaed
Non-Party Verizon Online, LLC

Guava, LLC,	:	PHILADELPHIA COUNTY
	:	COURT OF COMMON PLEAS
Plaintiff,	:	CIVIL DIVISION
	:	
v.	:	December Term, 2012
	:	
John Does 1-40,	:	No.: 03387
	:	
Defendants.	:	
	:	

VERIFICATION OF GIANCARLO UREY, ESQUIRE IN SUPPORT OF MOTION TO QUASH AND FOR A PROTECTIVE ORDER BY VERIZON ONLINE, LLC

VERIFICATION

I, Giancarlo Urey, pursuant to 18 Pa. C.S.A. § 4904, state as follows:

1. I am an attorney with the law firm of Morrison & Foerster LLP, counsel for Verizon Online LLC (Verizon) in this action. I have personal knowledge of the facts stated herein, and if called upon to do so, I would testify competently to them.

2. Attached hereto as **Exhibit A** is an article entitled "Judges Limiting Subpoenas in Porn-Downloading Suits," published in *The Legal Intelligencer* on March 5, 2013. The article is available online at <http://www.law.com/jsp/pa/PubArticleFriendlyPA.jsp?id=1362306474578> (last visited on March 7, 2013).

3. Attached hereto as **Exhibit B** is an article entitled "Angry Judge Calls Porn Troll's Bluff, Orders Entire Firm to Court," published on the arstechnica.com website and available at <http://arstechnica.com/tech-policy/2013/03/angry-judge-calls-porn-trolls-bluff-orders-entire-firm-to-court/> (last visited on March 7, 2013).

4. Attached hereto as **Exhibit C** is a demand letter on letterhead from Guava LLC, dated January 30, 2013, filed in the U.S. District Court for the Central District of California in *Ingenuity 13 LLC v. Doe*, Case No. 2:12-cv-8333 (ECF No. 53-2). The letter appears to be signed by Brett Gibbs as "In-House Counsel, Guava LLC," and it attaches a "Notice of Offer of Settlement and Payment Authorization" for Guava LLC.

5. Attached hereto as **Exhibit D** is a printout from the website www.livewireholdings.com (the "Our Principals" and "Contact Us" pages), identifying Mark Lutz as the CEO of Live Wire Holdings and Live Wire's address as 2100 M Street Northwest, Suite 170-407, Washington D.C. 20037. I visited this website and printed the webpages pages on March 6, 2013.

6. Attached hereto as **Exhibit E** is a webpage printout for a UPS Store located at 2100 M Street Northwest, Washington D.C. 20037, the same address listed for Guava in the demand letter attached as Exhibit C and the contact address for Livewire Holdings identified in Exhibit D. The attached webpage can be accessed at <http://www.theupsstorelocal.com/2016>. This copy was printed on March 6, 2013.

7. Attached hereto as **Exhibit F** is an Order to Show Cause dated February 7, 2013, directed to Brett Gibbs, Prenda Law, in *Ingenuity 13 LLC v. Doe*, Case No. 2:12-cv-8333 (ECF No. 48), pending in the U.S. District Court for the Central District of California.

8. Attached hereto as **Exhibit G** is a Response to the Order to Show Cause filed by John Doe on February 19, 2013, in *Ingenuity 13 LLC v. Doe*, C.D. Cal. Case No. 2:12-cv-8333 (ECF No. 52).

9. Attached hereto as **Exhibit H** is a Supplemental Declaration of Morgan Pietz, Esq. (counsel for John Doe), and selected exhibits, in response to the Order to Show Cause filed February 19, 2013, in *Ingenuity 13 LLC v. Doe*, C.D. Cal. Case No. 2:12-cv-8333 (ECF No. 53).

10. Attached hereto as **Exhibit I** is an Order dated March 5, 2013 in *Ingenuity 13 LLC v. Doe*, C.D. Cal. Case No. 2:12-cv-8333, requiring principals of Prenda Law or Livewire Holdings (including John Steele, Paul Duffy and Mark Lutz) to appear at the Order to Show Cause on March 11, 2013, in the Central District of California.

11. Attached hereto as **Exhibit J** is an Order to Show Cause in *AF Holdings v. Does 1-135*, Case No. 11-cv-3336 in the U.S. District Court for the Northern District of California, and the response filed by Prenda Law's "custodian of records," identifying

118 multi-Doe lawsuits filed by the Prenda firm in which no defendant had been served (ECF Nos. 42, 43).

12. Attached hereto as **Exhibit K** is the subpoena served on Verizon by Guava LLC in this action.

13. Attached hereto as **Exhibit L** is my letter dated February 26, 2013 to Guava's counsel of record in this action (without attachments). To date, Verizon has not received a substantive response to any of the questions posed in my letter.

I, Giancarlo Urey, verify that the foregoing statements are true and correct to the best of my knowledge, information and belief. I understand that the statements are made subject to the penalties of 18 Pa. C.S.A. § 4904, relating to unsworn falsification to authorities.

March 7, 2013
DATE

Giancarlo Urey

Morrison & Foerster LLP
555 W. 5th Street, Suite 3500
Los Angeles CA 90013-1024
Tel. (213) 892-5200

EXHIBIT A

The Legal Intelligencer

ALM Properties, Inc.
Page printed from: *The Legal Intelligencer*

Back to Article

Judges Limiting Subpoenas in Porn-Downloading Suits

Porn producers are having a hard time using federal court subpoenas to find out who is behind the widespread, unauthorized distribution of their films online.

Mary Pat Gallagher

2013-03-05 12:14:31 AM

Porn producers are having a hard time using federal court subpoenas to find out who is behind the widespread, unauthorized distribution of their films online.

Copyright infringement suits over the use of BitTorrent — a peer-to-peer protocol for anonymous file sharing — are on the rise.

But judges in the District of New Jersey are refusing to allow Internet service providers to be subpoenaed wholesale for identification of customers named as John Doe defendants.

Concerned that the alleged infringers are not necessarily the customers whose IP addresses were involved in the BitTorrent activity, the judges are limiting what information can be subpoenaed and how it can be used.

At least three judges in the district have issued seven decisions to that effect. U.S. Magistrate Judge Joseph Dickson in Newark issued five last week.

BitTorrent litigation has surged in the past two years. It accounts for nine of the 13 copyright actions filed in the district so far in 2013.

Defense lawyers and even a federal judge in Virginia have described the so-called "porn downloading lawsuits" as use of the courts and subpoena power to shake down John Doe defendants.

Adult film companies typically file a single action against Does, identified solely by IP addresses, who allegedly took part in BitTorrent activity.

They usually seek expedited discovery, in advance of the Rule 26 conference, allowing them to subpoena ISPs for names, addresses, telephone numbers and email addresses.

The plaintiffs then contact the Does to demand settlement or are contacted by the Does after their ISPs alert them to the subpoenas, and the cases are resolved without trial or further discovery.

It is more than the desire to avoid liability or legal fees and other costs that induces them to settle. "The motivation behind

these cases appears to be to leverage the risk of embarrassment associated with pornography to coerce settlement payments despite serious problems with the underlying claims," according to the Electronic Frontier Foundation, a San Francisco nonprofit that advocates for free speech and privacy on the Internet.

U.S. District Judge Faith Hochberg appears to be the first in New Jersey to find improper joinder of Doe defendants.

Last October, in a suit with 187 Doe defendants, she ordered all claims but those against John Doe 1 to be severed and the rest dismissed without prejudice to being refiled as individual actions or against multiple defendants who shared a connection to a common downloader.

In Amselfilm Productions v. Swarm 6A6DC, 12-cv-3865, Hochberg found permissive joinder of 187 Does inappropriate because the defendants' "only determinable connection to one another is the similar method of distributing the same work" and having 187 Does in one action would strain judicial resources.

Hochberg said she was not convinced that members of a "swarm" — a group of users downloading and uploading a torrent file — were part of the same transaction.

"Although there may be multiple individuals who distribute pieces of the same work and are thereby described as being in the same swarm, it is probable that different people within the swarm never distribute a piece of the work to the same person, or at the same moment in time," she wrote.

Joinder would require showing a more definite connection — for example, that "on a certain date and time, a particular subset of the swarm distributed pieces of the work to a common downloader."

Hochberg further held that any re-filed complaints must be accompanied by a certification that the plaintiff "will not engage in any coercive settlements or litigation tactics with defendants upon learning their identifying information" on pain of sanctions. Defendants wishing to proceed anonymously must show a reasonable fear of severe harm.

Plaintiff Amselfilm Productions, of Berlin, Germany, which sued over the movie sound track Bablo, has taken no further action in the case since Hochberg's decision and no one answered the telephone at the office of its lawyer, Jay McDaniel of Hackensack.

Michael Mignona, of Mattleman Weinroth & Miller in Cherry Hill, had moved to quash the subpoena against John Doe 72, or to sever and dismiss the claims against him.

He called the suit "a fishing expedition to hassle, embarrass and extract payment" by warning defendants their names "will appear alongside the allegations of copyright infringement of a film or films, the titles of which are usually obnoxious and pornographic." Mignona did not return a call.

On Jan. 17, U.S. Magistrate Judge Mark Falk followed the Amselfilm holding in denying without prejudice a request for expedited discovery in Third Degree Films v. John Does 1-110, 12-cv-5817.

Falk pointed out that the infringer might not be the IP subscriber but someone else in the household, a visitor or even someone outside the house who gained access to the network.

"As a result, Plaintiffs sought after discovery has the potential to ensnare numerous innocent Internet users into the litigation placing a burden on them that outweighs Plaintiff's need for discovery as framed," Falk said.

Acknowledging the plaintiff's need to identify John Doe 1 to serve the complaint, he said he would allow a new motion for expedited discovery that set forth "a detailed plan that addresses the Court's concern regarding potential innocent individuals" and how plaintiff intended to use the subpoenaed information.

Third Degree voluntarily dismissed its case one day after Falk ruled. Its lawyer, Flemington solo Patrick Cerillo, also filed one of the suits decided Tuesday by Dickson, Malibu Media v. John Does 1-11, 12-cv-7615.

Dickson's five BitTorrent rulings allowed limited expedited discovery only as to John Doe 1 in each case — just the name and address, to be used solely for the purpose of the instant lawsuit — and ordered the plaintiffs to show cause by April 1 why he should not dismiss each case without prejudice to refiling individual actions.

Cerillo, who has filed 41 BitTorrent cases in New Jersey on behalf of three adult filmmakers since last July and plans six more shortly, says judges in the district have taken a balanced approach.

He points to a Dec. 12, 2012, decision by U.S. Magistrate Judge Douglas Arpert denying motions to quash and sever by two Does in Malibu Media v. Does 1-30, 12-cv-3896, which alleged infringement of 30 movies.

Arpert found that the information sought was relevant, that there was no privilege, undue burden or improper joinder and that "the claim of potential reputational injury fails to articulate a reasonable fear of severe harm."
"We're playing by the rules," says Cerillo. "We just want everyone else to play by the rules and these cases would go away."

Three of Dickson's rulings were in cases captioned Modern Woman LLC v. Does I-X, filed against different swarms.

Ryan Janis of Jekielek & Janis in Feasterville, Pa., represents Modern Woman, which sued over The Woman, a horror film screened at the 2011 Sundance Film Festival.

He says Dickson's rulings "may foreclose our client's ability to seek redress for hundreds of thousands of illegal distributions of their copyrighted works."

Janis adds, "when courts refuse to allow copyright holders to identify multiple infringing account holders, it only further emboldens those who commit anonymous theft via the Internet and exacerbates the exact problem our client is attempting to curtail."

Mary Pat Gallagher *is a reporter for the* New Jersey Law Journal, *a* Legal *affiliate.*

EXHIBIT B

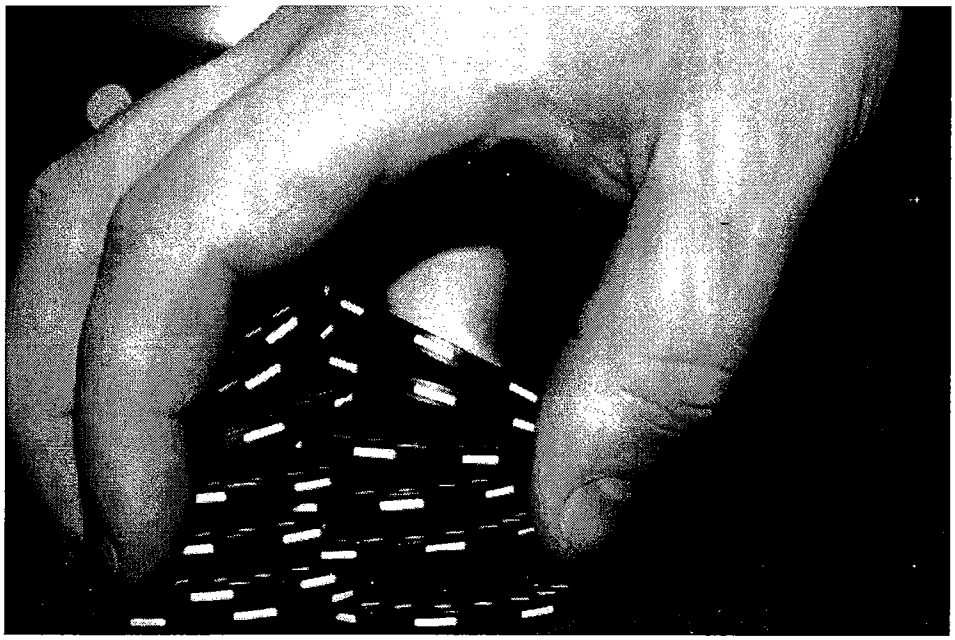
LAW & DISORDER CIVILIZATION & DISCONTENTS

Angry judge calls porn troll's bluff, orders entire firm to court

It's put up or shut up time for Prenda Law.

by Timothy B. Lee - Mar 6 2013, 6:21am PST

COPYRIGHT 108



Lost Vegas

A federal judge has dramatically raised the stakes of an upcoming hearing on alleged misconduct by porn copyright trolling firm Prenda Law. The hearing, scheduled for Monday in Los Angeles, was originally slated to focus on the actions of Prenda attorney Brett Gibbs. But in documents filed last month, Gibbs denied wrongdoing, blaming all of his alleged misconduct on his superiors. So on Tuesday, US District Judge Otis Wright ordered seven additional people connected to Prenda to report to his courtroom and explain themselves.

More precisely, Wright expanded Monday's hearing to include six more real people and one person who may not exist. A Minnesota man named Alan Cooper has accused Prenda of naming him the CEO of a litigious shell company called AF Holdings. Prenda insists

WHO'S BEHIND PRENDA LAW?

Trolling firm digs deeper hole with defamation suit against critics

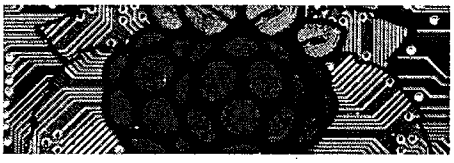
Troll attorney lawyers up, admits he never met his "client" Alan Cooper

Judge hints at jail time for porn troll Prenda Law over identity theft

Porn trolling firm accused of colluding with defendant in sham lawsuit

Porn-trolling failure: Prenda Law can't ditch unhappy judge

TOP FEATURE STORY



FEATURE STORY (2 PAGES)

How two volunteers built the Raspberry Pi's operating system

Raspbian makes the Pi go faster—and supplanted Fedora as the #1 OS.

46

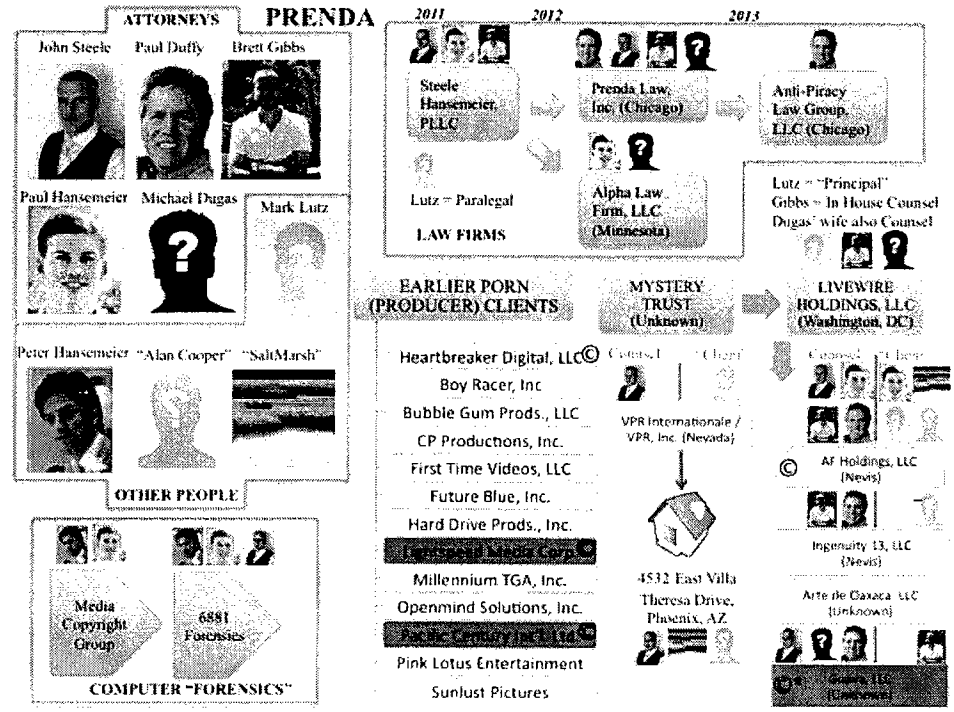
STAY IN THE KNOW WITH

Cooper's allegations are false, so Judge Wright has ordered *both* Alan Coopers to appear in his courtroom next Monday. Now, Prenda's senior officials will either have to produce a second Alan Cooper or explain to Judge Wright, in person, why they were unable to do so.

View all...

A terrible soap opera

Some television dramas have complex plots involving so many characters that fans have created elaborate charts to keep the characters and their relationships straight. Defense attorney Morgan Pietz was experiencing a similar difficulty keeping track of all the entities affiliated with Prenda Law, so he created an elaborate chart and filed it as an exhibit to a Monday legal filing:



Enlarge

Morgan Pietz

The "characters" in the Prenda soap opera are listed in the upper left. John Steele and Paul Hansmeier originally founded a law firm called Steele and Hansmeier. According to G bbs, the firm sold its book of business to a new firm called Prenda Law in 2011. A lawyer named Paul Duffy is nominally the principal of Prenda, but critics say Steele and Hansmeier are still secretly pulling Prenda's strings.

An operative named Mark Lutz has been named as an official in a variety of Prenda-related companies. In November, a Florida federal judge blasted him for "attempted fraud on the court," for claiming to represent a pomography producer when he was unable to even name the porn company's officers. More recently, Gibbs named Lutz as a successor to "Alan Cooper," the CEO of the shell companies AF Holdings and Ingenuity 13.

Someone named "Salt Marsh" has been named in corporate documents as an officer of AF Holdings. Pietz has suggested that this is not a real person, but rather a reference to Anthony Saltmarsh, the "live-in boyfriend" of John Steele's sister Jayme.

In Pietz's view, the fact that so many Prenda "clients" are all staffed by the same handful of individuals with close ties to Steele or Hansmeier is evidence that they are not independent entities at all. Rather, the proliferation of shell companies is, well, a shell game, designed to shield Prenda's real principals from accountability for their ethically questionable activities.

Judge Wright has ordered seven of the nine individuals on Pietz's chart, including the possibly imaginary Alan Cooper, to report to his courtroom on Monday. These include Duffy and Steele, who recently filed defamation lawsuits against their online critics. Having all of Prenda's senior officials in

LATEST NEWS

HAND ME DOWNS
Leaked screenshots for Galaxy S III update also hint at eye-tracking


Beware the drones of March: FBI seeks quadrocopter that buzzed airliner

FRYING EYES
Bill would force cops to get a warrant before reading your e-mail


Helium-burning binary stars give us a new tape measure for the Universe

EDUMACATION
The iPad may soon have competition in the education sector

A POST-SOPA WORLD?
Copyright reformers launch attack on DMCA's "digital locks" rule

one room will make it much easier for Wright to get straight answers to his questions.

But Brett Gibbs, who was originally slated to face Judge Wright alone at Monday's hearing, likely won't be singing from Prenda's hymnal. As the chart above indicates, G bbs has been heavily involved in Prenda's business activities for years. But last month, he lawyered up and began blaming his actions on his superiors at Prenda. In a Monday filing, he stated that "I no longer have a relationship with Prenda Law."

He didn't elaborate on whether Prenda fired him or whether he made a strategic decision to put as much distance as possible between himself and the troubled firm.

Ars will be reporting from court on Monday.

PROMOTED COMMENTS

Mindzb Smack-Fu Master, in training jump to post

Read as Oprah:

You get disbarred! You get disbarred! You get disbarred! Everybody gets disbarred!

23 posts | registered Jul 21, 2011

READER COMMENTS 108

Timothy B. Lee / Timothy covers tech policy for Ars, with a particular focus on patent and copyright law, privacy, free speech, and open government. His writing has appeared in Slate, Reason, Wired, and the New York Times.

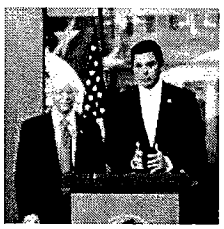
Follow @binarybits

← OLDER STORY NEWER STORY →

YOU MAY ALSO LIKE

Enraged by abusive lawsuits, anonymous troll slayers fight back

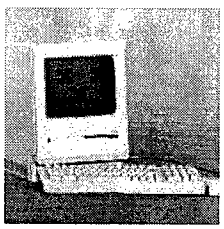
Troll attorney lawyers up, admits he never met his "client" Alan Cooper



Pissed-off politicians want "loser pays" rule for patent trolls

Trolling firm digs deeper hole with

Troll hunter: meet the Oregon lawmaker who



Judge slashes Apple's court win against

EXHIBIT C

Guava LLC

2100 M STREET NORTHWEST | SUITE 170-417 | WASHINGTON DC | 20037
P 888-588-WIRL (9473) | F 888-964-WIRE (9473)

01/30/2013
SENT VIA U.S. MAIL
[redacted]

Re: Guava LLC v. Comcast Cable Communications LLC
12-MR-417 Ref #[redacted]

Dear [redacted]

This letter is to provide you legal notice that a lawsuit involving you has been filed in St. Clair County, Illinois. The case, Guava LLC v. Comcast Cable Communications, LLC, was filed on November 20, 2012 in the Circuit Court of the Twentieth Judicial Circuit, St. Clair County, Illinois Law Division. The purpose of this letter is to put you on notice of impending litigation and allow you the opportunity to seek legal counsel or speak with someone from our office regarding this matter.

Our company, Guava LLC, operates computer systems on behalf of our clients, who are adult content producers. Our computers were breached and our files were stolen. Our engineers observed your Internet account distributing these files via BitTorrent. BitTorrent is associated with such websites and software as the Pirate Bay and Transmission. For more information regarding BitTorrent you may reference online sources.

In the course of discovery, we issued subpoenas to various Internet Service Providers (ISPs) to obtain the identifying information of the wrongdoers. On November [redacted] 2012 [redacted] UTC, our engineers observed your IP address, [redacted], trading in the files that were taken from our company's computers. Your ISP, Comcast, turned over records confirming that you were the account holder of IP [redacted] on the date in question. Based on this information, we will seek to hold you (or the person who used your Internet account) liable for this conduct. For your reference, we have enclosed a copy of the petition that was filed in this lawsuit. Please understand that if we are forced to proceed against you individually for the acts we observed your subscriber account committing, the actual complaint naming you as a defendant could possibly include additional counts, depending on what violations were observed.

Under the applicable rules of civil procedure, our lawsuit against you personally will not commence unless we serve you with a complaint. Please consider this letter to constitute formal notice that we demand that you not delete any files from your computer or any other devices under your control or in your possession. You have an affirmative obligation to preserve evidence, including router logs and computer files. A failure to do so may subject you to additional liability. You should consult an attorney to understand your obligations in this regard.

Many account holders contact our company to find out more about our claims or to resolve them before we refer this matter to our attorneys. While we certainly are willing to discuss resolution, we are also preparing to litigate this matter in the event a resolution is not reached. We have found that the earlier we are able to reach a resolution, the less expensive it is for both you and our company. As time passes, we (and you) will incur attorney's fees and court costs. The amount for which would be willing to resolve this matter for today will increase over time in proportion to the fees and expenses we incur.

As you know, being named as a defendant in a lawsuit can be time-consuming, distressing and expensive. Although we have endeavored to provide you with accurate information, our interests are directly adverse to yours and you should not rely on the information provided in this letter for assessing your position in this case. Only an attorney who represents you can be relied upon for a comprehensive analysis of our company's claims. Our records indicate that you are not represented by an attorney. If you are represented by an attorney please forward this letter to him or her and have your attorney contact our office immediately to indicate their representation.

PLEASE BE ON NOTICE: Due to the serious nature of this matter, we are referring this matter to our attorneys for further prosecution against you in 21 days if we do not hear from you.

Sincerely,

Brett Gibbs
In-House Counsel, Guava LLC
Licensed only in the state of California.

Notice of Offer of Settlement

Formal Date of Offer: 01/31/2013

Pursuant to our obligation to attempt to resolve our legal claims prior to filing a lawsuit against you personally, we hereby provide you the following settlement offer. If you reject our offer, or we do not hear from you within 21 days of the date of this letter, we will direct our attorneys to file a lawsuit against you personally. We believe that due to several factors, including our good faith offer to settle at this early stage of the case, we would be entitled to full damages.

We have weighed several aspects of this case, including our likelihood of success, our likely recovery of damages, the availability of an attorney's fees award, and the extreme burden of litigation on all parties. In exchange for a comprehensive release of all legal claims in this matter, which will enable you to avoid becoming a named defendant in a lawsuit, we will accept the sum of $4,000.00 as full settlement for our claims. This offer will expire in 21 days at 4:00 p.m. CST.

To reiterate: If you act promptly, you will avoid being named as a defendant in a lawsuit. You may pay the settlement amount by:

(a) Mailing a check or money order payable to "Guava LLC" to:
Guava LLC
2100 M Street Northwest, Suite 170-417
Washington DC, 20037-1233

(b) Completing and faxing the enclosed payment authorization to
1-888-964-9473.

It is very important to include your five digit reference number on your method of payment. Regardless of your payment method, once we have processed the settlement, we will send you your signed Release as confirmation that your payment has been processed and that our company's claims have been released.

Our records indicate that you are not represented by an attorney. If you are represented by an attorney please forward this offer of settlement to your attorney and have your attorney contact our office immediately to indicate their representation.

Guava LLC

2100 M STREET NORTHWEST | SUITE 170-417 | WASHINGTON DC | 20037
P 888-588-WIRE (9473) | F 888-964-WIRE (9473)

PAYMENT AUTHORIZATION

I hereby authorize Guava, LLC to withdraw funds from the bank account or credit card listed below for the settlement amount and legal issue referred to on my Release and herein below.

Case Name and Reference #: _____

PAYOR INFORMATION

Payor's Name: _____

Billing Address: _____

_____

Telephone Number: _____ Email address: _____

Signature: _____ Date: _____

PAYMENT INFORMATION

Payment amount: $ _____

Name on Bank Account / Credit Card: _____

If paying via bank account:

Type of Account: Checking / Savings

Routing Number: _____ Account Number: _____

If paying via credit or debit card:

Card Number: _____ Exp. Date: _____

Card Type: ☐ Master Card ☐ Visa ☐ AmEx ☐ Discover

CID Number: _____ (this is the last three digits on the back of your Master Card, Visa, or Discover Card, or the four digit number in the upper right corner on the front of your AmEx)

Fax, scan & email, or mail this authorization to:

Guava, LLC
2100 M Street Northwest, Suite 170-417
Washington, DC 20037
Fax: 888.964.WIRE (9473)
email: accounting@livewireholdings.com

www.livewireholdings.com

EXHIBIT D

LIVEWIRE
HOLDINGS, LLC

CLOSE

OUR PRINCIPALS

JUAN ALATORRE

Mr. Alatorre is the chairman of our Board of Managers. With over 15 years experience in various commercial content platform capacities, Mr. Alatorre brings valuable insight to bear as our chairman.

MARK LUTZ

Mr. Lutz is the chief executive officer of Livewire Holdings, LLC and oversees the management of Limewire Holdings and its portfolio companies.

TESTIMONIALS

"I operate several members websites and outsource my backend logistics to the Livewire group. These systems allow me to spend my time focusing not on how to deliver content to my customers, but on creating amazing content.

CEASAR BUENAFLOR

Founder - JXSystems

ABOUT US | PARTNERS | SERVICES | CLIENTS | CONTACT US

LIVEWIRE
HOLDINGS, LLC

CLOSE

CONTACT US

Livewire Holdings, LLC

2100 M St. NW
Suite 170-417
Washington DC 20037-1233
Phone: 888-588-WIRE (9473)
Fax: 888-964-WIRE (9473)

FEEDBACK

Your Name:

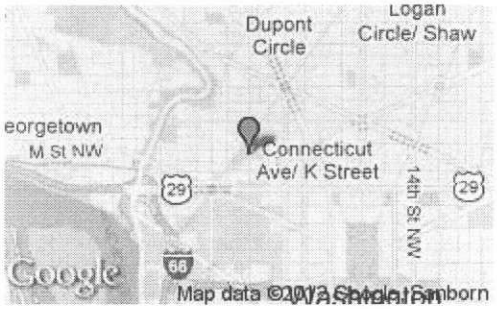
E-mail:

Message:

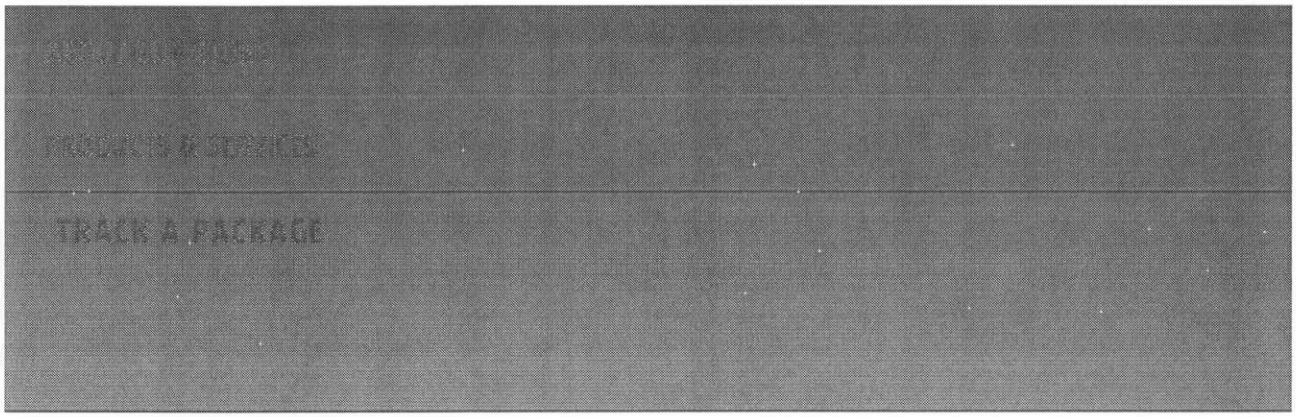
CLEAR SUBMIT

ABOUT US PARTNERS SERVICES CLIENTS CONTACT US

EXHIBIT E



Menu



The UPS Store

2100 M ST NW
WASHINGTON, DC 20037

Get Directions to Our Store

(202) 775-4302

(202) 775-4306

store2016@theupsstore.com

email uscall usdirections
store hours

HOURS OF OPERATION

Monday - Friday	9:00 am - 7:00 pm
Saturday	9:00 am - 5:00 pm

EXHIBIT F

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

INGENUITY 13 LLC, Plaintiff, v. JOHN DOE, Defendant.	Case Nos. 2:12-cv-8333-ODW(JCx) **ORDER TO SHOW CAUSE RE SANCTIONS FOR RULE 11 AND LOCAL RULE 83-3 VIOLATIONS**

The Court hereby orders Brett L. Gibbs, attorney of record for AF Holdings LLC and Ingenuity 13 LLC, to appear on March 11, 2013, at 1:30 p.m., to justify his violations of Federal Rule of Civil Procedure 11 and Local Rule 83-3 discussed herein.[1]

A. Legal Standard

The Court has a duty to supervise the conduct of attorneys appearing before it. *Erickson v. Newmar Corp.*, 87 F.3d 298, 301 (9th Cir. 1996). The power to punish contempt and to coerce compliance with issued orders is based on statutes and the Court's inherent authority. *Int'l Union, United Mine Workers of Am. v. Bagwell*, 512

[1] The violations discussed herein were committed in the following related cases: *AF Holdings LLC v. Doe*, No. 2:12-cv-6636-ODW(JCx) (C.D. Cal. filed Aug. 1, 2012); *AF Holdings LLC v. Doe*, No. 2:12-cv-6669-ODW(JCx) (C.D. Cal. filed Aug. 2, 2012); *Ingenuity 13 LLC v. Doe*, No. 2:12-cv-6662-ODW(JCx) (C.D. Cal. filed Aug. 2, 2012); *Ingenuity 13 LLC v. Doe*, No. 2:12-cv-6668-ODW(JCx) (C.D. Cal. filed Aug. 2, 2012); *Ingenuity 13 LLC v. Doe*, No. 2:12-cv-8333-ODW(JCx) (C.D. Cal. filed Sept. 27, 2012). To facilitate this matter, Mr. Gibbs will be given the opportunity to address these violations together in one hearing rather than in several separate hearings.

U.S. 821, 831 (1994). And though this power must be exercised with restraint, the Court has wide latitude in fashioning appropriate sanctions to fit the conduct. *See Roadway Express, Inc. v. Piper*, 447 U.S. 752, 764–65 (1980).

B. Rule 11(b)(3) Violations

By presenting a pleading to the Court, an attorney certifies that—after conducting a reasonable inquiry—the factual contentions in the pleading have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery. Fed. R. Civ. P. 11(b)(3). This precomplaint duty to find supporting facts is "not satisfied by rumor or hunch." *Bankers Trust Co. v. Old Republic Ins. Co.*, 959 F.2d 677, 683 (7th Cir. 1992). The reasonableness of this inquiry is based on an objective standard, and subjective good faith provides no safe harbor. *Golden Eagle Distrib. Corp. v. Burroughs Corp.*, 801 F.2d 1531, 1538 (9th Cir. 1986); *F.D.I.C. v. Calhoun*, 34 F.3d 1291, 1296 (5th Cir. 1994); *Knipe v. Skinner*, 19 F.3d 72, 75 (2d Cir. 1994). The Court wields the discretion to impose sanctions designed to "deter repetition of the conduct or comparable conduct by others similarly situated." Fed R. Civ. P 11(c)(4).

In *Ingenuity 13 LLC v. Doe*, No. 2:12-cv-6662-ODW(JCx) (C.D. Cal. filed Aug. 2, 2012), the Court ordered Plaintiff on December 20, 2012, to show cause why it failed to timely serve the Defendant or, if the Defendant has already been served, to submit the proof of service. (ECF No. 12.) In response, Plaintiff noted that the delay was because it waited to receive a response from the subscriber of the IP address associated with the alleged act of infringement. (ECF No. 14.) Plaintiff further noted: "Though the subscriber, David Wagar, remained silent, Plaintiff's investigation of his household established that Benjamin Wagar was the likely infringer of Plaintiff's copyright." (ECF No. 14, at 2.) Based on this investigation, Plaintiff filed an Amended Complaint, substituting Benjamin Wagar for John Doe. (ECF No. 13.)

Plaintiff's Amended Complaint alleges the following in connection with Benjamin Wagar:

- "Defendant Benjamin Wagar ('Defendant') knowingly and illegally reproduced and distributed Plaintiff's copyrighted Video by acting in concert with others via the BitTorrent file sharing protocol and, upon information and belief, continues to do the same." (AC ¶ 1);
- "Defendant is an individual who, upon information and belief, is over the age of eighteen and resides in this District." (AC ¶ 4);
- "Defendant was assigned the Internet Protocol ('IP') address of 96.248.225.171 on 2012-06-28 at 07:19:47 (UTC)." (AC ¶ 4);
- "Defendant, using IP address 96.248.225.171, without Plaintiff's authorization or license, intentionally downloaded a torrent file particular to Plaintiff's Video, purposefully loaded that torrent file into his BitTorrent client—in this case, Azureus 4.7.0.2—entered a BitTorrent swarm particular to Plaintiff's Video, and reproduced and distributed the Video to numerous third parties." (AC ¶ 22);
- "Plaintiff's investigators detected Defendant's illegal download on 2012-06-28 at 07:19:47 (UTC). However, this is a [*sic*] simply a snapshot observation of when the IP address was *observed* in the BitTorrent swarm; the conduct took itself [*sic*] place before and after this date and time." (AC ¶ 23);
- "The unique hash value in this case is identified as F016490BD8E60E184EC5B7052CEB1FA570A4AF11." (AC ¶ 24.)

In a different case, *Ingenuity 13 LLC v. Doe*, No. 2:12-cv-6668-ODW(JCx) (C.D. Cal. filed Aug. 2, 2012), Plaintiff essentially makes the same response to the Court's December 20, 2012 Order To Show Cause (ECF No. 12): "Though the subscriber, Marvin Denton, remained silent, Plaintiff's investigation of his household established that Mayon Denton was the likely infringer of Plaintiff's copyright." (ECF No. 13, at 2.) And based on this information, Plaintiff filed an Amended Complaint (ECF No. 16), similar in all respects to the one filed against Benjamin

Wagar in *Ingenuity 13 LLC v. Doe*, No. 2:12-cv-6662-ODW(JCx) (C.D. Cal. filed Aug. 2, 2012), with the following technical exceptions:

- "Defendant was assigned the Internet Protocol ('IP') address of 75.128.55.44 on 2012-07-04 at 07:51:30 (UTC)." (AC ¶ 4);
- "Defendant . . . purposefully loaded that torrent file into his BitTorrent client—in this case, µTorrent 3.1.3 . . . ." (AC ¶ 22);
- "The unique hash value in this case is identified as 0D47A7A035591B0BA4FA5CB86AFE986885F5E18E." (AC ¶ 24.)

Upon review of these allegations, the Court finds two glaring problems that Plaintiff's technical cloak fails to mask. Both of these are obvious to an objective observer having a working understanding of the underlying technology.

1. Lack of reasonable investigation of copyright infringement activity

The first problem is how Plaintiff concluded that the Defendants actually downloaded the entire copyrighted video, when all Plaintiff has as evidence is a "snapshot observation." (AC ¶ 23.) This snapshot allegedly shows that the Defendants were downloading the copyrighted work—at least at that moment in time. But downloading a large file like a video takes time; and depending on a user's Internet-connection speed, it may take a long time. In fact, it may take so long that the user may have terminated the download. The user may have also terminated the download for other reasons. To allege copyright infringement based on an IP snapshot is akin to alleging theft based on a single surveillance camera shot: a photo of a child reaching for candy from a display does not automatically mean he stole it. No Court would allow a lawsuit to be filed based on that amount of evidence.

What is more, downloading data via the Bittorrent protocol is not like stealing candy. Stealing a piece of a chocolate bar, however small, is still theft; but copying an encrypted, unusable piece of a video file via the Bittorrent protocol may not be copyright infringement. In the former case, some chocolate was taken; in the latter case, an encrypted, unusable chunk of zeroes and ones. And as part of its prima facie

copyright claim, Plaintiff must show that Defendants copied the copyrighted work. *Feist Publ'ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 361 (1991). If a download was not completed, Plaintiff's lawsuit may be deemed frivolous.

In this case, Plaintiff's reliance on snapshot evidence to establish its copyright infringement claims is misplaced. A reasonable investigation should include evidence showing that Defendants downloaded the entire copyrighted work—or at least a usable portion of a copyrighted work. Plaintiff has none of this—no evidence that Defendants completed their download, and no evidence that what they downloaded is a substantially similar copy of the copyrighted work. Thus, Plaintiff's attorney violated Rule 11(b)(3) for filing a pleading that lacks factual foundation.

2. Lack of reasonable investigation of actual infringer's identity

The second problem is more troublesome. Here, Plaintiff concluded that Benjamin Wagar is the person who illegally downloaded the copyrighted video. But Plaintiff fails to allege facts in the Amended Complaint to show how Benjamin Wagar is the infringer, other than noting his IP address, the name of his Bittorrent client, and the alleged time of download.[2] Plaintiff's December 27, 2012 Response to the Court's Order to Show Cause re Lack of Service sheds some light:

> Though the subscriber, David Wagar, remained silent, Plaintiff's investigation of his household established that Benjamin Wagar was the likely infringer of Plaintiff's copyright. As such, Plaintiff mailed its Amended Complaint to the Court naming Benjamin Wagar as the Defendant in this action. (ECF No. 14, at 2.)

The disconnect is how Plaintiff arrived at this conclusion—that the actual infringer is a member of the subscriber's household (and not the subscriber himself or anyone else)—when all it had was an IP address, the name of the Bittorrent client used, the alleged time of download, and an unresponsive subscriber.

---

[2] This analysis similarly applies in *Ingenuity 13 LLC v. Doe*, No. 2:12-cv-6668-ODW(JCx) (C.D. Cal. filed Aug. 2, 2012), where Plaintiff fails to allege sufficient facts to show how Mayon Denton is the infringer.

Plaintiff's December 27, 2012 Discovery Status Report gives additional insight into Plaintiff's deductive process:

> In cases where the subscriber remains silent, Plaintiff conducts investigations to determine the likelihood that the subscriber, or someone in his or her household, was the actual infringer. . . . For example, if the subscriber is 75 years old, or the subscriber is female, it is statistically quite unlikely that the subscriber was the infringer. In such cases, Plaintiff performs an investigation into the subscriber's household to determine if there is a likely infringer of Plaintiff's copyright. . . . Plaintiff bases its choices regarding whom to name as the infringer on factual analysis. (ECF No. 15, at 24.)

The Court interprets this to mean: if the subscriber is 75 years old or female, then Plaintiff looks to see if there is a pubescent male in the house; and if so, he is named as the defendant. Plaintiff's "factual analysis" cannot be characterized as anything more than a hunch.

Other than invoking undocumented statistics, Plaintiff provides nothing to indicate that Benjamin Wagar is the infringer. While it is plausible that Benjamin Wagar is the infringer, Plaintiff's deduction falls short of the reasonableness standard required by Rule 11.

For instance, Plaintiff cannot show that Benjamin is the infringer instead of someone else, such as: David Wagar; other members of the household; family guests; or, the next door neighbor who may be leeching from the Wagars' Internet access. Thus, Plaintiff acted recklessly by naming Benjamin Wagar as the infringer based on its haphazard and incomplete investigation.

Further, the Court is not convinced that there is no solution to the problem of identifying the actual infringer. Here, since Plaintiff has the identity of the subscriber, Plaintiff can find the subscriber's home address and determine (by driving up and scanning the airwaves) whether the subscriber, (1) has Wi-Fi, and (2) has password-protected his Wi-Fi access, thereby reducing the likelihood that an unauthorized user outside the subscriber's home is the infringer. In addition, since Plaintiff is tracking a

number of related copyrighted videos, Plaintiff can compile its tracking data to determine whether other copyrighted videos were downloaded under the same IP address. This may suggest that the infringer is likely a resident of the subscriber's home and not a guest. And an old-fashioned stakeout may be in order: the presence of persons within the subscriber's home may be correlated with tracking data—the determination of who would have been in the subscriber's home when the download was initiated may assist in discovering the actual infringer.

Such an investigation may not be perfect, but it narrows down the possible infringers and is better than the Plaintiff's current investigation, which the Court finds involves nothing more than blindly picking a male resident from a subscriber's home. But this type of investigation requires time and effort, something that would destroy Plaintiff's business model.

The Court has previously expressed concern that in pornographic copyright infringement lawsuits like these, the economics of the situation makes it highly likely for the accused to immediately pay a settlement demand. Even for the innocent, a four-digit settlement makes economic sense over fighting the lawsuit in court—not to mention the benefits of preventing public disclosure (by being named in a lawsuit) of allegedly downloading pornographic videos.

And copyright lawsuits brought by private parties for damages are different than criminal investigations of cybercrimes, which sometimes require identification of an individual through an IP address. In these criminal investigations, a court has some guarantee from law enforcement that they will bring a case only when they actually have a case and have confidently identified a suspect. In civil lawsuits, no such guarantees are given. So, when viewed with a court's duty to serve the public interest, a plaintiff cannot be given free rein to sue anyone they wish—the plaintiff has to actually show facts supporting its allegations.

///

///

C. Local Rule 83-3 Violations

Under Local Rule 83-3, the Court possesses the power to sanction attorney misconduct, including: disposing of the matter; referring the matter to the Standing Committee on Discipline; or taking "any action the Court deems appropriate." L.R. 83-3.1. This includes the power to fine and imprison for contempt of the Court's authority, for: (1) misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice; (2) misbehavior of any of its officers in their official transactions; or, (3) disobedience or resistance to its lawful writ, process, order, rule, decree, or command. 18 U.S.C. § 401.

The Court is concerned with three instances of attorney misconduct. The first and second instances are related and concern violating the Court's discovery order. The third instance concerns possible fraud upon the Court.

1. Failure to comply with the Court's discovery order

In *AF Holdings LLC v. Doe*, No. 2:12-cv-6636-ODW(JCx) (C.D. Cal. filed Aug. 1, 2012) and *AF Holdings LLC v. Doe*, No. 2:12-cv-6669-ODW(JCx) (C.D. Cal. filed Aug. 2, 2012), the Court ordered Plaintiff to "cease its discovery efforts relating to or based on information obtained through any abovementioned Rule 45 subpoenas." (ECF No. 13, at 1; ECF No. 10, at 1.) Further, Plaintiff was required to name all persons that were identified through any Rule 45 subpoenas. (*Id.*)

Plaintiff responded on November 1, 2012, and indicated that it did not obtain any information about the subscribers in both of these cases. (ECF No. 10, at 6–7, 10.)[3] But in response to the Court's subsequent Orders to Show Cause, Plaintiff not only named the subscribers, but recounted its efforts to contact the subscriber and find additional information. (ECF No. 15; ECF No. 18.)

This conduct contravenes the Court's order to cease discovery. Plaintiff has provided no justification why it ignored the Court's order.

[3] This response was filed in *AF Holdings LLC v. Doe*, No. 2:12-cv-5709-ODW(JCx) (C.D. Cal. filed July 2, 2012).

2. Fraud on the Court

Upon review of papers filed by attorney Morgan E. Pietz, the Court perceives that Plaintiff may have defrauded the Court. (ECF No. 23.)[4] At the center of this issue is the identity of a person named Alan Cooper and the validity of the underlying copyright assignments.[5] If it is true that Alan Cooper's identity was misappropriated and the underlying copyright assignments were improperly executed using his identity, then Plaintiff faces a few problems.

First, with an invalid assignment, Plaintiff has no standing in these cases. Second, by bringing these cases, Plaintiff's conduct can be considered vexatious, as these cases were filed for a facially improper purpose. And third, the Court will not idle while Plaintiff defrauds this institution.

D. Conclusion

Accordingly, the Court hereby **ORDERS** Brett L. Gibbs, **TO SHOW CAUSE** why he should not be sanctioned for the following:

- In *AF Holdings LLC v. Doe*, No. 2:12-cv-6636-ODW(JCx) (C.D. Cal. filed Aug. 1, 2012), violating the Court's October 19, 2012 Order instructing AF Holdings to cease its discovery efforts based on information obtained through any earlier-issued subpoenas;
- In *AF Holdings LLC v. Doe*, No. 2:12-cv-6669-ODW(JCx) (C.D. Cal. filed Aug. 2, 2012), violating the Court's October 19, 2012 Order instructing AF Holdings to cease its discovery efforts based on information obtained through any earlier-issued subpoenas;

///

[4] Although the papers revealing this possible fraud were filed in *Ingenuity 13 LLC v. Doe*, No. 2:12-cv-8333-ODW(JCx) (C.D. Cal. filed Sept. 27, 2012), this fraud, if true, was likely committed by Plaintiff in each of its cases before this Court.

[5] For example, in *AF Holdings LLC v. Doe*, No. 2:12-cv-6669-ODW(JCx) (C.D. Cal. filed Aug. 2, 2012), Plaintiff filed a copyright assignment signed by Alan Cooper on behalf of Plaintiffs. (ECF No. 16-1.)

- In *Ingenuity 13 LLC v. Doe*, No. 2:12-cv-6662-ODW(JCx) (C.D. Cal. filed Aug. 2, 2012), violating Rule 11(b)(2) by:
  - alleging copyright infringement based on a snapshot of Internet activity, without conducting a reasonable inquiry; or,
  - alleging that Benjamin Wagar is the infringer, without conducting a reasonable inquiry;
- In *Ingenuity 13 LLC v. Doe*, No. 2:12-cv-6668-ODW(JCx) (C.D. Cal. filed Aug. 2, 2012), violating Rule 11(b)(2) by:
  - alleging copyright infringement based on a snapshot of Internet activity, without conducting a reasonable inquiry; or,
  - alleging that Mayon Denton is the infringer, without conducting a reasonable inquiry;
- In *Ingenuity 13 LLC v. Doe*, No. 2:12-cv-8333-ODW(JCx) (C.D. Cal. filed Sept. 27, 2012), perpetrating fraud on the Court by misappropriating the identity of Alan Cooper and filing lawsuits based on an invalid copyright assignment.

This order to show cause is scheduled for hearing on March 11, 2013, at 1:30 p.m., to provide Mr. Gibbs the opportunity to justify his conduct. Based on the unusual circumstances of this case, the Court invites Morgan E. Pietz to present evidence concerning the conduct outlined in this order. The Court declines to sanction Plaintiffs AF Holdings LLC and Ingenuity 13 LLC at this time for two reasons: (1) Mr. Gibbs appears to be closely related to or have a fiduciary interest in Plaintiffs; and; (2) it is likely Plaintiffs are devoid of assets.

If Mr. Gibbs or Mr. Pietz so desire, they each may file by February 19, 2013, a brief discussing this matter. The Court will also welcome the appearance of Alan Cooper—to either confirm or refute the fraud allegations.

Based on the evidence presented at the March 11, 2013 hearing, the Court will consider whether sanctions are appropriate, and if so, determine the proper

punishment. This may include a monetary fine, incarceration, or other sanctions sufficient to deter future misconduct. Failure by Mr. Gibbs to appear will result in the automatic imposition of sanctions along with the immediate issuance of a bench warrant for contempt.

IT IS SO ORDERED.

February 7, 2012

OTIS D. WRIGHT, II
UNITED STATES DISTRICT JUDGE

EXHIBIT G

Morgan E. Pietz (SBN 260629)
THE PIETZ LAW FIRM
3770 Highland Ave., Ste. 206
Manhattan Beach, CA 90266
mpietz@pietzlawfirm.com
Telephone: (310) 424-5557
Facsimile : (310) 546-5301

Attorney for Putative John Doe in 2:12-cv-08333-ODW-JC

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

INGENUITY 13, LLC, a Limited Liability Company Organized Under the Laws of the Federation of Saint Kitts and Nevis,

Plaintiff,

v.

JOHN DOE,

Defendant.

Case Number: 2:12-cv-08333-ODW-JC

Case Assigned to:
District Judge Otis D Wright, II

Discovery Referred to:
Magistrate Judge Jacqueline Chooljian

PUTATIVE JOHN DOE'S RESPONSE TO ORDER TO SHOW CAUSE RE SANCTIONS FOR RULE 11 AND LOCAL RULE 83-3 VIOLATIONS AND REQUEST FOR RELIEF

TABLE OF CONTENTS

"Roman law criminalized *calumnia* (from which we get the word 'calumny'), which meant the support of fraudulent, groundless, or frivolous litigation for profit."[1]

I. INTRODUCTION AND SUMMARY

Over the last two and a half years, attorneys associated with Prenda Law, Inc.[2] have filed at least 348 lawsuits, against over 16,000 John Doe defendants. *See* Declaration of Morgan E. Pietz re: Prenda Law, Inc., ¶¶ 19–20 (ECF No. 40-1, filed 1/14/2013) ("Dec'l. re: Prenda Law"). According to the self-proclaimed pioneer of Prenda's "copyright troll" business model, attorney John L. Steele, in so doing, Prenda has made "a few million dollars."[3] At best, these lawsuits are all questionable—for all of the reasons previously explained by this Court.

What seems increasingly clear though is that Prenda, and its "of counsel" here, Mr. Brett Gibbs, have crossed the Rubicon in these cases, by resorting to fraud, which includes identity theft, sham offshore shell companies, and forged documents.

The AF Holdings cases are all founded upon forgeries. In each AF Holdings case before this Court, attached as "Exhibit A" to the complaint is a forged copyright assignment agreement supposedly signed by "Alan Cooper." This fact transforms each of these cases into fraudulent, sham litigation, and possibly renders Prenda a criminal conspiracy. Further, as detailed, *infra*, "Alan Cooper" is not the only bogus "client" name Prenda has used in its court filings; it appears there are other straw

---

[1] Anthony J. Seebok, *The Inauthentic Claim*, 64 VAND. L. REV. 61 at p. 75 (2011); *citing* Max Radin, *Maintenance by Champerty*, 24 CAL. L. REV. 48, 59-60 (1936). Vestiges of this sentiment survive in California, in the form of the seldom-enforced criminal prohibition on "barratry". Cal. Pen. Code §§ 158–159.

[2] Prenda Law, Inc. was formerly known as Steele Hansemier, PLLC (a Chicago divorce law firm). Since the name "Prenda" has lately become somewhat toxic, the lawyers behind this scheme are now using several aliases, including: "Anti-Piracy Law Group, LLC" (Prenda's newest successor entity, organized in Illinois); "Alpha Law Firm, LLC" (Mr. Paul Hansemeier's firm, organized in Minnesota) and "Livewire Holdings, LLC" (a newer affiliate listing a business address that is a UPS store with private mailbox and package services in Washington, D.C.).

[3] *See* http://www.forbes.com/sites/kashmirhill/2012/10/15/how-porn-copyright-lawyer-john-steele-justifies-his-pursuit-of-sometimes-innocent-porn-pirates/

men (with various connections to John Steele) out there. There is new evidence of Prenda submitting a fraudulent and unarguably false "client" verification in a case in Illinois, and disturbing revelations regarding collusion between Prenda and a "defendant" who agreed to stipulate to ISP subpoenas in another case in Minnesota.

Aside from the pattern of fraud with respect to every instance where people connected to Prenda's "clients" had to be identified to a court, there is another deeply troubling pattern in this litigation. Mr. Gibbs has repeatedly represented to various courts that, in his view, the mere fact that a person happens to pay the Internet bill is not sufficient, by itself, to establish a good faith factual basis for an allegation that this person is the John Doe defendant in a case like this. Dec'l. re: Prenda Law, ¶¶ 21–22. Mr. Gibbs has previously conceded—indeed, he was specifically warned on this exact point by Jude Seeborg—that under the circumstances of these cases, further "investigation" is required to name somebody in a complaint, to comply with Rule 11(b)(3). *Id.* Contrary to these several representations, and in defiance of specific warnings, in several instances Mr. Gibbs has apparently gone ahead and publicly named people as defendants (or tried to do so), without conducting the requisite objectively reasonable additional investigation. The bad faith inherent in 'shooting first, and identifying targets later,'[4] is substantially compounded given that: (i) these cases are calculated to embarrass (because the content at issue is pornography); (ii) Prenda makes a point of publicly shaming named defendants on its website, as a warning to others; and (iii) most cases are dismissed without prejudice at the first hint of trouble. The whole enterprise borders on bad faith, at the very least. Further, as detailed, *infra*, the Wagar and Denton cases are not the only examples of Prenda's shoddy "investigations"; undersigned counsel is aware of at least three other, similar cases

[4] *Boy Racer, Inc. v. Does 1-22*, No. 11 C 2984, Slip Op. (N.D. Ill. May 9, 2011) (Shadur, J.) (Court "rejected attorney [John] Steele's effort to shoot first and identify his targets later," and made clear that suits against a "passel of 'Does'" would not succeed).

where Mr. Gibbs similarly named a defendant recklessly (or tried to), leaving it to defendants to prove their innocence based on a lax interpretation of Rule 11(b)(3).

Finally, there is simply no excuse for violating the Court's orders to cease discovery efforts. Mr. Gibbs proffered explanation is that he interpreted the Court's OSC staying discovery as allowing continued "informal" discovery. According to Mr. Gibbs' response to the instant OSC,[5]

> "Mr. Gibbs believed and interpreted the October 19, 2012 Orders as only precluding him from engaging in any formal discovery efforts ***such as pressuring the ISPs to respond to the subpoenas*** that had been served and precluding him from serving any additional subpoenas. (Gibbs Decl. ¶ 20)." ECF No. 49, at 9:20-22.

Yet as confirmed by at least one ISP—AT&T—notwithstanding this representation, Prenda did in fact "pressur[e] the ISPs to respond to the subpoenas" notwithstanding Mr. Gibbs's interpretation of the stay order. Dec'l. of Bart Huffman; Dec'l. of Camille D. Kerr.[6] The pressure may have been applied from Mr. Duffy's office in Chicago, but the bottom line is that even under Mr. Gibb's current interpretation of the stay order, is was violated, more than once, in at least one case. *Id.*

II. FACTUAL AND PROCEDURAL BACKGROUND

(a) Procedural History of Prenda's Related AF Holdings and Ingenuity 13 Cases in the Central District of California

On July 2, 2012, Mr. Brett Gibbs, who lists himself on the pleadings as "of Counsel" to Prenda Law, Inc.,[7] began filing multiple actions in the Central District

---

[5] Undersigned counsel had about an hour to review Mr. Gibbs response to the OSC prior to filing this document.

[6] Concurrently filed herewith.

[7] In reality, Mr. Gibbs appears act as a functional Chief Operating Officer for Prenda Law. There is evidence that Mr. Gibbs hires Prenda's "local counsel." Dec'l. re: Prenda Law, Exhibit L, p.

of California on behalf of AF Holdings, LLC and Ingenuity 13, LLC. By September of 2012, the grand total was 45 cases filed by Mr. Gibbs on behalf of these two entities, each against a single "John Doe" defendant identified only by IP address.

All of the AF Holdings cases in this district were transferred to Judge Wright as related cases, pursuant to Section 3.1 of General Order 08-05, on October 4, 2012. *AF Holdings, LLC v. John Doe*, 12-cv-5709-ODW, ECF No. 7, 10/4/12. Shortly thereafter, Judge Wright issued an Order to Show Cause in the related AF Holdings cases. *AF Holdings, LLC v. John Doe*, 12-cv-5709-ODW, ECF No. 9, 10/19/12 (the "**AF Holdings OSC re: Early Discovery**"). The order required Prenda to explain "how it would proceed to uncover the identity of the actual infringer once it has obtained subscriber information—given that the actual infringer may be a person entirely unrelated to the subscriber—while also considering how to minimize harassment and embarrassment of innocent citizens." *AF Holdings OSC re: Early Discovery*, pp. 2-3 (emphasis added). Plaintiff submitted a response on November 1, 2012, which did not go into great detail.

On November 28, 2012, after being engaged by the client just before the subpoena return deadline, undersigned counsel, on behalf of the putative John Doe defendant in *Ingenuity 13, LLC v. John Doe*, C.D. Cal. No. 12-cv-8333, filed an ex parte application for a stay of the subpoena return date. ECF No. 13. This ex parte application was granted, *nunc pro tunc*, by Magistrate Judge Walsh on December 3,

---

132:23–24; 134:9–10; 138:15–17 (Prenda's former local counsel in Florida, while being questioned by Judge Scriven of Florida, states "Well, Mr. Gibbs apparently is a principal at Prenda Law, to my understanding"). There is also evidence that Mr. Gibbs' email address "blgibbs@wefightpiracy.com" is used as the email of record on Prenda pleadings all over the country. Dec'l. re: Prenda Law, ¶ 12, Exhibit C (pleading filed in Nebraska by local counsel there, but using "blgibbs@wefightpiracy.com" as the email address for counsel of record).

See Dec'l. of Morgan E. Pietz re: Prenda Law, Inc. ¶¶ 8, 12, Exhibit N, p. 132, li. 23-24. (All page references to the Exhibits to the Dec'l. of Morgan E. Pietz re: Prenda Law, Inc. are to the continuous pagination on the bottom right).

2013, extending the subpoena return deadline in 12-cv-8333 until December 29, 2012. ECF No. 16.

On December 3, 2012, undersigned counsel filed a Notice of Related Cases identifying the multiple Ingenuity 13 cases filed by Prenda in this district as related to the AF Holdings cases already assigned to Judge Wright. *AF Holdings, LLC v. John Doe*, 12-cv-5709-ODW, ECF No. 11. This notice pointed out a number of similarities between the Ingenuity 13 and AF Holdings cases, and also mentioned, for the first time, the evidence suggesting a possible misappropriation of the identity of one Alan Cooper of Minnesota. *Id.* Shortly thereafter, undersigned counsel, on behalf of a different client in the Northern District of California, also filed a similar "administrative motion to relate cases" in the AF Holdings and Ingenuity 13 cases in the Northern District. *See AF Holdings, LLC v. John Doe*, N.D. Cal. No. 4:12-cv-02049-PJH, ECF No. 40, 12/13/12.

On December 17, 2012, Mr. Gibbs filed three sanctions motions against undersigned counsel. One sanctions motion was filed here in 12-cv-8333, at ECF No. 22. Another sanctions motion was filed here in 12-cv-5709 at ECF No. 15, which was somewhat inexplicable given that undersigned counsel had not appeared in that action (other than to file the Notice of Related Cases). Stranger still, in the Northern District, a sanctions motion was filed in the low-numbered case, 4:12-cv-2049-PJH at ECF No. 42, not in the case where undersigned counsel had actually appeared on behalf of a client (i.e., in *Ingenuity 13, LLC v. John Doe*, N.D. Cal. No. 3:12-cv-4976-JSW). Notably, none of these sanctions motions asserted that any of the allegations about Alan Cooper were incorrect. Plaintiff's arguments (that attempting to relate cases together for coordination constituted a vexatious multiplication of legal proceedings) were frivolous, and all of the sanctions motions were denied.

On December 18, 2012, undersigned counsel, on behalf of the putative John Doe defendant in *Ingenuity 13, LLC v. John Doe*, C.D. Cal. No. 12-cv-8333, filed a

second ex parte application seeking a further stay of the subpoena return date, and also seeking leave to propound limited early discovery to explore the apparent Alan Cooper fraud. ECF No. 23.

On December 19, 2012, all of the Ingenuity 13 cases pending in the Central District were also transferred to Judge Wright as related cases, per General Order 08-05. *Ingenuity 13, LLC v. John Doe*, C.D. Cal. No. 12-cv-8333, ECF No. 24.

On December 20, 2012, the Court issued minute orders in each of the Ingenuity 13 cases that essentially adopted in the Ingenuity 13 cases the procedure already put in place in the *AF Holdings OSC re: Early Discovery*. Prior orders authorizing subpoenas were vacated, and Mr. Gibbs was ordered to do further explain how a list of ISP subscribers would be used to identify actual infringing John Doe defendants, prior to being given the keys to discovery. *See Ingenuity 13, LLC v. John Doe*, C.D. Cal. No. 12-cv-8333, ECF No. 28, 12/20/12.

Also on December 20, 2012, for some of the older AF Holdings cases, which had been filed over 120-days earlier, the Court issued an Order to Show Cause re: Lack of Service. *AF Holdings, LLC v. John Doe*, 12-cv-5709-ODW, ECF No. 16. Plaintiff responded to this order on the Rule 4(m) issue in at least a few of the cases, on December 27, 2012. *See, e.g., id.* at ECF No. 18.

On December 26, 2012, the Court granted undersigned's ex parte application (ECF No. 23) seeking leave to propound limited written discovery exploring the Alan Cooper issue. ECF No. 32. That order set a 14-day window in which to propound the requested written discovery. *Id.*

On December 31, 2012, plaintiff filed disqualification motions in most (if not all) of the related cases pending before Judge Wright. *E.g., Ingenuity 13*, No. 12-cv-8333 at ECF No. 37. Undersigned counsel filed a comprehensive reply to the disqualification motion on January 14, 2013. ECF No. 40. On January 15, 2013, the disqualification motion was denied by Judge Fitzgerald.

On January 4, 2013, undersigned counsel did indeed serve, via overnight mail, the Court-authorized written discovery delving into the Alan Cooper issue. Supplemental Dec'l. of Morgan E. Pietz ("Supp. Dec'l.") ¶ 6.

About a week before the Alan Cooper discovery responses were due in the 12-cv-8333 action, on the evening of January 28, 2013, Mr. Gibbs began voluntarily dismissing all of the related AF Holdings and Ingenuity 13 cases in the Central District of California—all without prejudice.

Mr. Gibbs wrote undersigned counsel on January 29, 2013 stating "I will be entering my notice of withdrawal as counsel of record for Ingenuity13 and AF Holdings in all cases filed in California. Mr. Paul Duffy will be substituting in as counsel." Exhibit P. Subsequent to the email from Mr. Gibbs, Mr. Duffy did substitute in as counsel in most of the Northern District of California AF Holdings and Ingenuity 13 cases. Paul Duffy has previously represented himself to a Florida court as Prenda's "sole principal." On February 6, 2013, Paul Duffy initiated an attempt to meet and confer about this case, the 12-cv-8333 action, by sending an email to undersigned counsel requesting to meet and confer about this case. *Id.* Undersigned counsel and Mr. Duffy mutually agreed to have a meet and confer telephone conference about this case (as well as about a few other matters) set for 11:30 a.m. on February 8, 2013. *Id.*

Around 8:30 a.m. on February 8, 2013, the Court entered the instant Order to Show Cause re Sanctions on the ECF docket (ECF No. 48, dated February 7, 2013). Mr. Duffy did not answer the phone when undersigned counsel attempted to call him, as mutually agreed, at 11:30 a.m. on February 8. Instead, starting on the afternoon on February 8, 2013, Mr. Duffy began dismissing the final cases left, mainly in the Northern District of California, which Prenda had filed on behalf of AF Holdings and Ingenuity 13. (The Central District cases were mostly dismissed on January 28 and 29, 2013). As of the date hereof, every case in California that Prenda could dismiss voluntarily, without paying prevailing party attorneys fees (in

other words, all cases except the ones where a defendant had answered), has now been dismissed. Further, according to a PACER search conducted February 11, 2013, most, but not quite all, of the AF Holdings and Ingenuity 13 cases have now been dismissed nationally, presumably most, if not all of them, without prejudice.

(b) Factual Background on Prenda's Various Straw Men and Sham Entities

(1) Alan Cooper: John Steele's Former Caretaker; Victim of Identity Theft

Most of the facts relating to Alan Cooper have already been explained, most comprehensively in the Dec'l. re: Prenda Law submitted in support of the opposition to the disqualification motion (ECF No. 40-1, at ¶¶ 29–42).

However, there are two new developments worth reporting: first, Alan Cooper, through his attorney Paul Godfread, has filed a civil lawsuit against John Steele, Prenda Law, and others alleging misappropriation of his identity. Exhibit Q. Second, at a 30(b)(6) deposition of AF Holdings conducted by undersigned counsel on February 19, 2013, a designated representative for AF Holdings blamed any potential problems with the "Alan Cooper" signature on John Steele.[8] According to AF Holdings 30(b)(6) deponent Paul Hansemeier, AF Holdings' sole manager and sole employee Mark Lutz directed John Steele (Mr. Lutz's former boss at Steele Hanemeier PLLC) to obtain the signature, and Mr. Steele returned a signed document.

Prenda's unilateral, voluntary dismissal of this action, just prior to the deadline for a response on the Alan Cooper-focused written discovery, is another fact pointing to potential fraud, rather than some kind of benign coincidence involving a second "Alan Cooper." Mr. Gibbs' response to the instant OSC says that the complaint is not based on an invalid ***copyright assignment***. Notably though, the response does ***not*** deny that AF Holdings cases are based on a ***forgery***.

[8] Given that this deposition was conducted earlier today, in San Francisco, no transcript is yet available.

(2) Mark Lutz: John Steele's Former Paralegal; Fraudulent Corporate Representative For Hire

The episode where Prenda attempted to perpetrate a fraud on the court, in *Sunlust Pictures, Inc. v. Tuan Nguyen*, M.D. Fl. Case No. 8:12-CV-1685-T-35MAP, by holding out John Steele's former paralegal, Mark Lutz, as a principal of Prenda's "client" has also been previously explained. Dec'l. re: Prenda Law ¶¶ 39–40, Exhibit N (transcript of hearing where Judge Scriven invites sanctions motion for attempted fraud on the Court).

However, there are new developments *Sunlust* case—more fraud. In an attempt to minimize and explain away the first attempted fraud on the Court and oppose a John Doe sanctions motion, Prenda apparently submitted what appears to be a fraudulent declaration to the Court. Specifically, Prenda tried to explain the absence of a true principal for the client, Sunlust Pictures, at the November 27 hearing by submitting a declaration explaining that the company's true principal, "Daniel Webber" was out of the country at the time of the hearing. *Sunlust Pictures, Inc. v. Tuan Nguyen*, M.D. Fl. Case No. 8:12-CV-1685-T-35MAP at ECF No. 40-2, ¶ 5, 12/20/12 (original, sworn affidavit of "Daniel Webber" stating he was in India on November 27, 2012). As defense counsel in *Sunlust* immediately pointed out, there were two big problems with this story: first, Daniel Weber spells his name with one 'b,' not two, and, second, his Twitter feed places him in Los Angeles, not India, on November 27, 2012. *Id.* at ECF No. 46 (defendants second motions for sanctions). Accordingly, after being notified of these inconsistencies by defense counsel, on December 26, 2012, Prenda, through outside counsel specializing in white collar criminal deense, filed a purported "corrected" version of the Daniel Weber declaration, this time spelling Mr. Weber's name correctly, and, more importantly, changing the key fact that he had actually been in Los Angeles on November 27, 2011, not India. *Id.* at ECF No. 44-1, ¶ 5 ("corrected" affidavit stating that "Daniel Weber" was actually in Los Angeles on November 27, 2012).

In short, Prenda has shown in *Sunlust* that when accused of fraud, it attempted to explain its actions and avoid responsibility by making further (supposedly inadvertent) misrepresentations.

(3) "Salt Marsh" a/k/a Anthony Saltmarsh: John Steele's Sister's Roommate (Boyfriend?) at Arizona Address Linked to Alan Cooper and Other Prenda Shell Entities; New Prenda Straw Man

A closer and more sustained review of various past Prenda court filings has revealed new facts suggesting that "Alan Cooper" is not the only straw man Prenda has used, when pressed to identify individuals associated with Prenda's various sham entities. Just as Alan Cooper was John Steele's former caretaker, and Mark Lutz was John Steele's former paralegal, another purported "client" representative with a personal connection to John Steele has also recently been discovered. In various filings in the Northern District of California, when pressed to identify a client contact on an ADR Certification, Prenda identified a person named "Salt Marsh" as the "AF Holdings Owner." *E.g., AF Holdings v. John Doe*, N.D. Cal. No. 12-cv-2396-EMC, ECF No. 8, 7/20/12.[9] Exhibit R.

After the "Alan Cooper" revelations resulted in newfound scrutiny of Prenda "client" contacts, Nicholas Ranallo, an attorney in Northern California did some digging on "Salt Marsh," since that seems like a made up name. Mr. Ranallo recently summarized his findings in a declaration. Exhibit S ("Ranallo Dec'l."). This declaration by Mr. Ranallo was filed on February 11, 2013, in opposition to Prenda's emergency motion to stay a pending 30(b)(6) deposition of AF Holdings. The stay was denied, and the 30(b)(6) deposition of AF Holdings is currently set to

[9] A similar ADR Certification, which is mandated in the Northern District of California by Local Rule 16-8(b), was filed in most if not all Prenda cases in the Northern District of California that progressed so far as service of process on a named defendant. However, per Mr. Ranallo, in Prenda's most recent ADR Certification, the new client

occur on February 19, 2013.[10] This N.D. Cal. AF Holdings case, which is one where the defendant responded to the complaint, is one of the very few AF Holdings or Ingenuity 13 cases now left anywhere in the country.

Without going into all of the details, which are contained in the Ranallo declaration, suffice it to say that although "Salt Marsh" appears to be a bogus name, but there *is* a man named Anthony Saltmarsh, who has apparently shared several residences with John Steele's Sister, Jayme C. Steele. Presumably then, the reputed owner of AF Holdings, "Salt Marsh" is actually Anthony Saltmarsh, who is the live-in boyfriend of John Steele's sister Jayme.

Further, a residential address in Phoenix apparently co-occupied by Anthony Saltmarsh and Jayme Steele has also been linked to several Prenda straw men and sham entities, including Alan Cooper. Ranallo Dec'l. ¶¶ 8–14. Prenda previously represented VPR Internationale in various copyright infringement suits. Dec'l. re: Prenda Law, ¶ 11. According to the Nevada Secretary of State, all officer positions at VPR Inc. are held by "Alan Cooper," and the address given for Mr. Cooper in each instance is 4532 East Villa Theresa Drive, Phoenix, AZ 85032. Ranallo Dec'l, "Exhibit D." Similarly, an Internet search of that same address revealed what appears to be an archived WHOIS record for an Internet domain name registration of <notissues.com> which lists "Alan Cooper" as the registrant, technical contact, and administrative contact, but using johnlsteele@gmail.com as the email address of record, and 4532 East Villa Theresa Drive, Phoneix, AZ 85032 as the mailing address of record. Exhbit T. According to public database searches on Anthony Saltmarsh and Jayme Steele, both of them resided at 4532 East Villa Theresa Drive, Phoenix, AZ 85032.

[10] Undersigned counsel recently appeared as co-counsel with Mr. Ranallo, in connection with the scheduled AF Holdings 30(b)(6) deposition. *See* AF Holdings v. John Doe, N.D. Cal. No. 12-cv-2396-EMC, ECF No. 58, 2/14/13.

In short, it appears that Prenda/John Steele has used his sister's house as a front for Prenda's litigation activities. The name "Alan Cooper," at least one Prenda sham entity, VPR, Inc., and John Steele's personal email account are all linked to this address. Further, it appears that John Steele has used his sister's apparent live-in boyfriend Anthony Saltmarsh, or a misleading twist on his name (i.e., "Salt Marsh") as the newest Prenda straw man.

(4) The Fraudulent Allen Mooney a/k/a "Alan Moay" a/k/a "Alan Mony" Verification in an Illinois Prenda Case

A few days before the Alan Cooper revelations came to light, and just the *Sunlust* hearing where the attempted fraud on the court occurred, Prenda file a verified petition for presuit discovery in St. Clair County, Illinois on behalf of "Guava, LLC," another offshore shell company. *Guava, LLC v. Comcst,* Circuit Court of St. Clair Count, Illinois, No. 12-MR-417. This petition, (like a more expansive version of a federal Rule 27 petition) invokes a rule of Illinois state procedure to seek leave to subpoena IP address records from 330 Internet users, was required to be verified by rule, and is purportedly verified by "Alan Moay." Exhibit U. The petition also asserted, as a verified fact, that "venue is proper because at least one of the Doe defendants resides in St. Clair County, Illinois. Further, Comcast transacts business in St. Clair County, Illinois."

Defense counsel in that case, including the undersigned, ultimately picked up on two problems with this petition: first, the verification is suspicious because "Alan Moay" is a bogus name; there is no record of any such person with that name existing in the United States. There are also other suspicious elements of the verification: although it purports to be notarized, there is no notary name, seal or registration number, and the font on the verification is different than the font on the petition itself. Second, after Comcast ran the records through it database, it was ultimately revealed that not a single one of the 330 IP addresses at issue were actually linked to St. Clair County. This is because Comcast does not do business

there; Charter is the local franchised cable operator. The suit was brought in St. Clair county, on the basis of demonstrably false venue and jurisdictional allegations, solely as a matter of forum shopping. Exhibit U, ¶ 6; *see* Exhibit V.

When pressed on the bogus affiant "Alan Moay," Prenda changed its story. Prenda's current story (as of 1:00 p.m. on February 18, 2013) is that the verification does not say "Alan Moay" at all; rather, it says "Alan Mony." The problem with the new story (aside from the fact the verification says Alan Moay) is that "Alan Mony" is also a bogus name. Exhibit V.

However, as noted in the attached reply brief filed recently by undersigned counsel in St. Clair County, the name "Allan Mooney" is a name that has been linked to Prenda previously. *Id.* According to the Minnesota Secretary of State, a man named "Allan Mooney" was previously listed as the manager of MCGIP, LLC, another shell company plaintiff on whose behalf Prenda has filed various federal lawsuits. *Id.* The address for "Allan Mooney" on the MCGIP business entity detail was care of Alpha Law Group, LLC, which is the newest firm of Prenda founder Paul Hansemier. One "Alan Mooney" is also a current client of Alpha Law / Paul Hansemeier, in *Mooney v. Priceline.Com Incorporated et al.*, No. 12-cv- 02731-DWF-JSM (D. Minn. Oct. 26, 2012). *Id.*

In short, Prenda appears to have filed yet another bogus verification,[11] this time in state Court in Illinois. The purported affiant links Prenda's fraudulent activities in Illinois to Mr. Paul Hansemeier of Minnesota, who was the other original founder of Prenda (and whose brother Peter still signs all of the technical declarations for Prenda).

In response to this allegation of another fraudulent Prenda verification, Mr. Gibbs retorts that

[11] The original bogus pre-suit discovery verification, purportedly signed by "Alan Cooper," was filed by Mr. Gibbs in *In the Matter of a Petition by Ingenuity 13, LLC*, E.D. Cal. Case No. 11-mc-0084-JAM-DAD, ECF No. 1.

(5) Collusion Between Prenda and the "Defendant" in Minnesota Case

Since Prenda has mainly stopped filing "swarm joinder" suits against multiple Does, given the trouble that theory has run into in federal Courts, it has now resorted to new tactics. One example of the new tactics are the state pre-suit discovery cases, like Guava, LLC v. Comcast, in St. Clair County, discussed above.

However, the other new tactic Prenda has employed is to make a back room deal with a John Doe it has previously identified, whereby Prenda agrees not to pursue that person, in exchange for which that person will agree to be named and served, and stipulate to early discovery against a passel of "John Doe" co-conspirators. Apparently, Prenda steers such people (one can imagine Prenda chooses the people who are particularly worried about their cases) to certain lawyers, and these lawyers then agree on behalf of the named lead defendant, to stipulate to far-reaching discovery. Details of this kind of collusion (all in the name of obtaining ISP subscriber information) are explained in the declaration from the attorney for Spencer Merkel in Guava, LLC v. Merkel, a Minnesota suit seeking discovery on Does all over the country. Exhibit W.

(6) Recent Rebranding of Prenda Law and Mr. Gibbs' New Career as "In House Counsel" for Various Prenda Shell Entities

Recently, Mr. Gibbs has substituted out of various Prenda cases as counsel of record. Far from washing his hands of his involvement with Prenda though, and trying to start anew, Mr. Gibbs has simply changed hats. Mr. Gibbs has recently purported to be "in house counsel" for at least three different Prenda-related sham entities.[12] This new role for Mr. Gibbs only further supports the Court's suspicion that Mr. Gibbs has a pecuniary interest in the Prenda shell companies.

[12] According to the February 19, 2013 deposition of AF Holdings' 30(b)(6) deponent, Paul Hansemeier, the amended substitution of attorney form Mr. Gibbs filed in N.D. Cal. 12-cv-4221, at ECF No. 22 (filed 1/30/13), which identified Mr. Gibbs as "In-House Counsel, AF Holdings, LLC" is incorrect, and Mr. Gibbs is now, as of two weeks later, not in house counsel to AF Holdings. Incidentally, the same day that Mr. Gibbs filed the amended substitution of counsel in

(7) Paul Duffy, John Steele and Paul Hansemier – Other Attorneys Who Share Responsibility with Mr. Gibbs for Overseeing Prenda's Fraudulent Litigation Scheme

Mr. Gibbs surely bears a significant amount of responsibility for Prenda's egregious actions, but he has not acted alone—the fraud here is systematic, and part of a conspiracy involving several other lawyers and laypeople.

Attorney Paul A. Duffy proclaimed himself the "sole principal" of Prenda Law last fall in a letter to the Court in the *Sunlust* case. Exhibit Y. Mr. Duffy is admitted to the State Bar of California[13] (although he primarily practices in Chicago; in addition to California, Mr. Duffy is also admitted Illinois, Massachusetts and Washington, DC)[14], and has appeared as counsel for record for Prenda in various Ingenuity 13 and AF Holdings cases in California. Exhibit Z. Moreover, Mr. Duffy attempted to meet and confer with undersigned counsel about this case, 12-cv-8333, indicating he is involved with this particular litigation now before this Court. Exhibit P.

Attorney John L. Steele, like Mr. Gibbs, also purports to merely be "of counsel" to Prenda. Dec'l. re: Prenda Law, Exhibit D (Steele's April 20, 2012, entry of appearance as "of counsel" to Prenda in DC case); *but see* Exhibit N, p. 139:5 (Steele tells Judge Scriven on November 27, 2012, "I'm not an attorney with any law firm right now.") *then see* Supp'l Dec'l. ¶ 15 (After appearing at a February 13, 2013, hearing for Guava, LLC, Steele confirmed to several people that he is still

---

that action (1/30/13), he also sent out a letter to several hundred ISP subscribers identified in the St. Clair County Guava, LLC case identifying himself as "In-House Counsel, Guava LLC." Exhibit X. Finally, as noted below, Mr. Gibbs' special counsel in this action has also identified him in the instant OSC response as in-house counsel for Livewire Holdings, LLC, the purported new owner of AF Holdings (note the letterhead used to send out the Guava letter). ECF No. 49, fn 1.

[13] http://members.calbar.ca.gov/fal/Member/Detail/224159

[14] http://www.wefightpiracy.com/paul-duffy.php

currently "of counsel" to Prenda Law). However, together with Paul Hansemier, Mr. Steele was the founder of Prenda's predecessor in interest, Steele Hansemier, PLLC. Morover, as indicated, *supra*, in sections II(b)(1)-(3), Mr. Steele's fingerprints are all over Prenda's various frauds. Almost every time Prenda has had to identify a person connection to a "client" shell entity, the person Prenda has held out to the world has been a current or former close associate of John Steele. Mr. Steele indicates on his LinkedIn page that he "sold [his] client book to Prenda Law in 2011," but in reality, Mr. Steele appears to remain heavily involved in Prenda. Exhibit AA. For example, in the Forbes article (fn 3, *supra*) Mr. Steele brags about Prenda litigation as if he is speaking about himself. Similarly, many lawyers who deal with Prenda on a regular basis could testify to the fact that inquiries to Prenda are routinely answered by Mr. Steele himself.

Attorney Paul L. Hansemeier is also one of the founders of this scheme, and his latest firm, "Alpha Law Firm, LLC," appears to be nothing more than Prenda's newest trade name in Minnesota.[15] Like Prenda, the "Alpha Law Firm" also represents the shell company "Guava, LLC" in CFAA / BitTorrent litigation. *See Guava, LLC v. Spencer Merkel*, Hennepin County, Minnesota District Court No. 27-CV-12-20976, Exhibit BB. Alpha Law's counsel of record in the Guava case, Mr. Michael Dugas, was a former associate for Prenda Law. Exhibit CC. Admittedly, Mr. Hansemeier has apparently made some attempts to try and distance himself from Mr. Steele, and the Prenda name, at least on paper, by creating a new firm name for himself. However, the continued involvement of Alpha Law in the Guava litigation, as well as the role Mr. Hansemeier's client Allan Mooney may have played in the bogus verification in the St. Clair County, Illinois Guava case (where Prenda is

[15] At the February 19, 2013 30(b)(6) deposition of AF Holdings, Mr. Hansemeier testified that in cases his Alpha Law Firm settled for AF Holdings, the proceeds were paid and deposited into the Prenda trust account, not the Alpha Law Firm trust account.

counsel of record, not Alpha Law) suggests Mr. Hansemeier remains involved behind the scenes.

Prenda also uses "local counsel" in many jurisdictions around the country. With the possible exception of the Dugases in Minnesota, who may be involved in management, many of these local attorneys appear to have ended up working with Prenda by answering Craigslist ads, and may not comprehend what they are getting themselves into. Since Mr. Gibbs is admitted in California, he has been counsel of record in all of Prenda's California cases, since the early days of Steele Hansemeier (excepting Paul Duffy's recent substitution for Mr. Gibbs in a handful of cases in the Northern District of California).

In terms of non-attorneys participating in Prenda's scheme, the top of the list would be Paul Hansemeier's brother Peter Hansemeier, who has been Prenda's "technical" expert since the early days of Steele Hansemeier. Close behind Peter Hansemeier would be Mark Lutz, a man who wears many hats for Prenda. In addition to being Mr. Steele's former paralegal, Mr. Lutz is a seasoned telephone solicitor who helps pressure John Doe defendants into settling, and he is also apparently a fraudulent corporate representative for hire, who is Prenda's go-to person to identify as a "client" contact in initial disclosures. On its website, Mr. Lutz is currently listed as a founder of Livewire Holdings, LLC, Prenda's newest affiliate, which has an office at a UPS Store in Washington, DC. Also possibly involved in this scheme, but to an unknown degree would be John Steele's sister Jayme C. Steele, her co-habitant (boyfriend?) Anthony Saltmarsh, and Allan Mooney (Paul Hansemier's client) who is perhaps the "Alan Mony" currently reputed to be the principal of Guava, LLC.

In short, Mr. Gibbs has had lots of help in defrauding this Court; several other attorneys and laypeople connected to Prenda Law are also culpable.

III. ARGUMENT

(a) All of Prenda's Cases Before this Court are "Sham" Lawsuits Exempted from the Protections of the *Noerr-Pennington* Doctrine

If Prenda had an explanation for the "Alan Cooper" situation, other than intentional fraud, it would have come out by now. Rather than rehash the documentary evidence on a factual issue that will be addressed at the March 11 hearing, this section instead addresses the legal ramifications that flow from confirmation of the Prenda's fraud.

One important consequence of confirming that Prenda misappropriated Alan Cooper's identity would be that Prenda and the lawyers associated with it would lose any potential tort immunity under the *Noerr-Pennington* doctrine.[16] Further, even without forged documents in the copyright chain of title, Prenda's cases still qualify as "sham" lawsuits.

(1) The "Sham" Lawsuit Exceptions to the *Noerr-Pennington* Doctrine

Often, plaintiffs can escape tort liability for filing questionable lawsuits by relying on protections of the *Noerr-Pennington* doctrine, which is the federal counterpart to state law litigation privileges. Essentially, the *Noerr-Pennington* doctrine protects litigants from retaliatory countersuits when they are using the courts to petition or influence the government (including by filing lawsuits), because such activity is protected under the Petition Clause of the First Amendment to the U.S. Constitution. *See Eastern Railroad Presidents Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127 (1961); *United Mine Workers v. Pennington*, 381 U.S. 657 (1965).

However, there is a general exception to the Noerr-Pennington doctrine for "sham" lawsuits. *See California Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508, 511 (1972). In an appeal from a Ninth Circuit copyright infringement

[16] This pre-assumes that the Noerr Pennington doctrine, which was originally aimed at antitrust injury, is applicable to lawsuits seeking redress for copyright infringement.

case, the U.S. Supreme Court established a two-part test for sham lawsuits. *Prof'l Real Estate Investors v. Columbia Pictures Indus.*, 508 U.S. 49 (1993). First, a sham lawsuit is one that is so "objectively baseless" that "no reasonable litigant could realistically expect success on the merits." *Id.* at 60. If the first part of the test is met, courts should then examine the plaintiff's subjective motivation, and in so doing, "the court should focus on whether the baseless suit conceals 'an attempt to interfere directly' with the business relationships of a competitor." *Id.*

Since *Prof'l Real Estate*, the "sham" lawsuit exception to the *Noerr-Pennington* doctrine has been extended beyond "objectively baseless" lawsuits to include fraudulent lawsuits. Although the U.S. Supreme Court has not explicitly reached the fraud exception to the *Noerr-Pennington* doctrine, it did leave open the possibility for such a rule (seemingly on purpose) in *Prof'l Real Estate. Id.* at fn 6 (the Court "need not decide here whether and, if so, to what extent Noerr permits the imposition of antitrust liability for a litigants fraud or other misrepresentations.") Several Courts of Appeal,[17] including the Ninth Circuit, have picked up on this *dicta*, and explicitly endorsed a fraudulent litigation exception to the *Noerr-Pennington* doctrine. In *Kottle v. Northwest Kidney Ctrs.*, 146 F. 3d 1056, 1060 (9th Cir. 1998) the Ninth Circuit explained that where the litigation behavior at issue "consists of making intentional misrepresentations to the court, litigation can be a sham if 'a party's knowing fraud upon, or its intentional misrepresentations to, the court deprive the litigation of its legitimacy." *Id. quoting Liberty Lake Inv., Inc. v. Magnuson*, 12 F.3d 155, 158 (9th Cir. 1993); *see also Clipper Exxpress v. Rocky Mountain Motor Tariff Bureau, Inc.*, 690 F.2d 1240, 1260 (9th Cir. 1980).

In *Kaiser Foundation Health Plan, Inc. v. Abbott Laboratories, Inc.*, 552 F. 3d 1033 (9th Cir. 2009), the Ninth Circuit further explained that there are essentially

[17] *Mercatus Group, LLC v. Lake Forest Hosp.*, 641 F. 3d 834, 842 (7th Cir. 2011); *Whelan v. Abell*, 48 F. 3d 1247, 1254-55 (D.C. Cir. 1995); *Potters Medical Center v. City Hosp. Ass'n.*, 800 F.2d 568, 580 (6th Cir. 1986); *Ottensmeyer v. Chesapeake & Potomac Tel. Co. of Md.*, 756 F.2d 986, 994 (4th Cir. 1985); *Israel v. Baxter Labs., Inc.*, 466 F.2d 272, 278 (D.C. Cir. 1972)

three different kinds of "sham" lawsuits that are not immunized by *Noerr-Pennington*: (i) "where the lawsuit is objectively baseless and the defendant's motive in bringing it was unlawful"; (ii) "where the conduct involves a series of lawsuits brought pursuant to a policy of starting legal proceedings without regard to the merits and for an unlawful purpose,"; and (iii) "if the allegedly unlawful conduct consists of making intentional misrepresentations to the court, litigation can be deemed a sham if a party's knowing fraud upon, or its intentional misrepresentations to, the court deprive the litigation of its legitimacy." *Id.* at 1045; *quoting Sosa v. DIRECTV, Inc.*, 437 F.3d 923, 938 (9th Cir. 2006) (citations and internal quotation marks omitted).

(2) Intentional Use of Forged Copyright Assignment Agreements in the AF Holdings Cases Deprive These Cases of Legitimacy

The AF Holdings cases before this Court are the most obvious "sham" lawsuits, because each case is founded upon a forged copyright assignment agreement, purportedly executed for AF Holdings by "Alan Cooper."[18] In each AF Holdings case, Prenda's standing and ability to bring the suit in the first place is essentially void *ab initio*. If Mr. Gibbs argues that he did not know the document was forged when he signed the complaint that does not get him or Prenda off the hook; someone at Prenda (*i.e.*, the person who forged Alan Cooper's signature) was attempting to deceive the Court.[19] In short, with respect to the forged copyright

---

[18] The Ingenuity 13 cases instead attach a Copyright Office printout indicating that the movies at issue were works made for hire for Ingenuity 13, LLC. *See, e.g., Ingenuity 13, LLC v. John Doe*, C.D. Cal. No. 12-cv-8333, ECF No. 1, p. 14.

[19] The motive for all of Prenda's fraud appears to be an attempt to hide the fact that Prenda and/or the lawyers associated with it have essentially become their own clients, by taking a direct pecuniary interest in the outcome of the litigation, through the use of the offshore shell companies. That motive means that the failure to identify the Prenda lawyers as people with a pecuniary interest in the outcome of the litigation in accord with Local Rule 7.1-1 would also be separately sanctionable, per L.R. 83-3. *See, Righthaven, LLC v. Democractic Underground, LLC*, D. Nev. No. 10-cv-1356, ECF No. 137, 7/15/11 (imposing $5,000 monetary sanction for failure to disclose party with pecuniary interest in litigation per Local Rule 7.1).

assignment agreements, Prenda's fraud was intentional, and it goes straight to the heart of the legitimacy of each of the AF Holdings cases, all of which are rendered "sham" lawsuits by the forgery. *See Kaiser Foundation, supra*, 552 F. 3d at 1045; *Sosa*, 437 F.3d at 938; *Kottle*, 146 F. 3d at 1060.

(3) The Ingenuity 13 Cases—Indeed, all of Prenda's Cases—Qualify as "Sham" Litigation Because The Cases Are Brought for an Improper Purpose, Without Regard to the Merits

The following definition of the second kind of fraudulent "sham" lawsuit perfectly describes Prenda's entire business model: "a series of lawsuits brought pursuant to a policy of starting legal proceedings without regard to the merits and for an unlawful purpose." *See Kaiser Foundation, supra*, 552 F. 3d at 1045.

Imagine for a moment what might constitute hard proof of a "policy" of "starting legal proceedings without regard to the merits." In considering this question, the Court need look no farther than Exhibit F to the Dec'l. re: Prenda Law, which is the status report filed by Mr. Gibbs on February 24, 2012, admitting that during the previous year and a half, he and Prenda had filed 118 mass-defendant copyright infringement lawsuits, against 15,878 John Does, but not a single defendant had ever been served in any of these cases.

The same pattern has held in the single-defendant cases filed by Prenda. Over and over again, the record has shown that if Prenda cannot get a default judgment, and a John Doe starts to effectively stick up for him or herself, or if a Court takes an active role overseeing the cases, Prenda simply unilaterally dismisses the case, without prejudice. That was exactly what happened in each of the Ingeunity 13 and AF Holdings cases pending in this district.

As for Prenda's unlawful purpose, that would be profit through extortion and intimidation. These cases are not really about vindicating copyright rights. Rather, they are about using the threat of statutory damages, and (where they can get away with it) the Court's subpoena power, to leverage Internet users into paying quick

settlements, upon threat of grave public embarrassment. That Prenda's scheme is unlawful, and not merely improper is further confirmed by California's criminal prohibition on barratry, which makes unlawful the stirring up of three or more actions "with a corrupt or malicious intent to vex and annoy." Cal. Pen. Code §§ 158–59.

In sum, all of Prenda's lawsuits in this district are "sham" litigation within the meaning of the fraud exceptions to the *Noerr-Pennington* doctrine.

(b) Given the Circumstances of These Cases, Prenda Routinely Fails to Comply with its Rule 11(b)(3) Obligations

The role Rule 11 standards should play in cases like these with respect to investigation of claims, good faith factual allegations, and borderline legal arguments, has been an underexplored topic in BitTorrent cases.

(1) Mr. Gibbs' Past Statements on the Rule 11 Implications of These Cases

A litigant other than Mr. Gibbs could perhaps make an argument (though not a convincing one) that merely paying the Internet bill for a household is enough, by itself, to justify naming and serving that person as a defendant in a case like this. However, Mr. Gibbs should not now be heard to make such an argument, because he knows better—Mr. Gibbs has gone on record with his view about this issue, multiple times, in prior court filings.

As further detailed in the Dec'l. re: Prenda Law, ¶¶ 21-22, on at least four separate occasions, Mr. Gibbs has addressed this Rule 11 issue with various other courts. Mr. Gibbs has confidently assured the courts that, in his view, additional investigation beyond the ISP subpoena is *required* in order to have a good faith basis to allege that an Internet user is a defendant in a case like this. When Prenda is seeking to obtain extensions of a Rule 4(m) deadline, and trying to explain to suspicious Judges why no John Doe defendants have been named and served, this has been the answer: 'Nobody has yet been served, because Prenda needed to do

more investigation of the ISP subscribers identified in the subpoena return in order to have a good faith basis to name and serve them.'

If and to the extent that Mr. Gibbs now reverses course and suggests that the subpoena return itself is sufficient, under Rule 11(b)(3) to justify signing a complaint naming someone as a defendant, he should be judicially estopped from making the argument, because it directly contradicts his prior stance on this issue.

(2) "Inquiry Reasonable Under the Circumstances"

In considering the objective reasonableness of Prenda's additional "investigation" of Mr. Wagar and Mr. Denton which led to Mr. Gibbs signing a pleading naming them as defendants, several "circumstances" should be considered.

First, Prenda's lawsuits are calculated to embarrass, because they all involve allegations of illegally downloading pornography. Given the salacious content, and the fact that in a case like this, the embarrassing allegations can turn a person with meritorious defenses into an immediate loser, Prenda (and similar pornography plaintiffs) should have a heightened duty under this rule. That is, under the circumstances of these cases, with their propensity to embarrass, the investigation required to name someone as a defendant should be a little higher than in cases involving more mundane content. Because the stakes for the defendant are higher, so should they be higher for the plaintiff as well.[20]

Second, Prenda's routine practice of publicly shaming the people it "names" on its website is another circumstance that should be taken into account when evaluating the objective reasonableness of Mr. Gibb's conduct here. Similarly, third, Prenda's routine practice of dismissing most of its cases without prejudice at the first hint of trouble, is another circumstance that should be taken into consideration.

---

[20] If Prenda objects to being held to a higher pleading standard based on the content of the copyrighted works at issue, then it could simply seek leave to name people under seal, or subject to a protective order guarding against public disclosure (Prenda never does this) which is another way to mitigate the harm.

Fourth, Prenda has hundreds of these lawsuits against tens of thousands of defendants; as a professional BitTorrent copyright infringement litigant, a higher degree of factual certainty and investigation can and should be required of Prenda than might be asked of other litigants.

Taken together, all four of these circumstances militate in favor of a finding that Mr. Gibb's factual investigation in the Wagar and Denton cases was objectively unreasonable.

(3) Other Examples of Prenda's Shoddy "Investigation"

Notwithstanding his several representations to various Courts, and the specific warning on this issue from Judge Seeborg, Mr. Gibbs has repeatedly relied on shoddy, objectively unreasonable investigations in order to try and name people in complaints. Mr. Wagar and Mr. Denton are not alone; other Internet users victimized by Mr. Gibbs' lax interpretation of Rule 11(b)(3) include Jesse Nason, Josh Hatfield, and John Botson.

The circumstances of Mr. Gibb's shoddy additional "investigation" in the Nason and Hatfield cases are described in detail in the Dec'l re: Prenda Law, ¶¶ 23-28. Mr. Gibbs' insufficient investigation in the Botson case is memorialized at *AF Holdings, LLC v. John Doe*, N.D. Cal. No. 12-cv-02048-EJD (ECF No. 30, 11/6/12).

In each of these cases, when pressed to explain the "investigation" that had supposedly identified the defendant, Mr. Gibbs responded with paltry "facts," which turned out to the incorrect.

(4) The "Snapshot" Theory of Copyright Infringement

Undersigned counsel agrees with the Court that based on the factual allegations at issue in this group of cases, accusing the defendants of copyright infringement likely veers into questionable territory.

In sum, Mr. Gibbs decision to name Mr. Wagar and Mr. Denton is part of another pattern, whereby Mr. Gibbs has taken a purposefully lax stance on Rule 11(b), in order to maximize the extortionate impact of these kinds of cases.

(c) There is No Excuse for Violating the Court's Discovery Order

These violations speak for themselves. Apparently, while under orders from the Court to suspend discovery efforts, Prenda continued right on running the usual playbook. As noted above, Mr. Gibbs' proffered explanation does not hold water in light of the directly contradictory declarations offered by AT&T. Dec'l. of Bart Huffman; Dec'l. of Camille D. Kerr.

IV. CURSORY REBUTTAL TO MR. GIBBS' OSC RESPONSE

The first thing that should be pointed out about Mr. Gibbs OSC response is that somebody is mistaken (or lying) about who owns AF Holdings. On the same day that Mr. Gibbs special counsel filed a pleading stating that AF Holdings was recently sold to Livewire Holdings, LLC, an AF Holdings 30(b)(6) witness sat in a deposition and testified that AF Holdings sole owner is a Nevis trust. Mr. Hansemeier testified at the deposition that AF Holdings is not sure who formed this trust (other than the paid incorporator), where it is organized, whether there are any trust documents, what the name of the trust is, who might have a beneficial ownership interest in the trust, or who would have authority to terminate the trust. Mr. Hansemeier sat there and testified to all this with Mr. Gibbs (who, according to his own special counsel, at ECF No. 49. p.1, became general counsel of the company that acquired AF Holdings, Livewire Holdings, LLC back in January) right there at his side, as counsel of record for AF Holdings. In short, the story his evening is that AF Holdings was sold several weeks ago to Livewire Holdings (Mr. Gibbs new employer). But the story this afternoon was that AF Holdings is owned by a mystery trust. Clearly, someone is wrong.

A second, major misrepresentation in the OSC response: when Mr. Gibbs first saw the name Alan Cooper. Mr. Gibbs' special counsel states that "Indeed, the first time Mr. Gibbs saw the name "Alan Cooper" was on the copyright assignment that was attached to the complaints in the litigations regarding the copyrights." ECF No. 49, at 25:5-8. This is also false. *See* Exhibit L. Assuming he looked at the verified

petition he filed before filing it (which special counsel says was his custom and practice) Mr. Gibbs would have seen Alan Cooper's name on the verification page to a petition Mr. Gibbs filed (while still at Steele Hansemeier) for Ingenuity 13 back in 2011 in *In the Matter of a Petition by Ingenuity 13, LLC*, E.D. Cal No. 11-mc-0084, ECF No. 1, p. 8 (Exhibit L). Special counsel's attempt to explains away this prior, verification, with a "/s/" signature with Alan Cooper's name on it are not convincing. Depending on when "exhaustion of all appeals" occurred in that action, Mr. Gibbs likely would have still been under a duty to keep a copy of the original as of December 2012 when he was being asked to produce it. *See* E.D. Cal. L.R. 131(f).[21]

Finally, the attempt to explain away the apparently fraudulent verification in the St. Clair County, Illinois Guava action (a case where Mr. Gibbs has recently started signing his name to demand letters) should not be credited. Although the verification in that case purports to be "notarized," the "notarization" consists of an illegible squiggle, and Prenda still has not disclosed the name, notary seal number, or state of registration of the purported notary. Further, it also appears that Prenda may be playing games with the spelling of Alan Mooney.

V. RELIEF REQUESTED

(a) Substantial Monetary Sanction Against Prenda Law, Inc. in an Amount Sufficient to Have a Significant Deterrent Effect on a Repeat Bad Actor

In order to have a meaningful deterrent effect on a litigation enterprise which has bragged about making millions of dollars in this kind of litigation, and which has

[21] "**(f) Non-Attorney's Electronic Signature.** Documents that are required to be signed by a person who is not the attorney of record in a particular action (verified pleadings, affidavits, papers authorized to be filed electronically by persons in pro per, etc.), may be submitted in electronic format bearing a "/s/" and the person's name on the signature line along with a statement that counsel has a signed original, e.g., "/s/ John Doe (original signature retained by attorney Mary Roe)." It is counsel's duty to maintain this original signature for one year after the exhaustion of all appeals. This procedure may also be followed when a hybrid electronic/paper document is filed, i.e., the conventionally served document may also contain an annotated signature in lieu of the original."

repeatedly ignored ethical duties, and skirted rules on perjury, a substantial sanction is appropriate. Mr. Gibbs has filed 45 sham lawsuits in this district. A sanction of $10,000 per suit would work out to $450,000, which is an amount that would have a meaningful deterrent effect on Prenda and its associated attorneys. If the Court deems that amount too high, perhaps the Court would consider instead a sanction of $4,000 per case, which is the amount Ingenuity 13 has sought for up-front settlements in the cases now before this Court. *See* ECF No. 13-2, p. 1 (email from Mr. Gibbs to Mr. Pietz offering to settle the 12-cv-8333 action for $4,000 at the outset of litigation).

This sanction should be paid to the Clerk of Court by Prenda Law, Inc., and if not satisfied by Prenda itself, the attorneys running Prenda, including Mr. Gibbs, should make good on the amount owing as a matter of personal liability as attorneys engaged in a fraudulent (but extremely profitable) enterprise.

Sanctions are also appropriate "when an attorney is cavalier or bent on misleading the court; intentionally acts without a plausible basis; [or] when the entire course of the proceedings was unwarranted." *Miera v. Dairyland Ins. Co.*, 143 F.3d 1337, 1342 (10th Cir. 1998) (quotations and internal citations omitted); *see also In re: Estate of Ferdinand E. Marcos Human Rights Litigation*, Ninth Circuit No. 11-15487 (unpublished) (October 24, 2012) (affirming $353,600,000 contempt judgment and $100,000 per day contempt sanction).[22]

(b) Award of Attorneys Fees and Costs, as Compensatory Sanction, Payable by Mr. Brett Gibbs

On behalf of the putative John Doe defendant in 12-cv-8333, undersigned counsel has billed substantial time in this matter. Calling Prenda to account for its various frauds on the Court is time-consuming, detail-oriented work. Further, Mr. Gibbs has filed several frivolous motions in this matter, including two identical

[22] A copy of this unpublished opinion is attached as Exhibit DD.

sanctions motions against the undersigned, and an entirely frivolous disqualification motion, which undersigned counsel spent considerable time responding to. The total costs and attorneys fees billable to the client to date in this matter is likely to be close to $25,000. If the Court so desires, undersigned counsel would be happy to substantiate these costs and fees at or after the hearing on the sanctions motion.

Undersigned counsel shares the Court's suspicion that Prenda's shell companies do not have any assets. Indeed, in an opposition to a motion by a named defendant to require AF Holdings to post and undertaking to proceed with the case, Mr. Gibbs specifically argued that the undertaking should not be granted because, if it was, AF Holdings could not pay it. *See AF Holdings v. Navasca*, N.D. Cal. No. 12-cv-2396-EMC, ECF No. 34, p. 1 ("Plaintiff simply cannot afford to post the $48,000 required by the *Trinh* Court to pursue its claims.")

Further, at the February 19, 2013 30(b)(6) deposition of AF Holdings, the company's corporate representative Paul Hansemeier testified that AF Holdings has "never recognized any income" and that all of the company's assets fit into one of two categories. The first asset category is that AF Holdings owns copyrights. According to Mr. Hansemeier, the second class of assets is that, to the extent that AF Holdings has cash, ***all of the cash is located in the client trust accounts*** of AF Holdings' various attorneys, including Prenda Law, Inc. and the Anti-Piracy Law Group. Mr. Hansemeier testified that aside from reimbursement for costs and attorneys fees, all of the rest of AF Holdings money simply sits in its attorneys' trust accounts, so it can be used to finance further litigation.[23]

Although undersigned counsel is loathe to do so, under the circumstances of this case, it is respectfully requested that the attorneys fee award be made payable by Mr. Gibbs. It seems wrong that a massive enterprise that brags about making millions of dollars should somehow avoid paying attorneys fees by pleading penury.

---

[23] Undersigned counsel is doing his best to faithfully render this testimony, which was offered earlier today.

See Mick Haig Prods. E.K. v. Does 1-160, 687 F.3d 649, 652 (5th Cir. 2012) (upholding sanctions entered against a mass BitTorrent copyright plaintiff's attorney). Further, ***the imposition of attorney fees "must be available in appropriate circumstances notwithstanding a private party's effort to cut its losses and run out of court, using Rule 41 as an emergency exit***." Cooter & Gell v. Hartmarx Corp., 496 U.S. 384, 390 (1990) (citing Danik, Inc. v. Hartmarx Corp., 875 F.2d 890, 895 (D.C. 1989)).

(c) Striking of the Complaint With Prejudice, and Specific Factual Findings

The putative John Doe in 12-cv-8333 further requests that, as a sanction, the complaint in this matter be stricken with prejudice. *See id.*

In addition, it is requested that the Court find that the AF Holdings cases in this district are fraudulent, "sham" litigation because they are founded on forged copyright assignment agreements, making the entire action illegitimate. *Kaiser Foundation, supra*, 552 F. 3d at 1045

Similarly, it is requested that the Court find that the Ingenuity 13 cases in this district are fraudulent, "sham" litigation because the cases were brought for an improper purpose, without regard to the merits. *Id.*

It is also requested that the Court find that Prenda "excited" the AF Holdings and Ingenuity 13 cases in this district, and that these cases were brought "with a corrupt or malicious intent to vex and annoy." *See* Cal. Pen. Code §§ 158–59. If the Court is inclined to consider the entry of a vexatious litigant or pre-filing sanction, undersigned counsel would be willing to further brief the issue.

(d) Such Other Relief as the Court Deems Just and Proper

To the extent other sanctions may be appropriate, such further measures are left to the sound discretion of the Court.

VI. CONCLUSION

The conduct of Prenda and its "of counsel" Mr. Gibbs in these cases undermines the integrity of the courts and the public's confidence in the justice system. Here, Prenda has shown is that it is willing to do just about anything to obtain grist for its national "settlement" mill. Repeatedly, in hundreds of actions filed in courts across the country, Prenda has resorted to misrepresentations, half-truths, and questionable tactics, if not outright fraud, forgery, and identity theft. Until now, Prenda has gotten away with quite a lot of these kinds of tactics because it simply abandons its lawsuits, via a voluntary dismissal, after obtaining subpoena returns, and some settlements. Indeed, as noted above, Mr. Gibbs is already at it again, now sending out demand letters on behalf of Guava, LLC, which is now purportedly owned by Livewire Holdings, LLC not a mystery trust. Exactly who is responsible for the worst of Prenda's actions here may not yet be clear, but this is the archetypical type of case, where there is a pattern of bad action that is done in such a way to avoid scrutiny, where a major sanctions is appropriate as a deterrent. This Court is urged not to go easy on Mr. Gibbs or Prenda Law.

Respectfully submitted,

DATED: February 19, 2013

THE PIETZ LAW FIRM

/s/ Morgan E. Pietz

Morgan E. Pietz
THE PIETZ LAW FIRM
Attorney for Putative John Doe(s)
Appearing on Caption