

Kelly / Warner, PLLC.
8283 N. Hayden Rd., #229
Scottsdale, AZ 85258
Telephone: (480) 9331-9397

Aaron M. Kelly (AZ Bar #025043
Paul D. Ticen (AZ Bar # 024788)
Kelly / Warner, P.L.L.C.
8283 N. Hayden Rd., #229
Scottsdale, Arizona 85258
Tel: 480-331-9397
Fax: 1-866-961-4984
Email: aaron@kellywarnerlaw.com
Email: paul@kellywarnerlaw.com

Attorneys for Defendant

IN SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

LIGHTSPEED MEDIA CORPORATION, an

Arizona Corporation,

Plaintiff,

v.

ADAM SEKORA,

Defendant.

CV2012-053194

**ADAM SEKORA'S MOTION
AND APPLICATION FOR
ATTORNEYS' FEES AND
COSTS**

(Assigned to the Honorable Alfred
Fenzel)

Pursuant to A.R.S. §§ 12-341.01 and 12-349 and Rule 54(g), Ariz. R. Civ. P., Defendant Adam Sekora hereby submits his request for attorneys' fees in the amount of \$28,740¹, which he reasonably incurred in defending against Plaintiff's baseless claims, and that the Court enter double damages up to \$5,000. Further, pursuant to §§ 12-341 and 12-332, Mr. Sekora should be awarded his taxable costs of \$259 and pursuant to 12-349 and his non-taxable litigation expenses of \$36.00. In total, Mr. Sekora requests a **total award in the amount of \$34,053**. Redacted invoices reflecting the requested fees and costs are attached as **Exhibit 1** hereto. Mr. Sekora is entitled to an award of his

¹ In the event Plaintiff responds and objects to the application, the amount of reasonably incurred attorney's fees will increase to prepare a reply. Mr. Sekora reserves the right to amend the amount requested.

1 reasonably incurred attorneys' fees because he is the successful party in a contested
2 action arising under contract because Plaintiff's claims were dismissed voluntarily or for
3 lack of prosecution. And because Plaintiff's claims were brought against him without
4 substantial justification and for purposes of harassment as part of an overarching abusive
5 litigation strategy to coerce settlements. This Motion is supported by the following
6 Memorandum of Points and Authorities and the accompanying declaration of counsel.

7 **MEMORANDUM OF POINTS AND AUTHORITIES**

8 Pursuant to Rule 54(g)(2), Ariz. R. Civ. P., the party seeking an award of attorneys'
9 fees and costs must request same by motion "within 20" days from the clerk's mailing of
10 a decision on the merits of the cause." "Merits of the cause" has been construed to mean
11 termination of the action. *Britt v. Steffen*, 205 P.3d 357, 220 Ariz. 265 (Ariz. App.,
12 2008). And a dismissal, whether voluntary or for lack of prosecution, qualifies the
13 successful party for a possible award of attorneys' fees and costs pursuant to § 12-341.01.
14 *Id.*, *Vicari v. Lake Havasu City*, 222 Ariz. 218, 213 P.3d 367 (App. 2009) Here, the
15 judgment of dismissal was entered on May 15, 2013 for lack of prosecution. Therefore,
16 Mr. Sekora's motion for attorneys' fees and costs is timely because it is well within the
17 20-day time period afforded under Rule 54(g)(2).
18

19 **A. Mr. Sekora is Entitled to His Reasonable Attorneys' Fees and Costs**
Pursuant to A.R.S. §12-341.01(A).

20 A.R.S. Section 12-341.01(A) provides that "[i]n any contested action arising out
21 of a contract, express or implied, the court may award the successful party reasonable
22 attorney fees." Plaintiff's allegations implicate § 12-341.01. See Complaint at ¶¶ 39-48,
23 See *Pelletier v. Johnson*, 188 Ariz. 478, 482-83, 937 P.2d 668, 672-73 (App. 1996)
24 (holding that a party prevailing on an unjust enrichment claim may recover attorney's
25 fees under § 12-341.01).
26

27 **1. An award of attorney' fees and costs under § 12-341.01 is**
proper because Plaintiff voluntarily dismissed the breach of
contract and unjust enrichment claims pursuant to Rule 15(a).
28

Mr. Sekora was the "successful party" in a contested action arising under
contract, and therefore he should be awarded his attorneys' fees and costs. A

defendant is considered the successful party and courts may properly award attorneys' fees under § 12-341.01 when claims are dismissed with or without prejudice for failure to prosecute, even though such dismissal does not operate as an adjudication upon the merits. *Britt*, 220 Ariz. at 267, 205 P.3d at 359. And also when claims against a defendant are voluntarily dismissed pursuant to Rule 41(a), Ariz. R. Civ. P. *Vicari*, 222 Ariz. at 224, 213 P.3d at 373. In *Vicari*, the Arizona Court of Appeals upheld the trial court's award of attorneys' fees following a Rule 41(a)(1) voluntary dismissal, reasoning that neither the plain language nor legislative history suggested that a plaintiff's right to voluntarily dismiss a case also acted as a shield against the liability of attorneys' fees. 372. See also *Bldg. Innovation Indus., L.L.C. v. Onken*, 473 F.Supp.2d 978, 983 (D.Ariz.2007) (rejecting argument that Rule 41(a)(1) deprived court jurisdiction to consider attorneys' fees because it would provide a vehicle by which plaintiff may evade otherwise appropriate sanctions and costs).

It is undeniable that this was a contested action arising under contract. Plaintiff's own allegations support this position. Plaintiff acknowledges that it used Rule 15(a) to dismiss its breach of contract and unjust enrichment claims, among others. See Plaintiff's Reply To Defendant's Response to Plaintiff's Motion For Leave to File Its Amended Complaint, ¶¶ 1:23-2:2, 3:10-3:16; 4:12-14. The dismissal makes Mr. Sekora the successful party. And there is no meaningful distinction between a dismissal under Rule 41(a) and Rule 15(a) for purposes of awarding attorneys fees under § 12-341.01. The Court of Appeal's rationale for upholding an attorneys' fees award in *Vicari* equally applies to a dismissal under Rule 15(a). There is nothing in the plain language of the Rule or any other justification for using Rule 15 as a shield against an award of attorneys fees. The right to file amended pleadings is liberally granted by the court, and a contrary finding would lead to absurd results of being able to test the waters with a breach of contract claim, but pull out before the water got hot. The ability to evade attorneys' fees is what the courts in *Vicari* and *Bldg. Innovation Indus.* were trying to prevent. A defendant does not have this same luxury. But unlike Rule 41(a), Mr. Sekora actually

1 answered the complaint and defended against the claims, thereby incurring substantial
2 attorneys' fees in the process. Considerable time was spent in preparing a disclosure
3 statement and disclosing a substantial volume of documents, including over 2,000 pages
4 of all activity that has occurred over Mr. Sekora's tor network. And considerable time
5 was spent in holding Plaintiff to its disclosure obligations. Plaintiff made the decision to
6 sue Mr. Sekora on claims lacking a sound factual basis and evidentiary support. And
7 therefore it should face the ramifications of having done so.

8
9 Last, it should not be lost that Mr. Sekora, an individual, had little choice but to
10 incur substantial attorneys' fees to defend against claims brought by Plaintiff, an online
11 porn business that has made millions of dollars.² Therefore, the Court may properly
12 award Mr. Sekora his incurred attorneys' fees and costs under §12-341.01, and should do
13 so given the significant disadvantage in resources between Plaintiff and Mr. Sekora.

14 **2. Mr. Sekora is entitled to an award of all reasonable attorneys'**
15 **fees because Plaintiff's contract and unjust enrichment claims**
16 **are interwoven with Plaintiff's other claims.**

17 Mr. Sekora respectfully requests that he be awarded all incurred attorneys' fees and
18 costs pursuant to §12-341.01, but at a minimum, an award of attorneys fees and costs
19 incurred through the Court's January 7, 2013 Order compelling Plaintiff to disclose
20 additional evidence. "It is well-established that a successful party on a contract claim
21 may recover not only attorneys' fees expended on the contract claim, but also fees
22 expended in litigating ... 'interwoven' tort claim[s]." *Modular Min. Systems v. Jigsaw*
23 *Technologies*, 221 Ariz. 515, 522, 212 P.3d 853, 860 (App. 2009), *Ramsey Air Meds,*
24 *LLC v. Cutter Aviation*, 198 Ariz. 10, 13, P.3d 315, 318 (App. 2000). In such a
25 situation, an attorneys' time is "devoted generally to the litigation as a whole, making it
26 difficult to divide the hours expended on a claim-by-claim basis." *Schweiger v. China*
27 *Doll Rest., Inc.*, 138 Ariz. 183, 189, 673 P.2d 927, 933 (App.1983), quoting *Hensley v.*
28

² See the Wallstreet Journal article concerning Steve "Lightspeed" Jones and revenue generated by his online porn business. http://online.wsj.com/public/article/SB114441900916020032-Ho7GX_b6DPtDWqLDdXewKIcVF10_20070413.html

1 *Eckerhart*, 461 U.S. 424, 435, 103 S.Ct. 1933, 76 L.Ed.2d 40 (1983). Contract and tort
2 claims are interwoven when the same set of facts, common allegations, and intertwined
3 and overlapping legal issues make up the action. *Modular Min. Systems*, 221 Ariz. at
4 522-523, 212 P.3d at 860-861. In *Modular Min. Systems*, the Arizona Court of Appeals
5 upheld the trial court's award of the full amount of attorneys fees' incurred in bringing
6 claims for a violation of Arizona's Uniform Trade Secrets Act, unfair competition,
7 intentional interference with business relationships and contract, and breach of an
8 employment agreement. 221 Ariz. at 517, 212 P.3d at 855. The court held that the
9 evidentiary record supported findings that the trade secrets and breach of contract
10 claims "were based on the same set of facts, involv[ed] the same common allegation that
11 [defendant] "misappropriated and made use of [plaintiff's] trade secrets." *Id.* at 522, 212
12 P.3d at 860. And all legal work performed was "in connection with both claims." *Id.* at
13 523, 212 P.3d at 861. Further, the court found support that the legal issues concerning
14 the claims were intertwined and overlapped because the act of misappropriation and use
15 was the breach and all other claims were "completely dependent" on the plaintiff's
16 ability to show misappropriation and use. *Id.*

17
18 The multiple claim scenario here is substantially similar to that in *Modular Min.*
19 *Systems*. Plaintiff's legal claims (except the alternative negligence claim) and factual
20 allegations were all dependent on proving that Mr. Sekora had unauthorized accessed to
21 Plaintiff's website. Plaintiff's breach of contract claim alleged that Mr. Sekora failed to
22 perform his obligatins under the user agreement when he accessed and used the website
23 content for more than "personal use" and in "violation of community standards."
24 Plaintiff's Complaint at ¶¶ 43-48. Likewise, the unjust enrichment claim was premised
25 on allegations that Mr. Sekora viewed, consumed and downloaded Plaintiff's content
26 without providing compensation. *Id.* at ¶¶ 39-41. If Plaintiff was unable to show that
27 Mr. Sekora had unauthorized access to the website content, then all four claims fail.
28 Only Plaintiff's negligence claim arguably was not "completely dependent," on these
facts, but Plaintiff clearly pled it as an alternative claim for relief, and was dismissed at

the same time the breach of contract claim was. *Id.* at ¶¶ 50-59.

C. Mr. Sekora is Entitled to His Reasonable Attorneys' Fees and Expenses Pursuant to A.R.S. § 12-349.

An award of fees is one way to discourage the filing of frivolous or meritless claims. *Schweiger v. China Doll Restaurant, Inc.*, 138 Ariz. 183, 673 P.2d 927, (App. 1969); *Price v. Price*, 134 Ariz. 112, 654 P.2d 46 (Ct.App.1982). Mr. Sekora is entitled to all his reasonable attorneys' fees and expenses under A.R.S. § 12-349, and this is a proper case for the Court to exercise discretion in doubling the damages. Under A.R.S. § 12-349(A):

the court shall assess reasonable attorney fees, expenses and, at the court's discretion, double damages of not to exceed five thousand dollars against an attorney or party, including this state and political subdivisions of this state, if the attorney or party does any of the following:

1. Brings or defends a claim without substantial justification.
2. Brings or defends a claim solely or primarily for delay or harassment.
3. Unreasonably expands or delays the proceeding.
4. Engages in abuse of discovery.

Section 12-349(F) defines "without substantial justification" as "mean[ing] that the claim or defense is groundless and is not made in good faith."

"[T]he trial court must make appropriate findings of fact and conclusions of law" for all three elements. *Fisher ex rel. Fisher v. Nat'l Gen. Ins. Co.*, 192 Ariz. 366, ¶ 13, 965 P.2d 100, 104 (App.1998). Section 12-349 requires that a defendants show, by a preponderance of the evidence, that the plaintiff's lawsuit was groundless and in bad faith or harassing. *Phoenix Newspapers, Inc. v. Dep't of Corr., State of Ariz.*, 188 Ariz. 237, 244, 934 P.2d 801, 808 (App. 1997). There is more than sufficient evidence to support a finding that Plaintiff filed this lawsuit against Mr. Sekora without substantial justification and to harass him as part of its overall litigation strategy to coerce settlements.

1. Plaintiff Admits The Sole Basis of Its Claims Against Mr. Sekora Were Contained in the Server Logs

Significantly, Plaintiff asserted that Mr. Sekora was a "computer hacker" who was part of a "hacking community" that trafficked in stolen user names and passwords,

1 which Mr. Sekora used to gain unauthorized access to Plaintiff's website content. (See
2 Plaintiff's Complaint at ¶ 4, Plaintiff's Initial Disclosure Statement at 3:3, 3:6-9, attached
3 as **Exhibit 2** hereto). However, Plaintiff's only basis linking Mr. Sekora to such serious
4 allegations was an IP address (174.138.169.218) assigned by Secured Servers to his tor
5 node network on December 5, 2011. Plaintiff admits as much, by claiming five separate
6 times in its Response to Mr. Sekora's Motion to Compel that it "**disclosed the entire**
7 **basis for its case [and] claims against [Mr. Sekora].**" (See Plaintiff's Response to Mr.
8 Sekora's Motion to Compel at 2:21-22, 5:19-22; 7:9-10; 7:13-14, 8:13-14) (emphasis in
9 the original). The server logs purportedly show the above IP address connecting to two
10 of Plaintiff's websites between 4:51 and 4:58 p.m. (See Server Log attached as **Exhibit**
11 **3** hereto)³. The server logs disclose no other information establishing that Mr. Sekora is
12 a hacker or connecting him to the alleged unlawful acts.

13
14 **2. Plaintiff's Lawsuit Against Mr. Sekora based on an IP Address**
15 **Alone is Without Substantial Justification and Intended to**
16 **Coerce Mr. Sekora into a Settlement.**

17 Both the substantial justification prong and harassment prong are established by
18 the insufficiency of an IP address to connect an individual to unlawful conduct. This
19 issue has been flushed out in federal courts throughout the country, and this practice has
20 been clamped down hard on.

21 In *Ingenuity 13 v. John Doe*, C.D. Cal., 2:12-08333, Judge Otis Wright, II
22 vacated a discovery order authorizing a subpoena to various ISP's over concern of
23 discovery abuse because an IP addresses only revealed the internet subscriber, not
24 necessarily the actual infringer. (See Order dated December 20, 2012, ECF Doc No. 28
25 at 1:27-2:6, attached as **Exhibit 4** hereto). Judge Wright set an Order to Show Cause
26 hearing requiring plaintiff to demonstrate how it was going to proceed in uncovering the
27 identity of the actual infringer once subscriber information was obtained without using
28 the information to coerce settlements and while minimizing harassment and

³ Mr. Sekora's counsel will also submit an electronic version of Exhibit 3 for the Court's convenience.

1 embarrassment to innocent citizens. (*Id.* at 2:24-28). Rather than comply, the plaintiff
2 sought to disqualify the judge and then voluntarily dismissed the complaint after its
3 disqualification efforts failed. Nevertheless, Judge Wright followed up this OSC
4 hearing with another, but this time, the hearing focused on why Attorney Brett Gibbs⁴,
5 should not be sanctioned for failure to conduct a reasonable investigation before
6 bringing a copyright infringement case against an individual. (See Order dated February
7 7, 2013, ECF Doc. No. 48, attached as **Exhibit 5** hereto). Judge Wright stated that
8 alleging copyright infringement based on an IP snapshot is akin to alleging theft based
9 on a single surveillance camera shot. (*Id.*).

10 Judge Wright was not done. The last OSC hearing occurred on April 2, 2013,
11 where Prenda Law's principals (John Steele, Paul Hansmeier and Paul Duffy) were
12 ordered to show cause why they should not be sanctioned, among other things, for
13 committing fraud⁵ upon federal courts throughout the country. (See Order dated May 6,
14 2013, ECF Doc No. 130, attached as **Exhibit 6** hereto). But rather than testify, all
15 invoked their 5th Amendment right against self-incrimination. The OSC hearings
16 culminated in Judge Wright issuing the powerful sanctions order⁶ and making certain
17 findings of fact that are applicable to this case, including:
18

- 19
- 20 • Prenda Law embarked on a litigation strategy of filing federal lawsuits to identify
21 subscribers to IP addresses and offering to settle copyright infringement claims
22 for \$4,000;
 - 23 • Prenda Law engaged in vexatious litigation designed to coerce settlements, using
24 boilerplate complaints based on a modicum of evidence.
 - 25 • Prenda Law showed little desire to litigate against determined defendants and
26 instead would seek to dismiss and avoid discovery obligations.
 - 27 • Prenda law hired local counsel [like opposing counsel] and Brett Gibbs to
28 prosecute these cases.
 - Steele, Hansmeier and Duffy, maintained full control over the entire copyright-
litigation operation.
 - Prenda Law ordered its local counsel to file copyright infringement complaints
based on a single snapshot of Internet activity.

⁴ Brett Gibbs interjected himself into this litigation during the disclosure dispute. See Exhibit 1 (Separate Statement of Moving Counsel and Exhibits) to Mr. Sekora's Motion to Compel at ¶¶ 2:11-3:1).

⁵ The fraud involved failure to disclose ownership interest in the plaintiff entities and use of a forged signature and misappropriated identity in connection with a copyright assignment that was an exhibit to the complaint.

⁶ The sanctions order includes a flow chart listing Plaintiff as among Prenda Law's adult entertainment clients. See Exhibit B at 9:1-17.

1 (*Id.* at 3:20-5:28).

2 Other courts have dismissed claims or forewarned plaintiffs that there is
3 insufficient evidentiary and factual support to accuse an individual of illegally
4 downloading porn based on IP address alone. In *AF Holdings v. Chris Rogers*, the court
5 in partially granting a motion to dismiss, stated that "just because an IP address is
6 registered to an individual does not mean that he or she is guilty of infringement when
7 that IP address is used to commit infringing activity." (12-cv-01519, S.D. Cal. (2013) at
8 3:9-11, attached as **Exhibit 7** hereto). And due to the risk of "false positives," an
9 allegation that an IP address is registered to an individual is not sufficient in and of itself
10 to support a claim that the individual is guilty of infringement." *Id.* at 4:10-12.

11 Likewise, in *Malibu Media, LLC v. John Does 1-11*, the court ordered that the
12 plaintiff may not rely on the IP address alone to name a subscriber in the lawsuit, but
13 rather required a showing of a sufficient factual basis before any assertions were made.
14 2:12-cv-07726, D. N.J (2013), ECF Doc No. 6, attached as **Exhibit 8** hereto).

15 While the above orders involve mass copyright infringement litigation, the instant
16 case and these mass copyright infringement cases have much in common. In both cases
17 individuals are accused of unlawful conduct based on nothing more than an IP address
18 and then subjecting them to an abusive litigation strategy designed to coerce settlements.
19 And if an individual ignores or refuses to settle, the individual is named in a lawsuit
20 (without sufficient evidence) to ratchet up the pressure to coerce the settlement. And
21 when involved in a battle with a handful of defendants who choose to fight back,
22 plaintiff seeks every possible avenue to dismiss the action. The primary difference here
23 is the plaintiff leverages the stigmatization of being cast a hacker in violation of the
24 CFFA (a federal criminal statute that creates a civil right and remedy) for unauthorized
25 access to porn, rather than somebody that unlawfully downloaded pornography from a
26 BitTorrent site like Pirate Bay. Judge Wright's finding of facts and other copyright
27 infringement cases demonstrate the groundless and bad faith nature of these cases.
28

Another common thread is that Prenda Law is/was driving both coercive

1 settlements and litigation strategy for the hacking and copyright cases. (See Exhibit 6 at
2 9:1-17). Prenda Law attempted to coerce Mr. Sekora into settling the case before
3 litigation. (See Prenda Law demand letters and e-mails to Mr. Sekora attached as
4 **Exhibit 9** hereto). **Indeed on June 15, 2012, after the complaint was filed but a week**
5 **before he was served, Mr. Sekora received automated voice calls from Prenda Law**
6 **continuing to harass him about a settlement and threatening that he would be**
7 **named in an individual lawsuit.**⁷ On July 20, 2012, Prenda Law continued harassing
8 Mr. Sekora regarding a settlement through these automated calls, even after Mr. Sekora's
9 counsel had filed an answer on July 10th. (See Exhibit 1-A to Mr. Sekora's Motion to
10 Compel). Mr. Sekora's counsel alerted opposing counsel to this issue and requested that
11 Prenda Law immediately cease improper communication with Mr. Sekora. (Id.). And
12 Prenda Law showed its active involvement in this case when Mr. Steele and Mr. Gibbs
13 interjected into the litigation during the disclosure dispute. (See Exhibits 1, 1-E, and 1-F
14 to Mr. Sekora's Motion to Compel). Both cases are undeniably part of the same overall
15 abusive litigation strategy.
16

17 **3. Plaintiff's Failure to Conduct a Reasonable Investigation**
18 **Further Supports a Finding That the Lawsuit was Without**
19 **Substantial Justification and Intended for Harassment.**

20 Plaintiff's lack of a reasonable investigation and failure to consider alternative
21 ways to deal with the purported hacking underscores the bad faith nature of this case and
22 demonstrates that litigation was designed to harass Mr. Sekora by coercing him into a
23 settlement. Steve Jones, Plaintiff's president and the sole owner of the security company
24 that Plaintiff claims took the IP address snapshot on December 5, 2011, has a significant
25 IT background. (See the unsigned Declaration of Steve Jones filed as an exhibit to the
26 Complaint in *Lightspeed Media Corporation v. John Doe*, St. Clair County, Illinois
27 attached as **Exhibit 10** hereto and the signed Declaration filed in connection with
28 *Lightspeed Media Corporation v. Anthony Smith, et al.*, S.D. Ill., 3:12-cv-00889, ECF

⁷ If the Court is inclined to listen to the June 15th automated message, Mr. Sekora's counsel has an electronic recording in his possession.

Doc. No. 9-1, attached as **Exhibit 11** hereto; See Arizona Corporation Commission screenshots of Plaintiff and Arcadia Security attached as **Exhibit 12** hereto).

Plaintiff, through Mr. Jones and his security company failed to conduct any investigation beyond recording the IP address and subpoenaing Secured Servers for Mr. Sekora's information. Given Mr. Jones' IT background and the resources of his security company, failing to conduct any further reasonable investigation beyond the IP address is simply unacceptable. There were free online resources that showed Mr. Sekora's IP address was assigned to a tor node. And the server logs, Plaintiff's sole evidence, raised significant red flags. Despite Plaintiff's claim that multiple people had to be using the stolen passwords and user names, the server logs not only show that the same browser (Mozilla Firefox) was used by everybody, but also the same version of the browser (Firefox/5.0). (See Exhibit 3). It'd be extremely unlikely that multiple people were accessing the site using the same browser, let alone the same browser version. Instead these red flags were ignored and a reasonable investigation not undertaken, before casting Mr. Sekora as a "computer hacker." Running a tor node network does not make one a computer hacker.

Further, Mr. Jones is/was personal friends with Ron Cadwell, the CEO of Secured Servers, Mr. Sekora's ISP. (See thread between Steve Lightspeed Jones and Ron Cadwell; See screen shot of Secured Servers, LLC's registration with the ACC). Significantly, Secured Servers has a clear "abuse procedure," where website owners and operators can report abuse to Secured Servers, which will take action, including disconnecting systems from those found to have engaged in repeated abuse. (See Secured Systems Policy attached as **Exhibit 13** hereto). Plaintiff never reported this to Secured Servers. The only reasonable inference that can be drawn is that lesser intrusive means were not considered because the lawsuit was filed against Mr. Sekora for purposes of coercing a settlement, and when he fought back, Plaintiff attempted to cut bait. These findings support an attorneys' fees award under A.R.S. § 12-349 and any other sanction or relief available.

1 **D. The Requested Fees Were Reasonable and Necessarily Incurred**
2 **by Mr. Sekora.**

3 The accompanying Declaration of Mr. Sekora's counsel attests to the
4 reasonableness and necessity of the requested fees. Mr. Sekora's fees, costs and
5 expenses were the direct product of providing an aggressive, thorough and successful
6 defense against Plaintiff's claims. And necessary to protect Mr. Sekora's professional
7 reputation and mitigate the damage that had been caused by Plaintiff's baseless
8 accusations. Further, the Declaration of Mr. Sekora's counsel attests that he agreed to
9 discount his then normal rate of \$225 per hour to \$180 per hour, given the unfair
10 dynamics of an individual versus company, and anticipation that a substantial number of
11 hours would be incurred to deal with Plaintiff's anticipated discovery abuses and to
12 achieve Mr. Sekora's desired result of successfully defending the claim while protecting
13 his professional reputation and mitigating against the harm Plaintiff and Prenda Law
14 caused. Exhibit 1 hereto provides a detailed listing of the tasks performed by Mr.
15 Sekora's counsel, including narrative descriptions of the work performed through May
16 24, 2013. Also filed herewith is Mr. Sekora's Statement of Costs, providing a detailed
17 listing of the taxable costs in the amount of \$259. Last, Exhibit 1 includes non-taxable
18 litigation expenses in the amount of \$66.00, including filing fee expenses that were
19 incurred. As stated in detail in the bills in Exhibit 1, the total fees billed by Mr. Sekora's
20 counsel is as follows:

21 Paul D. Ticen 159.7 hours at \$180.00 per hour: **\$28,740.**

22 The fees and costs Mr. Sekora seeks were reasonable, necessary, and appropriate.
23 Plaintiff sought damages against Mr. Sekora in excess of \$100,000. See Complaint at
24 12:3-5. Plaintiff accused Mr. Sekora of being a computer hacker and belonging to a
25 community of hackers trafficking in stolen user names and passwords. As noted above,
26 it was paramount for Mr. Sekora to protect his professional reputation and mitigate the
27 damage that had been caused. Mr. Sekora is employed as a systems architect, and a
28 significant part of his duties include interface with and teaching classes to Fortune 100

1 and 500 company executives and personnel. If Mr. Sekora was indeed a computer
2 hacker, his employer's clients would undoubtedly refuse Mr. Sekora the right and ability
3 to teach classes or have any communication, which would render him essentially
4 unemployable in his field. Mr. Sekora has endured significant emotional distress
5 because of Plaintiff's baseless accusations of labeling him a computer hacker, and the
6 fear that his employer and employer's clients will discover and/or take Plaintiff's
7 accusations at face value.

8 Further, Prenda Law took action that made this very visible on the Internet.
9 Because Prenda Law decided to boast on its website that it sued Adam Sekora, a simple
10 Google search of Adam's name reveals a result linking to Prenda Law's website
11 (www.wefightpiracy.com) and a visible excerpt that states "**Defendant Adam Sekora**
12 **(Defendant) used on or more username/hacked passwords to gain... .** (See Screen
13 shot from Prenda Law attached as **Exhibit 14** hereto and Google search results attached
14 as **Exhibit 15** hereto). **This above result is the third entry on the first page, and has**
15 **remained so throughout the course of this litigation through the present.** Hence,
16 Mr. Sekora was justified in incurring significant fees to aggressively defend against
17 Plaintiff's baseless accusations and claims, and thereby attempting to protect his
18 professional reputation and mitigate the harm that has been caused.

19 Based on the above, it was necessary for Mr. Sekora's counsel to conduct detailed
20 legal research and analysis to map out a defense strategy, prepare a detailed disclosure
21 statement that included a substantial volume of documents that further demonstrated the
22 lack of Mr. Sekora's involvement with the unlawful acts. On the other hand, Plaintiff
23 provided an inadequate disclosure statement on a number of different grounds. In the
24 disclosure, Plaintiff disclosed the insufficient basis for its claim and lawsuit against Mr.
25 Sekora. Other than the sever log, Plaintiff disclosed worthless raw server data from
26 December 5, 2011, that had no disclosed relevance to the case outside the time frame
27 disclosed in the server logs. Further, Mr. Sekora investigated the stolen user name issue
28 with Plaintiff's merchant processor, and discovered that the user name had been

1 deactivated in 2007. Mr. Sekora's counsel inquired of the Court in how to proceed with
2 the disclosure dispute. The Court informed Mr. Sekora's counsel to proceed with a
3 formal motion to compel. Thus, Mr. Sekora was justified in incurring substantial
4 attorneys' fees to lay the factual and legal foundation required for a motion to compel,
5 and a list of what was needed.

6 During the disclosure dispute, opposing counsel went silent and in his place
7 Prenda Law attorneys began contacting Mr. Sekora's counsel to get him convince his
8 client to stipulate to a dismissal. But Prenda Law refused to consider any of Mr.
9 Sekora's attorneys' fees, even though he had incurred approximately \$8,000 up to that
10 point⁸. Mr. Sekora was unwilling to simply walk away because he had incurred
11 significant attorneys' fees and he had to protect his professional reputation and mitigate
12 the damage that had been inflicted. But equally important, is Plaintiff and Prenda Law's
13 *modus operandi* in filing baseless lawsuits against individuals to ratchet up the pressure
14 against those who failed to give into their coercive settlement demands, but when faced
15 with a "determined defendant," to try and get out of the case anyway it can. Plaintiff
16 should not be rewarded for trying to dismiss baseless claims when it is part of a broader
17 abusive litigation strategy.
18

19 Following the order compelling further disclosure and service of written
20 discovery, Steve Jones (Plaintiff's President) contacted Mr. Sekora directly to try and
21 work something out. However, what was proposed was simply inadequate in light of
22 what Mr. Sekora has incurred and endured because of this lawsuit. Last, substantial
23 attorneys' fees were incurred in preparing this motion due to the complexity of dealing
24 with multiple claims, including the need to establish that the non-contract claims
25 overlapped with and interwoven into the contract claims, dismissal occurring at various
26 points throughout the litigation, and the need to establish a detailed record of facts and
27
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⁸ In fact Plaintiff did not even consider making an offer regarding Mr. Sekora's incurred attorneys' fees until it was compelled to disclosed further information following the January status conference and after being served with written discovery.

evidence to enable the Court to make a sufficient factual finding that Plaintiff's lawsuit against Mr. Sekora was without substantial justification and for purposes of harassment. Therefore, all of Mr. Sekora's attorneys' fees, costs and expenses were reasonably and necessarily incurred.

E. Conclusion

Mr. Sekora has maintained his innocence and emphatically denied his involvement in the alleged unlawful conduct. He refused to cave into Plaintiff's coercive demands. Instead, he chose to incur significant attorneys' fees required to defend because Plaintiff's claims were without a sound factual basis and sufficient evidence. And he had to protect his professional reputation.

Mr. Sekora didn't choose what claims he defended against, Plaintiff made those decisions. And Plaintiff made the decision to bring claims for breach of contract and unjust enrichment. Mr. Sekora was the successful party in contested action arising under contract, with all four primary claims involving overlapping and interwoven factual and legal issues. Therefore, Mr. Sekora is entitled to an award of his reasonable attorneys' fees and costs pursuant to A.R.S. §§ 12-341.01 and 12-341 respectively.

Further, Plaintiff's claims against him were without substantial justification and intended to harass him by coercing him into a settlement. Federal courts have held that an IP address alone is insufficient to establish a sound factual and evidentiary basis that an individual engaged in the unlawful conduct and Plaintiff's (through Prenda Law) abusive litigation strategy has been taken to task. And Judge Otis Wright's factual findings in the May 6th sanction order only reinforces the factual findings in this case to support an attorneys' fees, expense and damages award under A.R.S. § 12-349. Therefore, Mr. Sekora respectfully requests that the Court award him his reasonably incurred attorneys' fees in the amount of \$28,740, taxable costs in the amount of \$259, non-taxable litigation expenses in the amount of \$54, double damages in the amount of \$5,000 for a **total award of \$34,053**.

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1 RESPECTFULLY submitted this 28th day of May, 2013.

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3 **KELLY / WARNER, PLLC**

4 By /s/ Paul D. Ticen
5 Aaron M. Kelly
6 Paul D. Ticen
7 404 S. Mill Ave, Suite C-201
8 Tempe, Arizona 85281
9 Attorneys for Defendant

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12 Clerk of the Court
13 Maricopa County Superior Court

14 COPY e-mailed in accordance with stipulation
15 of counsel this same day to:

16 Steven James Goodhue
17 Law Offices of Steven James Goodhue
18 9375 East Shea Blvd., Suite 100
19 Scottsdale, Arizona 85260
20 Attorney for Plaintiff

21 By/s/ Paul D. Ticen
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