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8
9 IN THE UNITED STATES DISTRICT COURT FOR THE
10 CENTRAL DISTRICT OF CALIFORNIA
11

12 AF HOLDINGS LLC,

13 Plaintiff,

14 v.

15 JOHN DOE,

16 Defendant.

17 **Case No. 2:12-cv-05709-ODW (JCx)**
18 **(Lead Case)**

19 **AND RELATED CASES**

20 12-CV-5712, 12-CV-5722, 12-CV-5724,
21 12-CV-5725, 12-CV-6636, 12-CV-6637,
22 12-CV-6659, 12-CV-6665, 12-CV-6667,
23 12-CV-6669, 12-CV-6670, 12-CV-7384,
24 12-CV-7387, 12-CV-7391, 12-CV-7401,
25 12-CV-7402, 12-CV-7403, 12-CV-7405,
26 12-CV-7406, 12-CV-7407, 12-CV-8320,
27 12-CV-8321, 12-CV-8325

28 **AND RELATED CASES.**

**PLAINTIFF'S DISCOVERY
STATUS REPORT AND
RESPONSE TO ORDER TO SHOW
CAUSE**

19 Plaintiff AF Holdings, LLC, by and through its undersigned counsel, hereby
20 submits its response to the Court's Order to Show Cause of October 19, 2012 in AF
21 Holdings LLC v. John Doe, 2:12-cv-05709-ODW (JCx) (hereinafter "October 19
22 Order"). In this response, Plaintiff seeks to: (1) present a comprehensive report on the
23 discovery status of the individual cases related to the October 19 Order; and (2)
24 demonstrate why early discovery is warranted in AF Holdings LLC v. John Doe, 2:12-
25 cv-5709 and all its related cases
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1 **I. DISCOVERY STATUS REPORT**

2 (1) AF HOLDINGS LLC v. JOHN DOE, 2:12-cv-05709-ODW (JCx)

3 (a) Plaintiff filed its Complaint on July 2, 2012. (ECF No. 1.) On July 10,
4 2012, Plaintiff filed its *Ex Parte* Application for Leave to Take
5 Expedited Discovery. (ECF No. 5.) On July 16, 2012, Honorable
6 Michael W. Fitzgerald granted Plaintiff’s *Ex Parte* Application in an
7 Order. (ECF No. 6.) Pursuant to this Order, Plaintiff issued a
8 subpoena upon the Defendant’s Internet Service Provider (ISP) Road
9 Runner Holdco, LLC (“Road Runner”) on July 17, 2012 and served
10 the subpoena on July 18, 2012.

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13 (b) Plaintiff received the requested information about the subscriber
14 related to the IP address 66.27.196.248 from Road Runner. The name
15 of the subscriber is Liu Hsia Guo.

16 (c) After receiving the subscriber’s information, Plaintiff engaged in
17 informal discovery to determine the infringer’s identity. Specifically,
18 Plaintiff reached out to the subscriber to gather more information
19 regarding the subscriber’s possible connection to Plaintiff’s copyright
20 infringement claims. The subscriber declined to offer defenses or
21 identity another likely infringer. From there, Plaintiff conducted a
22 thorough investigation to determine what individuals had access to the
23 subscriber’s Internet account at the time of the infringement. Plaintiff
24 believes it has a good faith basis to name and serve the individual it
25 has identified as the infringer in this matter. Plaintiff intends to name
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1 that individual in this lawsuit unless its claims are resolved without
2 further court involvement.

3 (2) AF HOLDINGS LLC v. JOHN DOE, 2:12-cv-05712-ODW (JCx)

4 (a) Plaintiff filed the Complaint on July 2, 2012. (ECF No. 1.) On July
5 10, 2012, Plaintiff filed its *Ex Parte* Application for Leave to Take
6 Expedited Discovery. (ECF No. 6.) On July 12, 2012, Honorable
7 Patrick J. Walsh granted Plaintiff's *Ex Parte* Application in an Order.
8 (ECF No. 7.) Pursuant to this Order, Plaintiff issued and served a
9 subpoena upon the Defendant's Internet Service Provider (ISP)
10 Verizon Online, LLC ("Verizon") on July 16, 2012.

11 (b) Plaintiff received the requested information about the subscriber
12 related to the IP address 71.118.169.163 from Verizon. The name of
13 the subscriber is Verna Juarez.

14 (c) After receiving the subscriber's information, Plaintiff engaged in
15 informal discovery to determine the infringer's identity. Specifically,
16 Plaintiff reached out to the subscriber to gather more information
17 regarding the subscriber's possible connection to Plaintiff's copyright
18 infringement claims. The subscriber declined to offer defenses or
19 identity another likely infringer. From there, Plaintiff conducted a
20 thorough investigation to determine what individuals had access to the
21 subscriber's Internet account at the time of the infringement. Plaintiff
22 believes it has a good faith basis to name and serve the individual it
23 has identified as the infringer in this matter. Plaintiff intends to name
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1 that individual in this lawsuit unless its claims are resolved without
2 further court involvement.

3 (3) AF HOLDINGS LLC v. JOHN DOE, 2:12-cv-05722-ODW (JCx)

4 (a) Plaintiff filed the Complaint on July 2, 2012. (ECF No. 1.) On July
5 10, 2012, Plaintiff filed its *Ex Parte* Application for Leave to Take
6 Expedited Discovery. (ECF No. 6.) On July 12, 2012, Honorable John
7 A. Kronstadt granted Plaintiff's *Ex Parte* Application in an Order.
8 (ECF No. 7.) Pursuant to this Order, Plaintiff issued and served a
9 subpoena upon the Defendant's Internet Service Provider ("ISP")
10 Verizon Online, LLC ("Verizon") on July 16, 2012.

11 (b) Plaintiff received the requested information about the subscriber
12 related to the IP address 173.51.46.28 from Verizon. The name of the
13 subscriber is Gilbert Pegues.

14 (c) After receiving the subscriber's information, Plaintiff engaged in
15 informal discovery to determine the infringer's identity. Specifically,
16 Plaintiff reached out to the subscriber to gather more information
17 regarding the subscriber's possible connection to Plaintiff's copyright
18 infringement claims. The subscriber declined to offer defenses or
19 identity another likely infringer. From there, Plaintiff conducted a
20 thorough investigation to determine what individuals had access to the
21 subscriber's Internet account at the time of the infringement. Plaintiff
22 believes it has a good faith basis to name and serve the individual it
23 has identified as the infringer in this matter. Plaintiff intends to name
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1 that individual in this lawsuit unless its claims are resolved without
2 further court involvement.

3 (4) AF HOLDINGS LLC v. JOHN DOE, 2:12-cv-05724-ODW (JCx)

4 (a) Plaintiff filed the Complaint on July 2, 2012. (ECF No. 1.) On July
5 10, 2012, Plaintiff filed its *Ex Parte* Application for Leave to Take
6 Expedited Discovery. (ECF No. 5.) On July 18, 2012, Honorable Gary
7 A. Feess granted Plaintiff's *Ex Parte* Application in an Order. (ECF
8 No. 6.) Pursuant to this Order, Plaintiff issued a subpoena for the
9 Defendant's Internet Service Provider ("ISP") Road Runner Holdco,
10 LLC ("Road Runner") on July 19, 2012 and served the subpoena on
11 July 20, 2012.

12 (b) Plaintiff received the requested information about the subscriber
13 related to the IP address 76.172.144.175 from Road Runner. The
14 name of the subscriber is Kristina Yanez.

15 (c) After receiving the subscriber's information, Plaintiff engaged in
16 informal discovery to determine the infringer's identity. Specifically,
17 Plaintiff reached out to the subscriber to gather more information
18 regarding the subscriber's possible connection to Plaintiff's copyright
19 infringement claims. The subscriber declined to offer defenses or
20 identity another likely infringer. From there, Plaintiff conducted a
21 thorough investigation to determine what individuals had access to the
22 subscriber's Internet account at the time of the infringement. Plaintiff
23 believes it has a good faith basis to name and serve the individual it
24 has identified as the infringer in this matter. Plaintiff intends to name
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1 that individual in this lawsuit unless its claims are resolved without
2 further court involvement.

3 (5) AF HOLDINGS LLC v. JOHN DOE, 2:12-cv-05725-ODW (JCx)

4 (a) Plaintiff filed the Complaint on July 2, 2012. (ECF No. 1.) On July
5 10, 2012, Plaintiff filed its *Ex Parte* Application for Leave to Take
6 Expedited Discovery. (ECF No. 6.) On July 11, 2012, Honorable John
7 E. McDermott granted Plaintiff's *Ex Parte* Application in an Order
8 ("July 11 Order"). (ECF No. 7.) Pursuant to this Order, Plaintiff
9 issued a subpoena upon the Defendant's Internet Service Provider
10 ("ISP") SBC Internet Services, Inc. d/b/a AT&T Internet Services
11 ("AT&T") on July 12, 2012 and served the subpoena on the same day
12 in order to obtain information regarding the subscriber associated with
13 the IP address 75.38.25.176. The July 11 Order was vacated by the
14 Honorable Otis D. Wright, II on October 19, 2012. (ECF No. 9.)

15 (b) Plaintiff did not receive any information regarding this subscriber
16 from AT&T.

17 (c) As Plaintiff has no information regarding this subscriber, Plaintiff has
18 not contacted the subscriber in any manner.

19 (6) AF HOLDINGS LLC v. JOHN DOE, 2:12-cv-06636-ODW (JCx)

20 (a) Plaintiff filed the Complaint on August 1, 2012. (ECF No. 1.) On
21 August 24, 2012, Plaintiff filed its *Ex Parte* Application for Leave to
22 Take Expedited Discovery. (ECF No. 10.) On September 4, 2012, the
23 Honorable Frederick F. Mumm granted Plaintiff's *Ex Parte*
24 Application in an Order ("September 4 Order"). (ECF No. 11.)

1 Pursuant to this Order, Plaintiff issued a subpoena for the Defendant's
2 Internet Service Provider (ISP) Verizon Online LLC ("Verizon") on
3 September 5, 2012 and served it on September 6, 2012 in order to
4 obtain information regarding the subscriber associated with the IP
5 address 71.106.57.116. The September 4 Order was vacated by the
6 Honorable Otis D. Wright, II on October 19, 2012. (ECF No. 13.)

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8 (b) Plaintiff did not receive any information regarding this subscriber
9 from Verizon.

10 (c) As Plaintiff has no information regarding this subscriber, Plaintiff has
11 not contacted the subscriber in any manner.

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13 (7) AF HOLDINGS LLC v. JOHN DOE, 2:12-cv-06637-ODW (JCx)

14 (a) Plaintiff filed the Complaint on August 1, 2012. (ECF No. 1.) On
15 August 24, 2012, Plaintiff filed its *Ex Parte* Application for Leave to
16 Take Expedited Discovery. (ECF No. 9.) On August 30, 2012, the
17 Honorable Ralph Zarefsky granted Plaintiff's *Ex Parte* Application in
18 an Order ("August 30 Order"). (ECF No. 11.) Pursuant to this Order,
19 Plaintiff issued and served a subpoena upon the Defendant's Internet
20 Service Provider ("ISP") Road Runner Holdco, LLC ("Road Runner")
21 on August 31, 2012 in order to obtain information regarding the
22 subscriber associated with the IP address 76.169.108.45. The August
23 30 Order was vacated by the Honorable Otis D. Wright, II on October
24 19, 2012. (ECF No. 13.)

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26 (b) Plaintiff did not receive any information regarding this subscriber
27 from Road Runner.
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1 (c) As Plaintiff has no information regarding this subscriber, Plaintiff has
2 not contacted the subscriber in any manner.

3 (8) AF HOLDINGS LLC v. JOHN DOE, 2:12-cv-06659-ODW (JCx)

4 (a) Plaintiff filed the Complaint on August 2, 2012. (ECF No. 1.) On
5 August 24, 2012, Plaintiff filed its *Ex Parte* Application for Leave to
6 Take Expedited Discovery. (ECF No. 4.) On August 29, 2012, the
7 Honorable Christina A. Snyder granted Plaintiff's *Ex Parte*
8 Application in an Order. (ECF No. 6.) Pursuant to this Order, Plaintiff
9 issued and served a subpoena upon the Defendant's Internet Service
10 Provider ("ISP") Verizon Online, LLC ("Verizon") on August 28,
11 2012 in order to obtain information regarding the subscriber
12 associated with the IP address 71.106.44.52.

13 (b) Plaintiff did not receive any information regarding this subscriber
14 from Verizon.

15 (c) As Plaintiff has no information regarding this subscriber, Plaintiff has
16 not contacted the subscriber in any manner.

17 (9) AF HOLDINGS LLC v. JOHN DOE, 2:12-cv-06665-ODW (JCx)

18 (a) Plaintiff filed the Complaint on August 2, 2012. (ECF No. 1.) On
19 August 24, 2012, Plaintiff filed its *Ex Parte* Application for Leave to
20 Take Expedited Discovery. (ECF No. 6.) On August 27, 2012, the
21 Honorable Dean D. Pregerson ordered stricken Plaintiff's *Ex Parte*
22 Application in an Order. (ECF No. 7.) Pursuant to this Order, Plaintiff
23 filed its Renewed *Ex Parte* Application for Leave to Take Expedited
24 Discovery on August 27, 2012 (ECF No. 8.) On September 5th, 2012,
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1 the Honorable Dean D. Pregerson denied without prejudice Plaintiff's
2 Renewed *Ex Parte* Application for leave to take expedited discovery
3 and ordered Plaintiff to Show Cause with regard to personal
4 jurisdiction (ECF No. 9.) On September 17, Plaintiff filed its
5 Response to the Court's Order to Show Cause (ECF No. 10.)
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7 (b) Plaintiff did not receive any information regarding this subscriber
8 from Comcast Cable Communications LLC.

9 (c) As Plaintiff has no information regarding this subscriber, Plaintiff has
10 not contacted the subscriber in any manner.

11 (10) AF HOLDINGS LLC v. JOHN DOE, 2:12-cv-06667-ODW (JCx)

12 (a) Plaintiff filed the Complaint on August 2, 2012. (ECF No. 1.) On
13 August 24, 2012, Plaintiff filed its *Ex Parte* Application for Leave to
14 Take Expedited Discovery. (ECF No. 6.) On August 27, 2012, the
15 Honorable Stephen J. Hillman granted Plaintiff's *Ex Parte*
16 Application in an Order ("August 27 Order"). (ECF No. 7.) Pursuant
17 to this Order, Plaintiff issued a subpoena upon the Defendant's
18 Internet Service Provider ("ISP") Charter Communication, LLC
19 ("Charter") on August 28, 2012 in order to obtain information
20 regarding the subscriber associated with the IP address
21 24.176.226.177.
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23 (b) Plaintiff did receive the requested information from Charter. The
24 subscriber's name is Sandy Young.
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26 (c) After receiving the subscriber's information, Plaintiff engaged in
27 informal discovery to determine the infringer's identity. Specifically,
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1 Plaintiff reached out to the subscriber to gather more information
2 regarding the subscriber's possible connection to Plaintiff's copyright
3 infringement claims. The subscriber declined to offer defenses or
4 identify another likely infringer. From there, Plaintiff conducted a
5 thorough investigation to determine what individuals had access to the
6 subscriber's Internet account at the time of the infringement.
7 Plaintiff's investigation is ongoing.

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9 (11) AF HOLDINGS LLC v. JOHN DOE, 2:12-cv-06669-ODW (JCx)

10 (a) Plaintiff filed the Complaint on August 2, 2012. (ECF No. 1.) On
11 August 24, 2012, Plaintiff filed its *Ex Parte* Application for Leave to
12 Take Expedited Discovery. (ECF No. 6.) On September 4, 2012, the
13 Honorable Fernando M. Olguin granted Plaintiff's *Ex Parte*
14 Application in an Order. (ECF No. 8.) Pursuant to this Order, Plaintiff
15 issued and served a subpoena upon the Defendant's Internet Service
16 Provider ("ISP") Verizon Online LLC ("Verizon") on September 5,
17 2012 in order to obtain information regarding the subscriber
18 associated with the IP address 71.118.185.55.

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21 (b) Plaintiff did not receive any information regarding this subscriber
22 from Verizon.

23 (c) As Plaintiff has no information regarding this subscriber, Plaintiff has
24 not contacted the subscriber in any manner.

25 (12) AF HOLDINGS LLC v. JOHN DOE, 2:12-cv-06670-ODW (JCx)

26 (a) Plaintiff filed the Complaint on August 2, 2012. (ECF No. 1.) On
27 August 24, 2012, Plaintiff filed its *Ex Parte* Application for Leave to
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1 Take Expedited Discovery. (ECF No. 5.) On August 29, 2012, the
2 Honorable Christina A. Snyder granted Plaintiff's *Ex Parte*
3 Application in an Order. (ECF No. 6.) Pursuant to this Order, Plaintiff
4 issued a subpoena for the Defendant's Internet Service Provider
5 ("ISP") Verizon Online LLC ("Verizon") on August 30, 2012 and
6 served the subpoena on August 31, 2012 in order to obtain
7 information regarding the subscriber associated with the IP address
8 108.23.117.228.

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10 (b) Plaintiff did not receive any information regarding this subscriber
11 from Verizon.

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13 (c) As Plaintiff has no information regarding this subscriber, Plaintiff has
14 not contacted the subscriber in any manner.

15 (13) AF HOLDINGS LLC v. JOHN DOE, 2:12-cv-07384-ODW (JCx)

16 (a) Plaintiff filed the Complaint on August 28, 2012. (ECF No. 1.) On
17 September 11, 2012, Plaintiff filed its *Ex Parte* Application for Leave
18 to Take Expedited Discovery. (ECF No. 8.) On September 19, 2012,
19 the Honorable John A. Kronstadt denied Plaintiff's *Ex Parte*
20 Application in an Order ("September 19 Order"). (ECF No. 9.) The
21 September 19 Order was vacated on October 19, 2012 by the
22 Honorable Otis D. Wright, II. (ECF No. 13.)

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24 (b) Plaintiff did not receive any information regarding this subscriber
25 associated with the IP address 67.49.108.156.

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27 (c) As Plaintiff has no information regarding this subscriber, Plaintiff has
28 not contacted the subscriber in any manner.

1 (14) AF HOLDINGS LLC v. JOHN DOE, 2:12-cv-07387-ODW (JCx)

2 (a) Plaintiff filed the Complaint on August 28, 2012. (ECF No. 1.) On
3 September 11, 2012, Plaintiff filed its *Ex Parte* Application for Leave
4 to Take Expedited Discovery. (ECF No. 7.) On September 13, 2012,
5 the Honorable Jacqueline Chooljian granted Plaintiff's *Ex Parte*
6 Application in an Order. (ECF No. 8.) Pursuant to this Order, Plaintiff
7 issued a subpoena for the Defendant's Internet Service Provider
8 ("ISP") Road Runner Holdco LLC ("Road Runner") on September 13,
9 2012 and served the subpoena on September 14, 2012 in order to
10 obtain information regarding the subscriber associated with the IP
11 address 76.89.191.106.
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14 (b) Plaintiff did not receive any information regarding this subscriber
15 from Road Runner.

16 (c) As Plaintiff has no information regarding this subscriber, Plaintiff has
17 not contacted the subscriber in any manner.
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19 (15) AF HOLDINGS LLC v. JOHN DOE, 2:12-cv-07391-ODW (JCx)

20 (a) Plaintiff filed the Complaint on August 28, 2012. (ECF No. 1.) On
21 September 11, 2012, Plaintiff filed its *Ex Parte* Application for Leave
22 to Take Expedited Discovery. (ECF No. 5.) On September 14, 2012,
23 the Honorable Ralph Zarefsky granted Plaintiff's *Ex Parte*
24 Application in an Order ("September 14 Order"). (ECF No. 6.)
25 Pursuant to this Order, Plaintiff issued and served a subpoena upon
26 the Defendant's Internet Service Provider ("ISP") Road Runner
27 Holdco LLC ("Road Runner") on September 17, 2012 in order to
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obtain information regarding the subscriber associated with the IP address 76.90.118.186.

(b) Plaintiff did not receive any information regarding this subscriber from Road Runner.

(c) As Plaintiff has no information regarding this subscriber, Plaintiff has not contacted the subscriber in any manner.

(16) AF HOLDINGS LLC v. JOHN DOE, 2:12-cv-07401-ODW (JCx)

(a) Plaintiff filed the Complaint on August 29, 2012. (ECF No. 1.) On September 11, 2012, Plaintiff filed its *Ex Parte* Application for Leave to Take Expedited Discovery. (ECF No. 7.) This case was transferred on October 5, 2012 to Magistrate Judge Chooljian (ECF No. 8), and any previous early discovery orders were vacated on October 19, 2012 by the Honorable Otis D. Wright, II. (ECF No. 10.)

(b) Plaintiff did not receive any information regarding the subscriber associated with the IP address 76.95.241.163.

(c) As Plaintiff has no information regarding this subscriber, Plaintiff has not contacted the subscriber in any manner.

(17) AF HOLDINGS LLC v. JOHN DOE, 2:12-cv-07402-ODW (JCx)

(a) Plaintiff filed the Complaint on August 29, 2012. (ECF No. 1.) On September 11, 2012, Plaintiff filed its *Ex Parte* Application for Leave to Take Expedited Discovery. (ECF No. 8.) On September 17, 2012, the Honorable Gary A. Feess granted Plaintiff's *Ex Parte* Application in an Order ("September 17 Order"). (ECF No. 9.) The September 17

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Order was vacated on October 19, 2012 by the Honorable Otis D. Wright, II. (ECF No. 11.)

(b) Plaintiff issued and served Verizon Online, LLC (“Verizon”) on September 19, 2012 in order to obtain information regarding the subscriber associated with the IP address 71.189.173.168. Plaintiff has not received any requested information from Verizon.

(c) As Plaintiff has no information regarding this subscriber, Plaintiff has not contacted the subscriber in any manner.

(18) AF HOLDINGS LLC v. JOHN DOE, 2:12-cv-07403-ODW (JCx)

(a) Plaintiff filed the Complaint on August 29, 2012. (ECF No. 1.) On September 11, 2012, Plaintiff filed its *Ex Parte* Application for Leave to Take Expedited Discovery. (ECF No. 10.) This case was transferred on October 5, 2012 to Magistrate Judge Chooljian (ECF No. 11), and any previous early discovery orders were vacated on October 19, 2012 by the Honorable Otis D. Wright, II. (ECF No. 12.)

(b) Plaintiff has not received any requested information on this subscriber associated with the IP address 173.58.144.109.

(c) As Plaintiff has no information regarding this subscriber, Plaintiff has not contacted the subscriber in any manner.

(19) AF HOLDINGS LLC v. JOHN DOE, 2:12-cv-07405-ODW (JCx)

(a) Plaintiff filed the Complaint on August 29, 2012. (ECF No. 1.) On September 11, 2012, Plaintiff filed its *Ex Parte* Application for Leave to Take Expedited Discovery. (ECF No. 7.) On September 18, 2012, the Honorable Frederick F. Mumm granted Plaintiff’s *Ex Parte*

1 Application in an Order (“September 18 Order”). (ECF No. 8.) The
2 September 18 Order was vacated on October 19, 2012 by the
3 Honorable Otis D. Wright, II. (ECF No. 10.)

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5 (b) Plaintiff did receive the requested information from Charter. The
6 subscriber’s name is Andy Vien.

7 (c) After receiving the subscriber’s information, Plaintiff engaged in
8 informal discovery to determine the infringer’s identity. Specifically,
9 Plaintiff reached out to the subscriber to gather more information
10 regarding the subscriber’s possible connection to Plaintiff’s copyright
11 infringement claims. The subscriber declined to offer defenses or
12 identify another likely infringer. From there, Plaintiff conducted a
13 thorough investigation to determine what individuals had access to the
14 subscriber’s Internet account at the time of the infringement.
15 Plaintiff’s investigation is ongoing.

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17 (20) AF HOLDINGS LLC v. JOHN DOE, 2:12-cv-07406-ODW (JCx)

18 (a) Plaintiff filed the Complaint on August 29, 2012. (ECF No. 1.) On
19 September 11, 2012, Plaintiff filed its *Ex Parte* Application for Leave
20 to Take Expedited Discovery. (ECF No. 8.) On September 14, 2012,
21 the Honorable Christina A. Snyder granted Plaintiff’s *Ex Parte*
22 Application in an Order (“September 14 Order”). (ECF No. 9.) The
23 September 14 Order was vacated on October 19, 2012 by the
24 Honorable Otis D. Wright, II. (ECF No. 12.)

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26 (b) Plaintiff issued and served Cox Communications, Inc. (“Cox”) on
27 September 18, 2012 in order to obtain information regarding the
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subscriber associated with the IP address 68.99.190.38. Plaintiff has not received any requested information from Cox.

(c) As Plaintiff has no information regarding this subscriber, Plaintiff has not contacted the subscriber in any manner.

(21) AF HOLDINGS LLC v. JOHN DOE, 2:12-cv-07407-ODW (JCx)

(a) Plaintiff filed the Complaint on August 29, 2012. (ECF No. 1.) On September 11, 2012, Plaintiff filed its *Ex Parte* Application for Leave to Take Expedited Discovery. (ECF No. 9.) This case was transferred on October 5, 2012 to Magistrate Judge Chooljian (ECF No. 11), and any previous early discovery orders were vacated on October 19, 2012 by the Honorable Otis D. Wright, II. (ECF No. 12.)

(b) Plaintiff has not received any requested information about the subscriber associated with the IP address 76.175.73.72.

(c) As Plaintiff has no information regarding this subscriber, Plaintiff has not contacted the subscriber in any manner.

(22) AF HOLDINGS LLC v. JOHN DOE, 2:12-cv-08320-ODW (JCx)

(a) Plaintiff filed the Complaint on September 27, 2012. (ECF No. 1.) On October 8, 2012, Plaintiff filed its *Ex Parte* Application for Leave to Take Expedited Discovery. (ECF No. 8.) This case was transferred on October 5, 2012 to Magistrate Judge Chooljian (ECF No. 9), and any previous early discovery orders were vacated on October 19, 2012 by the Honorable Otis D. Wright, II. (ECF No. 11.)

(b) Plaintiff has not received any requested information about the subscriber associated with the IP address 71.106.65.201.

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(c) As Plaintiff has no information regarding this subscriber, Plaintiff has not contacted the subscriber in any manner.

(23) AF HOLDINGS LLC v. JOHN DOE, 2:12-cv-08321-ODW (JCx)

(a) Plaintiff filed the Complaint on September 27, 2012. (ECF No. 1.) On October 8, 2012, Plaintiff filed its *Ex Parte* Application for Leave to Take Expedited Discovery. (ECF No. 8.) This case was transferred on October 5, 2012 to Magistrate Judge Chooljian (ECF No. 9), and any previous early discovery orders were vacated on October 19, 2012 by the Honorable Otis D. Wright, II. (ECF No. 11.)

(b) Plaintiff has not received any requested information about the subscriber associated with the IP address 64.183.53.14.

(c) As Plaintiff has no information regarding this subscriber, Plaintiff has not contacted the subscriber in any manner.

(24) AF HOLDINGS LLC v. JOHN DOE, 2:12-cv-08325-ODW (JCx)

(a) Plaintiff filed the Complaint on September 27, 2012. (ECF No. 1.) On October 8, 2012, Plaintiff filed its *Ex Parte* Application for Leave to Take Expedited Discovery. (ECF No. 8.) This case was transferred on October 5, 2012 to Magistrate Judge Chooljian (ECF No. 9), and any previous early discovery orders were vacated on October 19, 2012 by the Honorable Otis D. Wright, II. (ECF No. 12.)

(b) Plaintiff has not received any requested information about the subscriber associated with the IP address 173.58.57.119.

(c) As Plaintiff has no information regarding this subscriber, Plaintiff has not contacted the subscriber in any manner.

1 **II. PLAINTIFF’S RESPONSE TO COURT’S ORDER TO SHOW CAUSE**

2 Plaintiff respectfully now responds to this Court’s Order to Show Cause as to
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4 why early discovery is warranted in this situation. (ECF No. 9 at 2.) The issue raised
5 by the Order is “how [Plaintiff] would proceed to uncover the identity of the actual
6 infringer once it has obtained subscriber information—given that the actual infringer
7 may be a person entirely unrelated to the subscriber—while also considering how to
8 minimize harassment and embarrassment of innocent citizens.” (*Id.*) Plaintiff responds
9 as follows.
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11 **A. THE SUFFICIENCY OF AN IP ADDRESS**

12 Plaintiff notes, and certainly understands, the discomfort expressed by the Court
13 with the fact that a given IP address does not literally correspond to the identity of a
14 specific person, in the way that, for example, his fingerprints would. Plaintiff now
15 takes a step back to discuss the exact nature of what IP addresses *do* tell us with
16 certainty. An IP address, at its most fundamental level, is a number assigned to
17 devices, such as computers, that are connected to the Internet. Internet Service
18 Providers maintain a database, for each of their customers, identifying the specific IP
19 address that was assigned to each customer at a given date and time. At this stage—
20 when ISPs respond to the subpoena—we know with certainty that a given subscriber
21 was assigned the specific IP address committing copyright infringement at that
22 specific date and time.
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1 As in the case of a handgun that was registered to a certain individual and was
2 used in a murder, it is certainly within the realm of possibility that the subscriber of a
3 given IP address at a given date and time was not the one who committed the alleged
4 illegal acts, just as it is possible that the hypothetical handgun registrant did not
5 commit the murder. But Plaintiff strongly asserts here that, in the instant case as much
6 as in the hypothetical, one *must* begin the inquiry with the most logical individual –
7 i.e. the gun owner or IP address subscriber.
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10 Fraud, identity theft, and the sharing of child pornography are but a few of the
11 multitude of injuries that a malicious individual can carry out through the use of the
12 Internet. If courts, generally, were to decide that IP addresses are insufficient merely
13 because *there is a possibility that the subscriber of the IP address was not in control*
14 *of the IP address*, then neither law enforcement nor any private actors who have
15 suffered harms committed via the Internet would have any recourse for those harms.
16 In other words, if the use of IP addresses is disallowed, how else would one even
17 begin the inquiry into who committed a given harm that was carried out online?
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21 Law enforcement has certainly faced this very dilemma, and it has been
22 repeatedly determined through litigation that law enforcement's decision to use IP
23 addresses as the basis to investigate and criminally prosecute a given defendant is one
24 that satisfies probable cause. Plaintiff concedes that not every single court in the
25 nation has found an allegation based upon an IP address to be sustainable. Many
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1 courts have, however, found such an allegation to be sustainable, in both the civil
2 context and the higher-standard criminal context. (See, e.g. *U.S. v. Hay*, 231 F.3d 630,
3 637 (9th Cir. 2000); *U.S. v. Perrine*, 518 F. 3d 1196, 1204 (10th Cir. 2008); *Sony*
4 *Music Entertainment Inc. v. Does 1-40*, 326 F. Supp 2d 556, 567 (S.D. NY 2004).)

6 **B. HOW PLAINTIFF PROCEEDS TO IDENTIFY THE INFRINGER**

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8 Upon receiving a subscriber's information from the ISP, Plaintiff begins its
9 investigation by contacting the subscriber. The subscriber is the most likely person to
10 have committed the infringement, and if he in fact did not do so, he is the most likely
11 person to know who may have done so. Indeed, the subscriber is the *only* person from
12 whom Plaintiff, and others similarly situated—in having their copyrights, or other
13 protected material, violated online—could glean such information. Once the
14 subscriber is identified, the steps going forward are very similar to those in more
15 typical cases.
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18 Specifically, Plaintiff and subscriber will discuss the matter. In some instances,
19 subscriber himself admits to having infringed Plaintiff's copyright. In other instances,
20 subscriber acknowledges that another member of the household infringed Plaintiff's
21 copyright, or likely did so. In yet other instances, the subscriber chooses to remain
22 silent. As with any other type of litigation, Plaintiff does offer many subscribers the
23 opportunity to settle. Plaintiff notes that, according to the Notice to Parties of Court-
24 Directed ADR Program that is issued by this very Court, "of the more than 9000 civil
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1 cases filed in the [Central] District [of California] annually, less than 2 percent
2 actually go to trial. The remaining cases are, for the most part: settled between the
3 parties [or end in other pre-trial outcomes]...” Given such statistics, it would be
4 shocking if Plaintiff *did not* offer settlement, and it is even more shocking that this
5 Court would characterize Plaintiff’s decision to offer the opportunity to settle its claim
6 as a “legal shakedown.” (October 19 Order at 2.) It is a known aspect of civil litigation
7 that settlement is cheaper and more efficient than trial. Plaintiff is always eager to
8 prove its claims at trial, but is often able to come to an agreement with the subscribers,
9 thus saving both the parties and the Court the time and expense of litigating further.
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12 **C. HARASSMENT AND EMBARRASSMENT**

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14 Plaintiff now turns to the Court’s assertion that Plaintiff must consider “how to
15 minimize harassment and embarrassment of innocent citizens.” Plaintiff would
16 suggest that the assumption underlying this assertion is that, since Plaintiff’s
17 copyrighted works are pornographic in nature, even the mere *accusation* that someone
18 infringed on Plaintiff’s copyrighted works constitutes “harassment and
19 embarrassment.” First of all, Plaintiff notes here that there are many types of
20 accusations, within both the civil and criminal legal systems, which could properly be
21 characterized as constituting embarrassment (and, because of their embarrassing
22 nature, harassment as well.) The most obvious example would be possession of child
23 pornography. If law enforcement were to follow the assumption underlying this
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1 Court’s assertion, then law enforcement could never even initiate a search and seizure
2 of the subscriber of an IP address found to have trafficked in child pornography.
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4 Indeed, nearly any criminal case that has ever been brought in which a criminal
5 defendant was found not guilty, and any civil case in which Plaintiff did not win a
6 judgment on the merits, could theoretically be characterized as constituting
7 “harassment and embarrassment of innocent citizens.” Most people, after all, are
8 embarrassed and feel harassed when they are sued or tried for a crime. Not to belabor
9 the point, but it is simply an unavoidable fact of litigation, generally, that sometimes
10 the innocent are accused of bad acts, and at other times those who commit bad acts are
11 not accused at all. Yet despite this discomfoting, fundamental underpinning of our
12 legal system, the wheels still keep turning—our legal system is an adversarial one, and
13 though it is not perfect, it is what our society has chosen and is arguably far superior
14 to any other in the world. Plaintiff would assert that, since civil actions constitute
15 publicly available information, such public exposure on the part of defendants is
16 simply an unavoidable consequence of the fact that the content of civil lawsuits is
17 publically available in the first place.
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23 Plaintiff understands that this Court, and a few other Courts before whom
24 Plaintiff has brought its actions, do not necessarily draw the parallel, at first, between
25 other sorts of litigation and that brought by Plaintiff. Plaintiff would suggest that, once
26 again, this is because of the nature of Plaintiff’s copyrighted works. Plaintiff asserts
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1 here, however, that it is as entitled to pursue justice for the harms caused it as any
2 other litigant in the civil system. Plaintiff's material, though objectionable to some, is
3 protected by the laws of the United States under the purview of the United States
4 Copyright Act. Plaintiff claims harms under the United States Copyright Act, and
5 Plaintiff has literally no other way of obtaining recompense for those harms than the
6 process it has outlined in its *Ex Parte* Application for Expedited Discovery. (*See*,
7 generally, ECF No. 5.)
8

9
10 This Court, in its Order to Show Cause, expressed concern that the subscriber
11 may not always be the infringer. Plaintiff respectfully asks of this Court the following:
12 if Plaintiff is barred from beginning its investigation by turning to the only person
13 formally associated with an infringing IP address (i.e. the subscriber), to whom else
14 can Plaintiff turn? And if the answer is no one, does that not effectively mean that
15 Plaintiff would be unable to ever assert its rights under the Copyright Act for
16 infringement committed online? This Court may take issue with the specific nature of
17 Plaintiff's content, but Plaintiff notes that downloading *any* copyrighted content for
18 free is illegal; the arguments made herein apply equally to other copyright holders
19 attempting to assert their rights under the Copyright Act for infringement committed
20 online. An IP address may not be perfect, but for now, it's all we've got.
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25 This Court faces a choice: on one hand, the Court can allow the use of a fairly
26 reliable, though imperfect, technique that represents Plaintiff's only hope of obtaining
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1 recompense for online infringement of its copyright; on the other, the Court can deny
2 the use of this technique and effectively bar Plaintiff, and others similarly situated,
3 from ever obtaining recompense for online infringement of its copyright. Plaintiff
4 hopes that, in making that choice, this Court frees itself of any prejudice it may hold
5 against the nature of Plaintiff's copyrighted work. The U.S. Copyright Act contains no
6 exceptions for pornography; owners of copyrights to pornography are as justified in
7 pursuing legal action under the Act as owners of copyrights to major motion pictures
8 or documentaries. Plaintiff sincerely hopes that the Court, in keeping with the tradition
9 on which our legal system is founded, recognizes that unpopular rights are just as
10 meritorious of governmental protection as popular ones.
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14 **CONCLUSION**

15
16 Plaintiff respectfully asserts that early discovery is warranted for the reasons
17 contained herein.
18

19 Respectfully submitted,
20 PRENDA LAW, INC.

21 **DATED: November 1, 2012**

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