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15 Attorneys for Plaintiffs

16 **UNITED STATES DISTRICT COURT**
17 **NORTHERN DISTRICT OF CALIFORNIA**
18 **OAKLAND DIVISION**

| | | | |
|----|---|---|---------------------------------------|
| 19 | IO GROUP, INC., a California corporation, |) | CASE NO.: C-10-1282 (MMC)(DMR) |
| 20 | CHANNEL ONE RELEASING, Inc., a |) | |
| 21 | California corporation and LIBERTY |) | |
| 22 | MEDIA HOLDINGS, LLC., a California |) | PLAINTIFF'S SEPARATE CASE |
| 23 | corporation, |) | MANAGEMENT CONFERENCE |
| 24 | Plaintiffs, |) | STATEMENT AND REQUEST FOR |
| 25 | vs. |) | LEAVE TO FILE MOTION FOR |
| 26 | |) | SUMMARY JUDGMENT AND TO |
| 27 | GLBT, Ltd., a British limited company, |) | CONTINUE TRIAL DATES; AND |
| 28 | MASH and NEW, Ltd., a British limited |) | [PROPOSED] ORDER |
| | company, PORT 80, Ltd., a company of |) | Date: October 21, 2011 |
| | unknown origin or structure, STEVEN |) | Time: 10:30 a.m. |
| | JOHN COMPTON, an individual living in |) | Courtroom: Telephonic |
| | the United Kingdom, and DAVID |) | |
| | GRAHAM COMPTON, an individual living |) | |
| | in the United Kingdom. |) | |
| | Defendants. |) | Trial Date: November 28, 2011 |

1 On September 20, 2011, Defendants counsel filed a notice that Defendants instructed
2 him “to participate no further in this proceeding.” [Docket No. 113] In response to a request
3 to meet and confer, Defense counsel Jonathan Capp stated that he intended to file a motion to
4 withdraw, but no such motion has been forthcoming. See Exhibit A. Defendants have not
5 filed any documents since September 20th. During that time they have failed to oppose
6 Plaintiff’s Motion for an Order of Contempt, failed to follow the Court’s order to transfer
7 domain name registrations, and failed to comply with the Magistrate Ryu’s Order to produce
8 additional discovery. Defendants have apparently thrown in the towel.

11 Accordingly, and for the reasons stated below, Plaintiffs request that the Court continue
12 the trial dates and grant Plaintiffs leave to file their Motion for Summary Judgment.

14 **PROCEDURAL AND FACTUAL BACKGROUND**

15 Plaintiffs filed a Complaint for copyright infringement and other claims. During the
16 discovery process, Plaintiffs learned that Defendants were both withholding and destroying
17 evidence. Accordingly, Plaintiffs filed a Motion for Terminating Sanctions. [Docket No. 63]
18 On September 22, 2011, Judge Ryu conducted a hearing on Plaintiffs’ Motion and today
19 issued a written order imposing adverse inference sanctions in lieu of entering default. Judge
20 Ryu also ruled on several outstanding discovery orders. [Order Granting in Part and Denying
21 in Part Plaintiffs’ Motion for Sanctions for Spoliation of Evidence, Docket No. 124, 12:4-
22 13:2]

25 In the meantime, Defendants moved all their websites from .com domains, which are
26 controlled from within the United States, to .eu domains, which are controlled from within
27 Europe. Plaintiffs filed a motion for injunctive relief, which the Court granted in part.
28 [Docket No. 103] The Court ordered Defendants to transfer the domain name registrations to
a receiver. [*Id.*] Defendants ignored the order and Plaintiffs sought an order of contempt

1 (Docket No. 108), which Defendants did not oppose. On October 12, 2011, this Court issued
2 an order of contempt, directing Defendants to transfer the domains as previously ordered or
3 suffer a \$1,000 a day sanction until they do. [Docket 123] As of today, Defendants continue
4 to ignore the Court's order.
5

6 On September 20, 2011, Defendants counsel filed a notice that Defendants instructed
7 him "to participate no further in this proceeding." [Docket No. 113] Since that filing,
8 Defendants have filed no further documents with the Court. In response to further inquiry,
9 Mr. Capp would only say, "[i]n short, my clients have instructed me not to participate in any
10 way in this litigation." See Exhibit A.
11

12 Trial is currently set for November 28, 2011. Fact discovery closed on June 30th and
13 August 15th was the last day to file dispositive motions. However, significant discovery
14 questions remained open until Magistrate Ryu issued her order today. Indeed, it would have
15 been premature and prejudicial for Plaintiffs to bring a motion for summary judgment prior to
16 obtaining either the withheld evidence or Judge Ryu's order imposing negative inference
17 sanctions. Defendants and their counsel are no longer making themselves available for the
18 purposes of meeting and conferring. However, at the hearing on Plaintiffs' Motion for
19 Injunctive Relief, Mr. Capp joined with Plaintiffs in requesting that all case management dates
20 be continued. At that time, the Court suggested waiting until Judge Ryu ruled on Plaintiffs'
21 Motion for Terminating Sanctions.
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1 As significant discovery questions have only now been resolved and given that
2 Defendants no longer appear to be defending against Plaintiffs' claims, Plaintiffs respectfully
3 request that the trial dates be continued, and that the Court grant Plaintiffs leave to file their
4 Motion for Summary Judgment provided they file no later than November 28, 2011.
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7 Respectfully submitted,

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9 Dated: *October 19, 2011*

/s/ D. Gill Sperlein
D. GILL SPERLEIN
THE LAW OFFICE OF D. GILL SPERLEIN
Attorneys for Plaintiffs

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11
12 Dated: *October 19, 2011*

/s/ Marc Randazza
Marc Randazza
General Counsel
Liberty Media Holdings, LLC
Attorneys for Plaintiffs

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17 **[PROPOSED] ORDER**

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19 Having read and considered Plaintiff's Motion for Leave to File a Motion for Summary
20 Judgment and Continue Trial Dates and finding good cause therefore, **IT IS HERBY**
21 **ORDERED** that the current trial dates are taken off calendar and Plaintiffs have until
22 November 28, 2011 to file their Motion for Summary Judgment.

23 IT IS FURTHER ORDERED that the Case Management Conference is continued
24 from October 21, 2011 to February 10, 2012. A Joint Case Management Statement shall be
filed no later than February 3, 2012.

25 Dated: October 20, 2011

Maxine M. Chesney
MAXINE CHESNEY
UNITED STATES DISTRICT JUDGE