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9 **UNITED STATES DISTRICT COURT**

10 **DISTRICT OF NEVADA**

11 LIBERTY MEDIA HOLDINGS, LLC, a
12 California Corporation,

13 Plaintiff

14 vs.

15 FF MAGNAT LIMITED d/b/a ORON.COM;
16 MAXIM BOCHENKO a/k/a ROMAN
ROMANOV; and JOHN DOES 1 – 500,

17 Defendants.

Case No. 2:12-cv-01057-GMN-NJK

**FF MAGNAT LIMITED'S
OPPOSITION TO PLAINTIFF'S
MOTION TO STAY ENFORCEMENT
OF ORDER GRANTING PLAINTIFF'S
MOTION TO ENFORCE
SETTLEMENT AGREEMENT
AND
CROSS-MOTION TO ENFORCE
SETTLEMENT AGREEMENT**

1 **“The problem with wishes is that they sometimes come true.”¹**

2 **Introduction**

3 Plaintiff Liberty Media Holdings, LLC’s (“Liberty Media”) latest Motion to Stay is the
4 clearest demonstration of its tactics of “trolling” legitimate Internet services like Defendant FF
5 Magnat Limited d/b/a Oron.com (“Oron”). Liberty Media’s motion is not just “unusual,” as
6 they freely admit it to be, but an abuse of this Court’s resources. First, Liberty Media obtained
7 from this Court an order enforcing an agreement with Oron, and now it seeks to undo that order
8 because it does not want to have to live up to its part of the bargain. The title of the Motion itself
9 bespeaks abuse: “Plaintiff’s Motion to Stay Enforcement of Order Granting Plaintiff’s Motion to
10 Enforce Settlement Agreement.” Liberty Media’s gamesmanship should result in the Court’s
11 denial of Liberty’s Motion to Stay and in the Court’s enforcement of the Settlement Agreement
12 in accordance with the Court’s prior rulings.

13 **Background**

14 Liberty Media first expended this Court’s valuable resources to obtain (a) an order
15 enforcing a settlement agreement (the “Settlement Agreement”) (attached hereto as Exhibit 1)
16 and (b) an order to transfer \$550,000 from Oron to Liberty Media’s attorney. Now, having
17 accomplished this (by making untold erroneous representations to the Court), Liberty Media is
18 asking this Court to stay the enforcement of the Settlement Agreement, while at the same time
19 allowing it to retain the money it has already received from Oron. Liberty Media has moved to
20 stay because, despite obtaining everything it has already requested, *it* has utterly failed to comply
21 with a single one of its own obligations under the very Settlement Agreement, which it initially
22 asked this Court to enforce. In effect, having used this Court’s power to obtain a \$550,000

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¹ *United States v. Taylor*, 54 F.3d 967 (1st Cir. 1995), citing Aesop, The Old Man and Death
(circa 550 B.C.) (predicting that “we would often be sorry if our wishes were gratified”).

1 benefit, Liberty now seeks to further use this Court's power to allow it to fail to comply with its
2 own obligations under the Settlement Agreement, so as to rob Oron of any and all benefit or
3 consideration it should receive from the Settlement Agreement. Liberty Media seeks to put this
4 Court's imprimatur on its heads-I-win, tails-you-lose game.

5 Because Liberty Media is attempting to avoid its obligations under the Settlement
6 Agreement which it insisted the Court should enforce, Oron opposes Liberty Media's Motion to
7 Stay and brings this Cross-Motion to Enforce this Court's order to enforce the Settlement
8 Agreement. This Opposition and Cross-Motion is based on the papers and pleadings already on
9 file in this action, the following Memorandum of Points and Authorities, the attached exhibits,
10 and any oral argument the Court entertains.

11 **MEMORANDUM OF POINTS AND AUTHORITIES**

12 **I. Introduction**

13 Liberty Media is what is popularly considered to be a "copyright troll" that files baseless
14 lawsuits in the United States against foreign Internet companies like Oron (which is based in
15 Hong Kong and has no substantial connection to the United States).² On the basis of
16 unsupportable and erroneous allegations, Liberty Media obtained from this Court an injunction
17 freezing all of Oron's assets and prohibiting Oron from continuing its business. Faced with
18 certain destruction if it did not settle quickly, Oron entered into settlement discussions with
19 Liberty Media despite the fact that the lawsuit lacked merit on a number of grounds, particularly
20

21 _____
22 ²*Third Degree Films v. Doe*, 2012 U.S. Dist. LEXIS 142079 (D. Mass. 2012) ("A copyright troll is an owner of a
23 valid copyright who brings an infringement action 'not to be made whole, but rather as a primary or supplemental
revenue stream.'") quoting James DeBriyn, *Shedding Light on Copyright Trolls: An Analysis of Mass Copyright
Litigation in the Age of Statutory Damages*, 19 *UCLA Ent. L. Rev.* 79, 86 (2012).

1 because Oron is not subject to jurisdiction in the United States and, even if it was, it complied
2 with the safe harbor provisions of the Digital Millennium Copyright Act.

3 The parties entered into settlement negotiations and exchanged emails and documents,
4 including the Settlement Agreement which set forth certain terms of a potential settlement.
5 Although negotiations between the parties had broken down, Liberty Media moved this Court to
6 enforce the Settlement Agreement (Doc. 33). This Court granted the motion and ordered PayPal
7 to transfer to Liberty Media's attorney \$550,000 of Oron's money pursuant to the Settlement
8 Agreement (Doc. 85).

9 Oron filed an appeal with the Court of Appeals for the Ninth Circuit, appealing some of
10 this Court's orders – but not the portion of the order enforcing the Settlement Agreement. See
11 *Liberty Media Holdings, LLC v. FF Magnat Limited*, USCA No. 12-16976 (9th Cir.).³

12 After receiving \$550,000 from Oron, Liberty Media proceeded to utterly ignore its own
13 obligations under the Settlement Agreement. In fact, it actively breached many of them, causing
14 great financial harm to Oron. As the basis for its breach, Liberty Media blamed Oron's Notice of
15 Appeal. (Doc. 117). However, as the result of this Court's order enforcing the Settlement
16 Agreement, Liberty Media had a legal duty to comply with the terms of the Settlement
17 Agreement, rather than to ignore them wholesale.

18 Parties to a court order are bound even if the order is appealed unless the order is stayed
19 by the Court. Federal Rule of Appellate Procedure 8(a)(1) provides that "A party must ordinarily
20 move first in the district court for the following relief . . . a stay of the judgment or order of a
21 district court pending appeal." See also *Alliance of Nonprofits for Ins., Risk Retention Group v.*

22 ³ Oron's appeal is limited to (a) an appeal of any order other than that enforcing the Agreement – because the
23 Agreement contained an arbitration clause which required this Court to refer any post-enforcement disputes to
arbitration and (b) the Court's order to pay Oron's legal fees (Doc. 114) both because the Agreement contained a
general release, releasing such claims and because the Agreement contained no provision for the payment of
attorney's fees.

1 *Barratt*, 2012 U.S. Dist. LEXIS 115431 (D. Nev. 2012) (“Federal Rule of Appellate Procedure 8
2 sets forth the procedure for requesting a stay of a district court's order pending appeal. The rule
3 requires that the moving party requesting to stay an order or judgment to file a motion in district
4 court. Fed. R. App. P. 8(a)(1)(A)”); *NRDC v. United States DOI*, 13 Fed. Appx. 612 (9th Cir.
5 2001) (“It also is possible to obtain a stay pending appeal from the district court. See Rule
6 8(a)(1), Federal Rules of Appellate Procedure”); *Hovey v. McDonald*, 109 U.S. 150, 162 (1883)
7 (“Of course, where the power is not exercised by the court, nor by the judge who allows the
8 appeal, the decree retains its intrinsic force and effect.”); 20-308 Moore’s Federal Practice –
9 Civil 308.02 (“The mere filing of an appeal does not act to suspend execution or enforcement of
10 a judgment or injunction”).

11 Neither Oron nor Liberty Media moved to stay the court’s order to enforce the Settlement
12 Agreement. Neither this Court nor the Ninth Circuit stayed the order *sua sponte* either.
13 Therefore, by the clear letter of the law (and, of course, at Liberty Media’s original insistence),
14 the Settlement Agreement continued to be in effect following Oron’s filing of the Appeal and
15 Liberty Media’s refusal to comply with the Settlement Agreement is a breach of the Settlement
16 Agreement.

17 Having waived the question of enforceability of the Settlement Agreement, and having
18 suffered over \$20,000,000 in damages as the result of Liberty Media’s breach thereof, Oron filed
19 for arbitration pursuant to the terms of the Settlement Agreement with JAMS on November 16,
20 2012. *FF Magnat Limited v. Liberty Media Holdings, LLC*, JAMS Reference No. 1400014182.
21 However, Liberty Media refused to consent to the arbitration contrary to the mandatory terms of
22 the Settlement Agreement which it asked this Court to enforce. Instead, Liberty Media filed the
23 present Motion to Stay.

1 **II. Oron Did Not Appeal and Does Not Oppose the Enforceability of the**
2 **Settlement Agreement and Therefore Liberty Media’s Motion is Moot and**
3 **Should Be Denied**

4 Oron did not appeal and does not contest the enforceability of the Settlement Agreement.
5 In its brief before the Ninth Circuit, Oron does not request that the Circuit Court reverse this
6 Court’s enforcement of the Settlement Agreement, but rather requests that the Appeals Court
7 reverse this Court’s (a) order to PayPal to release the \$550,000 to Liberty Media (because the
8 Settlement Agreement contained an arbitration clause which required this Court to refer any
9 post-enforcement disputes to arbitration) and (b) judgment for \$131,797.50 in attorney’s fees
10 (both because the Settlement Agreement contained a general release, releasing such claims and
11 because it contained no provision for the payment of attorney’s fees). To the contrary, Oron
12 accepts the enforceability of the Settlement Agreement and has asked the Circuit Court to
13 “remand the matter to the District Court with instructions to compel the parties to arbitrate their
14 disputes.” Appellant FF Magnat Limited’s Opening Brief, Appeal Doc. 14, p. 28.

15 Liberty Media’s entire motion is premised on the incorrect proposition that Oron opposes
16 the enforceability of the Settlement Agreement. Given that Oron does not oppose the
17 enforceability of the Settlement Agreement – and in fact consents to its enforceability – Liberty
18 Media’s Motion to Stay is moot.⁴ Therefore, Liberty Media’s Motion to Stay should be denied.

19 **III. The Arbitration Agreement is Enforceable and Liberty Media Should Be**
20 **Ordered to Submit to Arbitration With JAMS**

21 On August 7, 2012 this Court issued an Order enforcing the Settlement Agreement
22 between the parties (Doc 85). The Settlement Agreement calls for the performance of certain

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⁴ However, even if Oron had not accepted the enforceability of the agreement on its appeal, Liberty Media’s motion would still be inappropriate and would have to be denied. Liberty Media cannot attempt to at the same time reap all the benefits of the Settlement Agreement (receiving the \$550,000 and the \$131,797.50 judgment for attorney’s fees) and attempt to shirk all of its obligations under the Settlement Agreement.

1 obligations by each of the parties and also contains numerous clauses requiring arbitration as the
2 sole means of dispute resolution for all post-Agreement disputes. In fact, arbitration is
3 referenced in three separate paragraphs, the relevant portions of which states that:

4 “Liberty will agree to privately arbitrate any future disputes with Oron
5 based on facts that occur after the date of the agreement. If there is
6 arbitration, no in-person hearings for the parties shall be required. [...] Any party may attend arbitration telephonically if they wish, and/or arbitration is not required to take place in the United States[.]”

7 Settlement Agreement at ¶ 9. It also requires:

8 “Arbitration of all disputes arising after date of this letter. All
9 arbitrations shall be done telephonically only[.]”

10 *Id.* at ¶ 17.

11 Liberty Media failed to comply with any of its obligations pursuant to the Settlement
12 Agreement and caused over \$20,000,000 in damages to Oron. *See* Claimant FF Magnat
13 Limited’s Notice of Claims and Remedies, JAMS Arbitration, attached hereto as Exhibit 2 and
14 filed as part of Exhibit 2 to Docket No. 121-1. Accordingly, pursuant to the arbitration
15 provisions of the Settlement Agreement, on November 16, 2012, Oron filed a demand for
16 arbitration before JAMS, a nationally recognized arbitration forum, and incurred a substantial
17 filing fee in doing so. *See* Demand for Arbitration Before JAMS, attached hereto as Exhibit 3
18 and previously filed by Liberty Media as part of Exhibit 2 to Docket No. 121-1. In its demand
19 for arbitration, Oron stated that “Pursuant to Paragraph 17 of the Settlement Agreement,
20 arbitration should be conducted telephonically only.” *Id.*

21 Once again, despite having a clear contractual duty to do so, Liberty Media refused to
22 comply with the terms of the Settlement Agreement and refused to submit to arbitration before
23 JAMS. On November 27, 2012, Oron’s attorney sent Liberty Media a letter requesting that

1 Liberty Media provide a list of nationally recognized and reputable arbitrations forums under
2 which Liberty Media would agree to arbitrate the dispute. Oron's attorney also informed Liberty
3 Media that should it fail to provide a list of arbitration forums, Oron would have no choice but to
4 move this Court to enforce the Settlement Agreement. See Letter from Oron to Liberty Media,
5 attached hereto as Exhibit 4.

6 Liberty Media refused to provide a list of arbitration forums. Instead of complying with
7 its contractual obligations, Liberty Media responded by filing its Motion to Stay Enforcement of
8 Order Granting Plaintiff's Motion to Enforce Settlement Agreement (Doc. 121), which, as
9 demonstrated above, is moot and should be denied.

10
11 **Conclusion**

12 Given that the Settlement Agreement contains an exclusive arbitration clause, and given
13 that Liberty refused to comply with the terms of the Settlement Agreement and refused to
14 arbitrate the present dispute with Oron, this Court's assistance is required to once again enforce
15 the terms of the Settlement Agreement. Accordingly, Oron respectfully requests that the Court
16 orders Liberty Media to submit to arbitration with JAMS, pursuant to Oron's Demand for
17 Arbitration, Reference No. 1400014182. A Proposed Order is attached hereto as Exhibit 5.

18 Dated: January 8, 2012

Respectfully submitted,

19 **WILSON ELSER MOSKOWITZ**
20 **EDELMAN & DICKER LLP**

21 By: /s/ David S. Kahn

22 David S. Kahn
23 Attorneys for Defendant
FF MAGNAT LIMITED

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the attached FF Magnat Limited's Opposition to Plaintiff's Motion to Stay Enforcement of Order Granting Plaintiff's Motion to Enforce Settlement Agreement and Cross-Motion to Enforce Settlement Agreement was served via electronic service, via CM/ECF, on this 8th day of January, 2013 to all the attorneys of record.



An Employee of
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