

1 **DAVID S. KAHN** (Nevada Bar No. 7038) [david.kahn@wilsonelser.com](mailto:david.kahn@wilsonelser.com)  
2 **SHERI M. THOME** (Nevada Bar No. 8627) [sheri.thome@wilsonelser.com](mailto:sheri.thome@wilsonelser.com)  
3 **J. SCOTT BURRIS** (Nevada Bar No. 010529) [j.scott.burris@wilsonelser.com](mailto:j.scott.burris@wilsonelser.com)  
4 **WILSON ELSER MOSKOWITZ EDELMAN & DICKER LLP**  
5 300 South Fourth Street, 11<sup>th</sup> Floor  
6 Las Vegas, NV 89101  
7 (702) 727.1400; FAX (702) 727-1401

8 **KENNETH E. KELLER** (CA Bar No. 71450) (*pro hac vice*) [kkeller@kksrr.com](mailto:kkeller@kksrr.com)  
9 **STAN G. ROMAN** (CA BAR. NO. 87652) (*pro hac vice*) [sroman@kksrr.com](mailto:sroman@kksrr.com)  
10 **MICHAEL D. LISI** (CA Bar No. 196974) (*pro hac vice*) [sroman@kksrr.com](mailto:sroman@kksrr.com)  
11 **KRIEG, KELLER, SLOAN, REILLEY & ROMAN LLP**  
12 555 Montgomery Street, 17<sup>th</sup> Floor  
13 San Francisco, CA 94111  
14 T: (415) 249-8330; Fax: (415) 249-8333

15 **STEVAN LIEBERMAN** (Washington, DC Bar No. 448218) (*pro hac vice*)  
16 **GREENBERG & LIEBERMAN, LLC**  
17 2141 Wisconsin Ave., NW Suite C2  
18 Washington, DC 20007  
19 T: (202) 625-7000; Fax: 202-625-7001  
20 [stevan@APLegal.com](mailto:stevan@APLegal.com)

21 Attorneys for Defendant FF MAGNAT LIMITED

22 **UNITED STATES DISTRICT COURT**  
23 **DISTRICT OF NEVADA**

24 LIBERTY MEDIA HOLDINGS, LLC, a  
25 California Corporation,

26 Plaintiff

27 vs.

28 FF MAGNAT LIMITED d/b/a/ ORON.COM;  
MAXIM BOCHENKO a/k/a/ ROMAN  
ROMANOV; and JOHN DOES 1 - 500.

Defendants.

Case No. CV 2:12-cv-01057 GMN-RJJ

**DEFENDANT FF MAGNAT LIMITED'S  
OPPOSITION TO REQUEST FOR  
EVIDENTIARY HEARING**

**Judge: Hon. Gloria M. Navarro**  
**Courtroom: 7D**

1 Without providing any indication of why it needs to present additional evidence at the  
2 August 9, 2012 hearing on its Motion for Preliminary Injunction, or what evidence it would present,  
3 plaintiff Liberty Media Holdings LLC (“Liberty Media”) asks this Court for leave to “present  
4 additional evidence and witness testimony” at that hearing. Defendant FF Magnat Limited (“Oron”)   
5 opposes plaintiff’s request for two reasons.

6 First, permitting Liberty Media to present new or additional evidence at the hearing would  
7 deprive Oron of a fair opportunity to oppose Liberty Media’s preliminary injunction motion.  
8 Fed.R.Civ.P. 65(a)(1) provides that no preliminary injunction may be issued without notice to the  
9 adverse party. Although the rule does not specify the amount of notice required, the United States  
10 Supreme Court has held that it “implies a hearing in which the defendant is given a fair opportunity  
11 to oppose the application **and to prepare for such opposition.**” *Granny Goose Foods, Inc. v.*  
12 *Brotherhood of Teamsters & Auto Truck Drivers*, 415 U.S. 423, 432 (1974)(emphasis added). It is  
13 respectfully submitted that it would be a denial of due process to require defendant Oron to respond  
14 to new and additional evidence “on the spot” at the hearing without first having had an adequate  
15 opportunity to review the proffered evidence, identify and gather responsive or opposing evidence,  
16 and determine how that evidence could be presented to the Court. Plaintiff Liberty Media has been  
17 given a full and fair opportunity to present evidence in its moving and reply papers, and it is simply  
18 unfair for it to spring new and additional evidence on Oron at the hearing. *See Lavan v. City of Los*  
19 *Angeles*, 797 F.Supp.2d 1005, 1010, n.1 (C.D. Cal. 2011) (“At the preliminary injunction hearing on  
20 June 20, 2011, the City requested permission to submit additional supplemental declarations to  
21 address issues such as certain Plaintiffs' standing to bring the claims in this case . . . The City's  
22 request is denied. The City has had ample time to submit declarations to the Court and issues such as  
23 standing could have, and should have, been raised in response to the Complaint or Plaintiffs'  
24 declarations submitted in support of the TRO Application.”).

25 Second, plaintiff Liberty Media’s request to present live testimony at the hearing should be  
26 denied. Although the Court has discretion to allow a motion for preliminary injunction to be heard  
27 on live testimony in appropriate circumstances, live testimony is rarely allowed. *See Kenneally v.*

1 *Lungren*, 967 F.2d 329, 334-35 (9<sup>th</sup> Cir. 1992) (“We do not indulge a presumption in favor of  
2 evidentiary hearings. [citations] “[I]f the facts are simple and little time would be taken, a court may  
3 be required to hold an evidentiary hearing on a motion for an injunction.... However, we have  
4 rejected any presumption in favor of evidentiary hearings, especially if the facts are complicated.”  
5 [citation]). Oral testimony is particularly inappropriate where, as here, the party seeking to present it  
6 has had a full and fair opportunity to present written materials to the court and to argue its position at  
7 a hearing. *See Stanley v. University of So. Calif.*, 13 F.3d 1313, 1326 (9<sup>th</sup> Cir. 1994) (court may  
8 refuse oral testimony where parties given full opportunity to submit written discovery and to argue  
9 the matter); *San Francisco-Oakland Newspaper Guild v. Kennedy*, 412 F.2d 541, 546 (9<sup>th</sup> Cir. 1969)  
10 (court did not abuse its discretion in refusing to permit oral testimony when presentation of many  
11 affidavits and oral argument provided sufficient opportunity for opposition to preliminary  
12 injunction).

13 For all of the foregoing reasons, Oron respectfully requests that Liberty Media’s Request for  
14 Evidentiary Hearing be denied.

15 Dated: August 2, 2012

KRIEG, KELLER, SLOAN, REILLEY & ROMAN LLP

17 By: \_\_\_\_\_/s/\_\_\_\_\_  
18 MICHAEL D. LISI  
19 Attorneys for Defendant FF MAGNAT LIMITED  
20  
21  
22  
23  
24  
25  
26  
27