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Attorney for Movant, anonymous internet subscriber.

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE EASTERN DISTRICT OF CALIFORNIA**

CP PRODUCTIONS, INC.,	)	Case No.: 2:12-CV-00616(WBS)(JFM)
	)	
Plaintiff,	)	“EXHIBIT B” DOE’S OPPOSITION TO
	)	PLAINTIFF’S MOTION FOR SANCTION
vs.	)	AND CONTEMPT
	)	
UNKNOWN,	)	Hon. John F. Moulds
	)	
Defendant.	)	Hearing Date: 9/20/2012
	)	
	)	<b>ORAL ARGUMENT REQUESTED</b>

**I. INTRODUCTION**

This opposition is in response to a Rule 37 motion for sanctions for failure to exchange a Rule 26(a) initial disclosure. This motion should be denied for two reasons:

- 1) Counsel represents a person that was on “Exhibit B” of Plaintiff’s complaint. All of these individuals are subject to this Court’s protective order.
- 2) Plaintiff has failed to serve the person on “Exhibit A”. Thus the real party in interest (not represented by this Counsel) is the one obligated to file a Rule 26 initial disclosure.

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2 As this motion appears to be frivolous, Movant respectfully requests appropriate  
3 damages be awarded under Fed Rule Civ P. 37 (A) (5)(B) and **Fed Rule Civ P. 26(g)(1)(B)(ii)**.  
4

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6 **II. FACTUAL BACKGROUND**

7 Plaintiff has moved that this Court award sanctions and issue a contempt order for the  
8 counsel Edmondson's failure to participate in the Rule 26 disclosure. (See Docket 40).

9 Plaintiff filed this complaint on 3/9/2012 then sought expedited discovery. (Dockets 1, 7,  
10 9). Attached to the complaint were two exhibits. Exhibit A with a single IP Address:  
11 24.7.175.228 and Exhibit B with a list of IP Addresses. (See Docket 1).

12 On 5/24/2012, Objector "DOE" as identified by an IP address on Exhibit B, through  
13 counsel, J. Curtis Edmondson, filed a motion to quash. (See Docket 9).

14 On 7/31/2012 this Court ordered the parties on "Exhibit B" of Plaintiff's complaint are  
15 not subject to expedited discovery: (See Docket 36 stating, "Order is VACATED to extent it  
16 grants plaintiff leave to conduct expedited Discovery as to non-party co-conspirators").  
17

18 On 8/9/2012, Attorney Gibbs requested Rule 26 disclosures.<sup>1</sup>

19 On 8/15/2012, Attorney Gibbs filed this instant motion. (Docket 40)

20 On 8/23/2012, Attorney Edmondson requested that this motion be withdrawn by letter.  
21 (See Exhibit 1).  
22  
23  
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25 <sup>1</sup> In fact, on 5/28/2012, "Interested Party Doe", though counsel Edmondson, filed a Rule 26 "Interested Party Doe  
26 Joint Status Report". See Docket No. 16. This document was filed as a precautionary measure in case the  
Defendants on Exhibit B of Plaintiff's Complaint were joined to the lawsuit. The "Interested Party Doe Joint Status  
Report" does not act as an admission that Mr. Edmondson represented the interested party listed on Exhibit A of  
Plaintiff's Complaint.

1 Attorney Gibbs has failed to withdraw this motion or disclose to Attorney Edmondson  
2 who the real party in interest is (i.e. Exhibit A, Defendant) or file a proof of service on the party  
3 listed on Exhibit A.  
4

5  
6  
7 **III. ARGUMENT**

8 **1) COUNSEL REPRESENTS A PERSON THAT WAS ON “EXHIBIT B” OF**  
9 **PLAINTIFF’S COMPLAINT. ALL OF THESE INDIVIDUALS ARE SUBJECT**  
10 **TO THIS COURT’S PROTECTIVE ORDER.**

11 Plaintiff asks that Attorney Edmondson disclose information that this Court has ordered  
12 to be protected. Edmondson represents a Party that was listed on “Exhibit B” and subject to this  
13 Court’s protective order. Attorney Gibbs has acknowledged this fact by stating in his opposition  
14 to Edmondson’s motion to quash (Docket #10):

15  
16 “Movant [Edmondson] is not a party to this case as the Defendant has not  
17 yet been named and served in this case.” (Docket #19, p2)

18  
19 If there was any confusion on this matter, it was clarified by Edmondson during the  
20 Motion Hearing on July 12, 2012, the transcript of which is attached as Exhibit 2. During the  
21 Hearing, Gibbs stated his belief that Edmondson represented the John Doe Defendant in this  
22 case, to which Edmondson replied:

23 Your Honor, Mr. Gibbs has made a statement that I represent the John Doe  
24 purportedly being the John Doe as the lead defendant in this case, and that’s an  
25 inaccurate statement. What I do is I represent one of the coconspirators, or alleged co-  
26 conspirators. I don’t represent the named John Doe.

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1 Gibbs disagreed, claiming that Edmondson had said “throughout the entire thing” that he  
2 represented the lead defending infringer. Edmondson replied:

3 I think we can all kind of agree that the term "John Doe" is a generic term and if any  
4 misrepresentation was made by me, or confusion created, I respectfully apologize. But  
5 the reality is, I’m not John Doe, lead defending infringer, I’m John Doe, one of the other  
6 people that have been mass joined in this case. (Docket 36).

7 Plaintiff has failed to serve the person on “Exhibit A”. Thus the real party in interest (not  
8 represented by this Counsel) is the one obligated to file a Rule 26 initial disclosure.

9  
10 **2) ATTORNEY GIBBS HAS FAILED TO FILE A PROOF OF SERVICE FOR THE**  
11 **DEFENDANT ON “EXHIBIT A”. SERVICE SHOULD IDENTIFY THE**  
12 **PROPER DEFENDANT.**

13 To the extent that Gibbs complains about Rule 26, he now has access to the information  
14 on “Exhibit A” of Plaintiff’s complaint. This should allow for service of the complaint on the  
15 “Defendant”. Then the “Defendant” answers and the parties have a Rule 26 conference.

16 It is a requirement of Rule 26 that a defendant exist. For a defendant to exist there must  
17 be valid service. As stated recently in *R&R Sails, Inc. v. Ins. Co. of Pennsylvania*, 673 F.3d  
18 1240, 1245-1246 (9<sup>th</sup> Cir 2012):

19 Rule 26(a)(1)(A) requires a **plaintiff** to make certain initial disclosures to  
20 the **defendant** “without awaiting a discovery request.” Pursuant to subsection  
21 26(a)(1)(A)(ii), the plaintiff must provide “a copy—or a description by category  
22 and location—of all documents ...” (Emphasis added).

23 Here we have no defendant and no declaration that there was service on a defendant.

24 Furthermore, as proof, Edmondson will also file, under seal<sup>2</sup>, the IP address of whom he  
25 represents as proof that this IP address does not match the IP address on Exhibit A. Thus, even if  
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<sup>2</sup> The IP address is filed under seal to protect the anonymity of the party of Exhibit B.  
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CONTEMPT

1 there was service, Edmondson’s client would still not need to participate in the Rule 26  
2 conference.

3 **IV. BRETT GIBB’S MOTION FOR SANCTIONS AGAINST J. CURTIS**  
4 **EDMONDSON SHOULD BE DENIED AND DAMAGES AWARDED UNDER**  
5 **FED RULE CIV P. 26(G)(1)(B)(II), FED RULE CIV P. 37, AND 17 USC 504**

6  
7 Plaintiff’s business model of litigation revolves around securing settlement payments.  
8 Plaintiff has an interest in discouraging the internet subscribers it targets from retaining counsel.

9 For example, in its “Frequently Asked Questions” section of the demand letters it sends  
10 to targeted internet subscribers, Prenda writes:

11 **“Q: Do I need to hire an attorney?”**

12 **A: The decision to hire an attorney is completely up to you. We cannot give you legal**  
13 **advise, but speaking with an attorney is generally highly advisable. **Some infringers****  
14 **have indicated to us that our settlement offer is significantly lower than the costs**  
15 **associated with hiring an attorney and litigating the matter through trial.” Exhibit**  
16 **3, p.5, emphasis added.**

17 Movant, like most internet subscribers, did not wish to be embroiled in one lawsuit after  
18 another, particularly one involving baseless allegations of them illegally downloading internet  
19 porn—a fate made significantly worse given Prenda’s regular practice of posting the names of  
20 the people it is in the process of suing on its website. See Exhibit 4.

21 Plaintiff’s clearly frivolous motion against a non-party suggests that sanctions are  
22 appropriate. Attorney Edmondson leaves it to this Court to craft an appropriate monetary and  
23 equitable sanction in light of this odd litigation tactic. To date, to attorney and paralegal fees (at  
24 \$ 375.00/hr and \$80.00/hr respectively) and costs are \$ 6,317.00 and for this motion fees alone  
25 was \$ 2,377.25.

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2 **V. CONCLUSION**

3 Attorney Edmondson respectfully requests that this Court deny Plaintiff's motion for  
4 sanctions and an order of contempt. Attorney Edmondson respectfully requests an award of  
5 \$6,317.00 as damages for this patently frivolous motion.  
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7  
8 Dated: 9/7/2012

Respectfully Submitted,

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