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6 **UNITED STATES DISTRICT COURT**
7 **CENTRAL DISTRICT OF CALIFORNIA**

8
9 INGENUITY 13, LLC, a Limited Liability
Company Organized Under the Laws of the
10 Federation of Saint Kitts and Nevis,

11 Plaintiff,

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13 v.

14 JOHN DOE,

15 Defendant.
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Case Number(s): 2:12-cv-08333-DMG-PJW

Assigned to: Judge Dolly M. Gee
Referred to: Magistrate Judge Patrick J.
Walsh

**MEMORANDUM IN SUPPORT OF
PUTATIVE JOHN DOE'S *EX PARTE*
APPLICATION FOR LEAVE TO TAKE
EARLY DISCOVERY AND FOR A
FURTHER STAY OF THE SUBPOENA
RETURN DATE**

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MEMORANDUM OF POINTS AND AUTHORITIES

(a) Introduction and Summary

Plaintiff Ingenuity 13, LLC is a shell entity organized under the laws of laws of the Federation of Saint Kitts and Nevis. It has filed dozens of copyright infringement cases across the country alleging that ISP subscribers illegally downloaded pornography. Prenda Law, Inc., which represents Ingenuity 13, LLC as counsel, has filed hundreds of such lawsuits against tens of thousands of John Doe defendants over the last two plus years, on behalf of a variety of pornographer clients. However, not a single one of the many Prenda Law cases has ever been decided on the merits (other than on default). In 2011, Judge Koh ordered Prenda to disclose how many of the thousands of people Prenda had sued had it ever actually served. The answer then was that out of 200 some odd lawsuits against approximately 15,000 John Does, it had served zero (0) people with complaints.¹

Nevertheless, Prenda has made a small to perhaps medium sized fortune over the past few years collecting “settlements” with ISP subscribers whom it has threatened with suit, accusing them of using the BitTorrent file sharing protocol to illegally download pornography. Prenda has pioneered a new business model that is based on using the Court’s subpoena power, and leveraging the social stigma associated with pornography, to shake down ISP subscribers for quick copyright infringement “settlements” of a few thousand dollars each. For the most part, Prenda’s business is essentially predicated on a single threat: pay Prenda a few thousand dollars, or Prenda will publicly accuse the ISP subscriber of downloading pornography.

One major problem with this scheme—and this is an issue that Prenda is perpetually dancing around; telling one Court one thing, and another Court something different—is

¹ *AF Holdings v. Does 1-135*, N.D. Cal. No. 5:11-cv-3336-LHK, ECF No. 43-1, 2/4/12, p 4. (“our records indicate that no defendants have been served in the below-listed cases”). Since this ‘emperor has no clothes’ moment this spring, Prenda has actually served several dozen people nationwide, to try and make an example out of them. As an effective way to shame its adversaries, and as a warning to the thousands of people it threatens with suit, Prenda lists the names of the people it has named or served with pornography lawsuits on its website:

<http://wefightpiracy.com/suits-against-individuals.php>

1 that ISP subscriber does not necessarily equal the actual John Doe defendant. That is, just
2 because someone happens to pay the Internet bill for a household does not mean that
3 person is actually the John Doe infringer who used the IP address to download something
4 illegally. Particularly when ISP subscribers have open or unencrypted WiFi networks that
5 are not encrypted (i.e., no password is required to join the network), very often, the actual
6 infringer can be a teenage kid next door, or, indeed, anyone with access to the wireless
7 network.

8 For a time, Prenda was getting away with filing lawsuits, issuing subpoenas, getting
9 lists of names from the ISPs, and then simply putting on a full court press, like a debt
10 collector, to try and collect from ISP subscribers. Prenda used the full toolkit to try and
11 leverage settlement: threats and harassing calls from “settlement negotiators” working at
12 call centers, robo-calls at all hours, etc. Particularly early on, Prenda would generally just
13 *assume* that whomever happened to pay the Internet bill was the actual defendant, and then
14 threaten this person with a lawsuit accordingly. When faced with the expense and
15 uncertainty of retaining counsel to contest the case, or paying a few thousand dollars to
16 Prenda avoid having ones name dragged through the mud many people—including many
17 innocent people—chose to simply pay the ransom.

18 More recently, and with good reason, federal courts have become increasingly
19 skeptical of Prenda’s business model. First, based on jurisdictional and venue concerns,
20 courts put a stop to the big, hundred-Doe or even thousand-Doe lawsuits where Prenda
21 sued John Doe defendants from all over the country in a single action. Next, Prenda and
22 others started filing multiple defendant lawsuits against groups of Does who all resided in a
23 given judicial district. Courts began throwing these lawsuits out too, rejecting the so-called
24 “swarm joinder” theory, which is now being consistently repudiated by district courts in
25 the Ninth Circuit. *E.g., Patrick Collins, Inc. v. John Does 1 through 9*, S.D. Cal. Case No.
26 3:12-cv-1436, ECF No. 23, 11/08/12 (“the majority view among district courts within the
27 Ninth Circuit is that allegations of swarm joinder are alone insufficient for joinder. . . Doe
28 Defendants’ alleged conduct therefore lacks the type of “very definite logic relationship”

1 required to permit joinder.”); *quoting Bautista v. Los Angeles County*, 216 F.3d 837, 842-
2 843 (9th Cir. 2000).

3 The instant case (as well as all the related Ingenuity 13, LLC and AF Holdings, LLC
4 cases) represents the latest incarnation of Prenda’s business model: actions against a single
5 John Doe defendant, with the increased costs passed on to ISP subscribers in the form of
6 higher settlement demands. However, Judge Wright, of the Central District of California,
7 who was assigned all of the AF Holdings cases pending there, recently zeroed in on
8 precisely what is wrong with these single Doe cases. After all the AF Holdings cases in the
9 Central District were transferred to Judge Wright, he vacated all prior orders authorizing
10 ISP subpoenas and issued an order to show cause asking plaintiff to justify why early
11 discovery should be allowed,

12 “AF Holdings must demonstrate to the Court, in light of the
13 Court’s above discussion,² ***how it would proceed to uncover***
14 ***the identity of the actual infringer once it has obtained***
15 ***subscriber information***—given that the actual infringer may be
16 a person entirely unrelated to the subscriber—while also
17 considering how to minimize harassment and embarrassment of
18 innocent citizens.” *AF Holdings LLC v. John Doe*, C.D. Cal.
19 Case No. 12-cv-5709-ODW, ECF No. 9, p. 2, 10/19/12
20 (emphasis added).

21 Judge Wright is spot-on: until the plaintiff can put forth some kind of credible discovery
22 plan showing how it will go from obtaining ISP subscriber information to identifying
23

24 ² The “above discussion” Judge Wright referred to was a discussion of all the reasons it is incorrect
25 to simply assume that an ISP subscriber is the actual defendant. The subpoenas to the ISPs “may
26 only lead to the person paying for the internet service and not necessarily the actual infringer, who
27 may be a family member, roommate, employee, customer, guest, or even a complete stranger.
28 *Malibu Media LLC v. John Does 1–10*, No. 2:12-cv-01642-RGK-SSx, slip op. at 4 (C.D. Cal. Oct.
10, 2012).” *AF Holdings LLC v. John Doe*, C.D. Cal. Case No. 12-cv-5709-ODW, ECF No. 9, p.
1-2, 10/19/12

1 actual infringing defendants, the subpoenas are premature. Once Prenda has a list of ISP
 2 subscriber info, that is all it needs or really wants to execute its business model; it will
 3 simultaneously threaten to sue and seek to settle with ISP subscribers, while also
 4 sometimes telling the Court that these people have no standing to object since they are not
 5 yet named as parties. Prenda Law has this two-step down pat: tell the ISP subscribers they
 6 are defendants and threaten to sue them, and then tell the Courts the ISP subscribers are
 7 merely targets for discovery, in an attempt to explain why almost none of the ISP
 8 subscribers are ever served.³

9 Although the ISP subpoenas are a *necessary* first step in identifying a defendant,
 10 they are not *sufficient* to make it “very likely” that the subpoenas seeking to identify ISP
 11 subscribers will result in identification of actual John Doe defendants, as required by
 12 *Gillespie v. Civiletti*, 629 F.2d 637, 642 (9th Cir. 1980) (early discovery to identify
 13 John Does authorized when it is “very likely” to identify actual defendants).
 14 Particularly in light of the potential for abuse in this kind of lawsuit, and Prenda’s
 15 track record of settling or dismissing most actions without prejudice at or near the
 16 service deadline, the plaintiff should be required to put forward a more complete
 17 discovery plan before being allowed to avail itself of the Court’s subpoena power.

18 **(a) Factual Background Regarding Alan Cooper, Ingenuity 13, and AF Holdings**

19 Movant believes that Prenda should be compelled to provide some answers on the
 20 Alan Cooper issue, and right away, in view of the following facts—all of which seem to
 21 suggest a possible pattern whereby current/former close associates of John Steele are being
 22 fraudulently held out as corporate representatives of AF Holdings and Ingenuity 13:

23 (1) There is a gentleman from Minnesota named Alan Cooper who formerly worked
 24 as a caretaker on a property owned by John Steele. Appendix 1; Appendix 2 ¶ 4.

25
 26
 27 ³ This “two-step” is issue that will be briefed in further detail in Movant’s opposition to Prenda’s
 28 completely frivolous motion for sanctions (ECF No. 22) that it filed in violation of the 21-day safe
 harbor, and without even an attempting to meet and confer.

1 (2) John Steele was the name partner in the predecessor firm to Prenda Law, Inc.,
2 which was called Steele Hansemeier PLLC, and, at least until recently, Mr. Steele clearly
3 remained closely associated with Prenda Law, Inc. *See* Appendix 1, Exhibits A through D.

4 (3) Mr. Steele has alternatively identified himself as both “of counsel” with Prenda
5 Law (Exhibit A to Appendix 1) and “not an attorney with any law firm” (Appendix 3, pp.
6 11:25–12:7), depending on who was asking and when. However, regardless of whatever is
7 Mr. Steele’s current story, it appears to the undersigned that Mr. Steele has been pulling the
8 strings at Prenda Law with respect to its national pornography lawsuit “settlement”
9 business.

10 (4) Mr. Steele bragged to his caretaker Alan Cooper about a copyright scheme
11 Appendix 1, p 1., and, according to Mr. Cooper “Steele had told me on at least one
12 occasion that if anyone asked about companies that I should call him.” Appendix 2, ¶ 8.

13 (5) After Mr. Cooper became suspicious, and searched online, he found out that
14 Prenda Law had been using the name “Alan Cooper” as the supposed principal of AF
15 Holdings and Ingenuity 13, in various federal court filings, including copyright assignment
16 forms, and verifications filed on behalf of Ingenuity 13 that use an electronic signature for
17 “Alan Cooper.” Appendix 1, Exhibit E, page 8 of 8.

18 (6) Concerned about his potential personal liability in connection with the scores of
19 Ingenuity 13 and AF Holdings copyright infringement lawsuits pending across the country,
20 Mr. Cooper hired a lawyer who asked Prenda Law to confirm that there was another Alan
21 Cooper who is the true principal of AF Holdings and Ingenuity 13, and that the identity of
22 Alan Cooper of Minnesota is not being misappropriated. Appendix 1.

23 (7) Immediately after Mr. Cooper’s attorney filed a notice of appearance on Mr.
24 Cooper’s behalf in an AF Holdings case pending in Minnesota, John Steele attempted to
25 call Mr. Cooper multiple times, despite the fact that Mr. Cooper was represented by
26 counsel. Appendix 1.

27 (8) For about three weeks, Prenda has been dodging the questions asked by Mr.
28 Cooper’s attorney, and by the undersigned counsel, about whether there is another Alan

1 Cooper who was the principal of AF Holdings and Ingenuity 13. Prenda refuses to say.
2 Appendix 4.

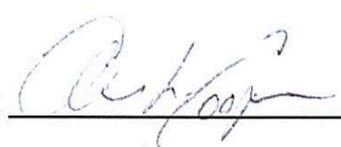
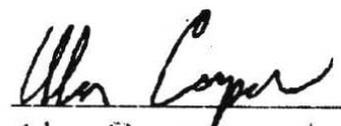
3 (9) Undersigned counsel has asked Brett Gibbs, counsel for plaintiff here, to
4 produce a verification allegedly signed by Alan Cooper that Mr. Gibbs purported to have in
5 his possession, under penalty of perjury. Mr. Gibbs has refused to do so. Appendix 4.

6 (10) At almost the exact same time the Alan Cooper allegations were coming to
7 light, the curtain was pulled back a bit farther on Prenda's operation by a federal Judge in
8 Florida, in an episode that begins to suggest a pattern of deception with respect to who is
9 really behind these lawsuits. In *Sunlust Pictures, Inc. v. Tuan Nguyen*, M.D. Fl. Case No.
10 8:12-CV-1685-T-35MAP Judge Scriven ordered a principal of Prenda Law, Inc. to attend a
11 hearing on a John Doe motion, and also ordered a principal of Sunlust Pictures, the
12 plaintiff in that action, to attend the hearing as well. (The complete hearing transcript is
13 attached as Appendix 3). According to the transcript, Prenda's purported "sole principal"
14 Paul Duffy, belatedly notified the Court that he could not attend due to a health issue.
15 After two prior local counsel sought to withdraw from the matter, Prenda placed an
16 advertisement in a local newspaper and obtained a new, third local counsel (hired by
17 plaintiff's counsel here Brett Gibbs) who, after filing a notice of appearance and conferring
18 with defense counsel, almost immediately sought to withdraw. Sunlust also did not send a
19 principal to the hearing; rather, it sent John Steele's former paralegal, a man named Mark
20 Lutz, as the plaintiff's "corporate representative" for hire. However, upon questioning Mr.
21 Lutz, Judge Scriven quickly determined that Mr. Lutz had no authority to bind the
22 company, and that he did not know who owned or managed it. Accordingly, despite a
23 Court order requiring them to do so, neither Prenda Law nor its client Sunlust Pictures sent
24 a principal to the hearing.⁴ Note in particular page 20 of the transcript where Judge

25 _____
26 ⁴ Coincidentally (?) one person who did attend the hearing: John Steele. Mr. Steele started out in
27 the gallery and purported not to be involved in the case, but after the Court noticed Mr. Lutz
28 constantly trying to confer with Mr. Steele, the Judge asked Mr. Steele who he was, and then asked
him for answers to some of her questions about Sunlust Pictures, which Mr. Steele provided.
Appendix 3, p. 18:12-24.

1 Scriven orders the purported “corporate representative” for the plaintiff, Mark Lutz (i.e.,
 2 John Steele’s former paralegal), away from the plaintiff’s table and dismisses the case for
 3 “failure to present a lawful agent, for attempted fraud on the Court by offering up a person
 4 who has no authority to act on behalf of the corporation as its corporate representative” and
 5 invites a motion for sanctions. Appendix 3.

6 (11) The signature used by Alan Cooper of Minnesota on his lease agreement with
 7 John Steele appears to be somewhat similar to the “Alan Cooper” signature used on various
 8 copyright assignments in Prenda cases:

<i>Image of Authenticated Signature of Minnesota Alan Cooper from His Lease with John Steele:⁵</i>	<i>Image of “Alan Cooper” Signature Used on Copyright Assignment Filed in C.D. Cal. 12-cv-5709 (Low-number Case):⁶</i>
<p>SIGNED THIS 17TH OF NOVEMBER, 2006</p> <p>Landlord:  _____</p> <p>John Steele, 21067 220th St. McGrath MN 56350.</p> <p>Tenant:  _____</p>	<p> _____</p> <p>Alan Cooper, on behalf of:</p> <p>Assignee AF Holdings, LLC</p>

5 This signature is found the last page of the attachment to Allan Cooper’s sworn affidavit, which is a copy of his lease with John Steele, a copy of which is filed herewith as Appendix 2.

6 This signature is found on the last page of Exhibit B to the complaint, which is the copyright assignment agreement for the copyright at issue in the above-referenced action, a copy of which is filed herewith as Appendix 5.

1 **(b) Applicable Law**

2 As correctly noted by the plaintiff in its own brief seeking early discovery, “Courts
3 within the Ninth Circuit use a balancing test to decide whether motions for expedited
4 discovery should be granted. *Semitool, Inc. v. Tokyo Electron Am., Inc.*, 208 F.R.D. 273
5 (N.D. Cal. 2002) (granting expedited discovery under a “balance of hardships” analysis).
6 Under the balancing test standard, a request for expedited discovery should be granted
7 where a moving party can show that its need for expedited discovery outweighs the
8 prejudice to the responding party. *Id.* at 276 (“Good cause may be found where the need
9 for expedited discovery, in consideration of the administration of justice, outweighs the
10 prejudice to the responding party.”); *see also Texas Guaranteed Student Loan Corp. v.*
11 *Deepinder Dhindsa*, 2010 U.S. Dist. LEXIS 65753, No. 10-00335 (E.D. Cal. 2010).” ECF
12 No. 8, p. 3, 10/8/12.

13 **(c) The Requested Early Discovery is Relevant to the Issue of Plaintiff’s Standing**
14 **to Sue for Copyright Infringement and is Also Relevant to Uncovering a**
15 **Possible Fraud on the Court and/or Undisclosed Financial Interests in the Case**

16 Moreover, “The use of a forged document in defense of a lawsuit prejudices both
17 the opposing party and the judicial system itself. . . A court may use its inherent powers to
18 preserve the integrity of the judicial process and prevent the perpetration of fraud on the
19 court.” *Forsberg v. Pefanis*, 261 F.R.D. 694, 702 (N.D. Ga. 2009); *citing Hazel-Atlas*
20 *Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 246, 64 S. Ct. 997, 88 L. Ed. 1250, 1944
21 Dec. Comm’r Pat. 675 (1944).

22 As the Ninth Circuit has explained, “It is well settled that dismissal is warranted
23 where. . . a party has engaged deliberately in deceptive practices that undermine the
24 integrity of judicial proceedings: ‘courts have inherent power to dismiss an action when a
25 party has willfully deceived the court and engaged in conduct utterly inconsistent with the
26 orderly administration of justice.’” *Anheuser-Busch, Inc. v. Natural Beverage Distribs.*, 69
27 F.3d 337, 348 (9th Cir. Cal. 1995); *quoting Wyle v. R.J. Reynolds Indus., Inc.*, 709 F.2d
28 585, 589 (9th Cir. 1983) (upholding dismissal of complaint pursuant to court’s inherent

1 power where plaintiff's denials of material fact were knowingly false); *see also Combs v.*
2 *Rockwell Int'l Corp.*, 927 F.2d 486 (9th Cir. 1991) (affirming dismissal under the court's
3 inherent power as appropriate sanction for falsifying a deposition), cert. denied, 502 U.S.
4 859, 116 L. Ed. 2d 138, 112 S. Ct. 176 (1991).

5 If there are indeed forged documents in the copyright chain of title, then there are
6 obvious standing problems with respect to AF Holdings and Ingenuity 13's ability to sue
7 for copyright infringement. Standing is a particularly important concern in lawsuits like
8 this because it was on the rocky issue of copyright standing that *Righthaven* copyright troll
9 cases foundered.⁷ *E.g., Righthaven, LLC v. Democractic Underground, LLC*, 791 F. Supp.
10 2d 968, 973 (D. Nev. 2011)(Case No. 10-cv-1356-RLH-GWF, ECF No. 116, 6/14/11)
11 (dismissing copyright infringement claims brought by "copyright troll" company taking
12 assignment to copyrights for lack of standing due to technical problems with the
13 assignment documentation); *see also, generally*, S. Balganes, "The Uneasy Case Against
14 Copyright Trolls," 86 S. CAL. L. REV (forthcoming May 2013), p *28⁸ (discussing how
15 the *Righthaven* court applied *Silvers v. Sony Pictures Entertainment, Inc.*, 402 F.3d 881
16 (9th Cir. 2005), which prohibits bare assignment of a mere right to sue, and noting that "As
17 a functional matter then, *Silvers* operates as copyright law's rule against *both* the
18 assignment of actionable copyright claims *and* champertous⁹ lawsuits).
19

20 _____
21 ⁷ The *Righthaven* actions, which began in 2010, were the first in the modern era where a company
22 was purpose-built to take assignment to copyrights and then go into business as a professional
23 copyright infringement plaintiff. After Judge Hunt of the District of Nevada learned that there was
24 a problem with *Righthaven's* assignment documents, the result was that all of *Righthaven's* many
25 infringement lawsuits were eventually dismissed, *Righthaven* was liquidated, and its copyrights
26 sold at auction to pay the attorneys fees of the defendants who *Righthaven* had sued.

25 ⁸ An abstract to and copy of this forthcoming law review article is available here:
26 http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2150716

27 ⁹ "Champerty – 1. An agreement between an officious intermeddler in a lawsuit and a litigant by
28 which the intermeddler helps pursue the litigant's claim as consideration for receiving part of any
judgment proceeds; specif. an agreement to divide litigation proceeds between the owner of the
litigated claim and a party unrelated to the lawsuit who supports or helps enforce the claim. . . 2

1 Further, beyond standing, the requested discovery on Alan Cooper is also highly
2 relevant to determining whether there are undisclosed parties with a pecuniary interest in
3 the outcome of the litigation, and to potential improper fee splitting. What seems
4 increasingly likely is that Minnesota Alan Cooper's identity was misappropriated, without
5 his knowledge or consent, in a fraudulent attempt to hide the fact that Prenda Law, Inc.
6 and/or John Steele are the real parties in interest behind AF Holdings and Ingeunity 13.
7 The fact that these two shell entities were organized in St. Kitts and Nevis, a notorious
8 privacy haven, which has strict laws guarding against the recording or disclosure of
9 corporate ownership information,¹⁰ lends further support to this theory. Moreover, the
10 hearing transcript from Prenda's *Sunlust* case in Florida suggests that there is a pattern
11 here: when Courts pry as to who is really behind Prenda's lawsuits, Prenda and/or John
12 Steele attempt to defraud the court. Appendix 3. In *Sunlust*, when Prenda was ordered to
13 produce a client principal at a hearing, the person who showed up was a current close
14 associate of John Steele—Steele's former paralegal, Mark Lutz—despite the fact that, as
15 the Court determined through questioning, Mr. Lutz had no authority and knew nothing
16 about the plaintiff entity. From defrauding a Court with respect to producing a purported
17 agent who lacks authority, it is not then a far leap to imagine that the same thing occurred
18 with respect to Alan Cooper. That is, Prenda and/or John Steele simply chose another
19 person Mr. Steele knew (and whose signature they had a copy of), namely Alan Cooper of
20 Minnesota, and attempted to hold this person out in federal court filings as the principal of
21 AF Holdings and Ingenuity 13 (only without telling Mr. Cooper about it). In short, there
22 appears to be a possible pattern of Prenda Law, Inc. and/or John Steele seeking to defraud
23

24 *Hist.* A writ available to the party who is the target of a champertous action.” Black’s Law
25 Dictionary, Eighth Ed., p. 246.

26 ¹⁰ “Managers and final beneficiaries are not registered anywhere, this way they have total
27 anonymity.” [http://www.offshorebankshop.com/en/11-saint-kitts-and-nevis-offshore-company-](http://www.offshorebankshop.com/en/11-saint-kitts-and-nevis-offshore-company-form-tax-haven-limited-liability.html)
28 [form-tax-haven-limited-liability.html](http://www.offshorebankshop.com/en/11-saint-kitts-and-nevis-offshore-company-form-tax-haven-limited-liability.html); see also U.S. Department of Treasury Financial Crimes
Enforcement Network Warning re: St. Kitts and Nevis:
http://www.fincen.gov/news_room/rp/advisory/html/advis26.html

1 the Courts on the issue of who is really behind these lawsuits, by falsely holding out straw-
2 men that have a personal connection to John Steele as company principals.

3 If Prenda Law, Inc. and/or John Steele (or some other person or entity) are the true
4 real parties in interest in these cases, then Movant, the public, and the Court (for the
5 purpose of recusal procedures) have a right to know, and this raises further questions about
6 improper fee splitting. Even if it turns out that John Steele and/or Prenda are not legally
7 the real parties in interest, a question remains: how much of the take can the plaintiff's
8 lawyers keep before they become the *de facto* real party in interest such that the required
9 financial disclosure is in order under Fed. R. Civ. Proc. 7.1 and L.R. 7.1-1? How much is
10 allowed pursuant to ethical rules on fee splitting – 90%, 70%? The Alan Cooper discovery
11 will also lead to answers on all of these questions as well. What appears to be going on
12 here is the definition of what was once called “champerty,” which, under common law
13 concepts that are no longer recognized, was a crime as well as a tort.

14 **(d) Prejudice to the Plaintiff Can be Easily Avoided**

15 Generally, Prenda Law complains that when there are delays in cases like this, it
16 will have difficulty meeting the Rule 4(m) service of process deadline. To remedy any
17 possible prejudice associated with that issue, Movant would stipulate to a 30-day extension
18 of that deadline. Indeed, if this lawsuit is allowed to proceed, and Movant's identity is
19 ordered disclosed to Prenda, and Prenda insists on moving forward notwithstanding Rule
20 11(b)(3), undersigned counsel will urge Movant to waive service.

21 **(e) Need for the Requested Discovery Outweighs the Minimal Prejudice to**
22 **Plaintiff**

23 Prenda law can moot the early discovery request (if not the request for a stay of the
24 subpoena return date), and put the minds of litigants nationwide at ease by providing a
25 verified response, in its opposition hereto, to a very simple question: is there another Alan
26 Cooper, other than the gentleman in Minnesota, who is or was the principal of Ingenuity 13
27 and AF Holdings? Similarly, if this Mr. Cooper did sign a notarized, verified petition by
28 hand, which Mr. Gibbs has averred, under penalty of perjury, that he kept a copy of, then

1 Mr. Gibbs should produce the signature page. *See In the Matter of a Petition by Ingenuity*
2 *13, LLC*, E.D. Cal. Case No. 11-mc-0084-JAM-DAD, ECF No. 1, p. 8 of 8, 10/28/11.¹¹ By
3 submitting a one-page affidavit in support of its opposition along with Mr. Cooper's
4 verification page, plaintiff could get the case right back on track. However, Movant
5 believes that the fact that Prenda has utterly refused to substantively address any of the
6 very troubling circumstances raised by Alan Cooper of Minnesota speaks volumes.

7 The requested early discovery is narrow in scope, minimally burdensome, can and
8 will be propounded promptly, and is necessary for several reasons: (1) to ensure that a
9 fraud is not being perpetuated, with help of the Court's subpoena power; (2) to address
10 standing issues associated with possible forged chain of title documents; (3) to determine
11 whether the plaintiff's lawyers, or some other person or entity, are actually the undisclosed
12 real parties in interest in this case; (4) to determine whether there is evidence of improper
13 fee splitting.

14 **(f) Need for *Ex Parte* Relief to Preserve the Ability of Movant to File a Meaningful**
15 **Motion to Quash**

16 Plaintiff Ingenuity 13, LLC sought and obtained leave of court to issue a subpoena
17 to Comcast seeking to identify the billing contact associated with the Internet account
18 which, at the relevant time, was assigned the particular IP address which plaintiff alleges
19 was used to illegally download plaintiff's pornographic movie.

20 After receiving a subpoena, Comcast checked its records and determined that at the
21 time alleged in the complaint the IP address at issue was assigned to an Internet account
22 paid for by Movant. Accordingly, Comcast then notified Movant, as the billing contact for
23 this account, that unless Movant takes action to quash or otherwise object to the subpoena
24 Comcast will disclose Movant's identity to the plaintiff.

25 On November 28, 2012, Movant filed an initial ex parte application seeking an
26 extension of the subpoena return date (ECF no. 13). On December 3, 2012, Magistrate
27 Judge Walsh held a telephonic conference with counsel for both sides in this action and

28 ¹¹ A copy of this verified petition is included as Exhibit E to Appendix 1 hereto.

1 granted the 30-day stay requested by Movant in the ex parte application, *nunc pro tunc* to
2 November 28, 2012. (ECF No. 16). Accordingly, ***the current subpoena response***
3 ***deadline is Saturday December 29, 2012.*** This application for a further stay of the
4 response deadline is being filed well in advance of that deadline, given the upcoming
5 Christmas holiday.¹²

6 Movant respectfully requests that the ISP subpoena response deadline in this case be
7 stayed pending further order of this Court, and that the very troubling questions regarding
8 Alan Cooper be resolved, or at least addressed, as threshold issues before this case is
9 allowed to proceed any farther. Movant will be filing a motion to quash, and the
10 information sought by early discovery is highly relevant thereto. Further, Movant, as well
11 as the public and the Court (for purposes of considering possible conflicts in connection
12 with recusal rules) have a right to know if Prenda Law, Inc. and/or John Steele are really
13 the true parties in interest in this lawsuit.

14 **(g) Even if the Court Denies John Doe's Request for Limited Early Discovery, the**
15 **Court Should Still Order a Brief Stay of the ISP Subpoena Return Date**

16 Even if the Court is not inclined to grant John Doe's request for limited pre-service
17 written discovery, Movant would respectfully request that, in the alternative, the Court stay
18 the return date on the subpoena plaintiff issued to Comcast seeking Movant's identity to a
19 date certain (perhaps a 30-day extension), to allow Movant to file a motion to quash by
20 then. Here, a 30-day stay of the subpoena return would also be beneficial in that the Notice
21 of Related Cases filed by undersigned counsel on December 3, 2012, will likely be decided
22 by Judge Wright by then. Since Prenda Law and similar plaintiffs firms generally prefer to
23 try and parcel their highly similar cases out to as many different Judges as possible, a
24 recurring problem in these cases is that after lawyers for John Does become involved and
25 seek to relate the cases, there end up being motions to quash heard before one Judge, only
26

27 ¹² Undersigned counsel notes that Magistrate Judge Walsh suggested that a further discovery
28 conference might be in order on this matter, and is filing this application in order to have
something in writing to discuss at such a conference, hopefully in advance of the coming holidays.

1 to have all of the cases then transferred to another Judge, which is clearly a waste of
2 resources for both the Court and the parties. Again, as noted above, Movant has no
3 objection to a reasonable continuance of the 4(m) deadline.

4 **(h) Local Rule 7-19 Statement**

5 As required by L.R. 7-19, the contact information for plaintiff's counsel is as follows:

6 Brett L. Gibbs, Esq. (SBN 251000)

7 Of Counsel to Prenda Law Inc.

8 38 Miller Avenue, #263

9 Mill Valley, CA 94941

10 415-325-5900¹³

11 blgibbs@wefightpiracy.com

12 Mr. Gibbs indicated on the phone that he would oppose an application like this one. Dec'l.
13 of Morgan E. Pietz ¶ 6.

14 /

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27 ¹³ An issue undersigned counsel has raised with Mr. Gibbs previously, in state court litigation, is
28 that Mr. Gibbs does not appear to maintain a working fax number:

<http://members.calbar.ca.gov/fal/Member/Detail/251000>

1 **(i) Conclusion**

2 For the foregoing reasons, Movant respectfully requests (1) that leave be granted to
3 propound the specific proposed written discovery identified in Movant’s ex parte
4 application; (2) that the subpoena return date be stayed pending further order of this Court,
5 which shall be re-evaluated after verified responses have been served to the requested
6 written discovery; or (3) in the alternative, that the subpoena return date be stayed for 30
7 more days, to permit Movant to file a motion to quash the subpoena plaintiff issued to
8 Comcast seeking Movant’s identity.

9
10 Respectfully submitted,

11 DATED: December 18, 2012

THE PIETZ LAW FIRM

/s/ Morgan E. Pietz

Morgan E. Pietz

THE PIETZ LAW FIRM

Attorney for Putative John Doe(s)

Appearing on Caption

12
13
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16
17 **CERTIFICATE OF SERVICE**

18 I hereby certify that on this day, the above document was submitted to the CM/ECF
19 system, which sent notification of such filing(s) to the plaintiff, which is registered for
20 electronic service.

21 Respectfully submitted: December 18, 2012

THE PIETZ LAW FIRM

/s/ Morgan E. Pietz

Morgan E. Pietz

THE PIETZ LAW FIRM

Attorney for Putative John Doe(s)

Appearing on Caption