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7 Specially Appearing for Respondent
BRETT L. GIBBS

8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10

11 INGENUITY 13 LLC,
12 Plaintiff,

13 vs.

14 JOHN DOE,
15 Defendant.
16

Case No. 2:12-CV-8333-ODW (JCx)
[Assigned to Judge Otis D. Wright, II]

[PROPOSED] ORDER RE BRETT L. GIBBS' OBJECTIONS TO THE REPLY DECLARATION OF MORGAN E. PIETZ AND EXHIBITS THERETO AND THE TRANSCRIPT OF THE DEPOSITION OF AF HOLDINGS, LLC TAKEN ON FEBRUARY 19, 2013

[OSC Filed: August 1, 2012]

Trial date: None set

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22 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD HEREIN:**

23 Respondent Brett L. Gibbs submits the following proposed order re objections
24 to the Reply Declaration of Morgan E. Pietz and Exhibits thereto and the Deposition
25 Transcript of the deposition of AF Holdings LLC taken on February 19, 2013
26 submitted in response to the Court's February 7, 2013 Order to Show Cause.
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OBJECTIONS TO DECLARATION OF MORGAN E. PIETZ

<u>Material Objected to:</u>	<u>Grounds for Objection:</u>	<u>Ruling on Objection</u>
<p>1. Declaration of Morgan E. Pietz, pg. 2 ¶ 2, as follows: I represent ISP subscribers who have been targeted by Ingenuity 13, LLC, through its counsel Prenda Law, Inc. f/k/a Hansemeier PLLC (“Prenda”) in copyright infringement cases Ingenuity 13 filed in both the Central District of California, and the Northern District of California.</p>	<p>1. Irrelevant (<i>FRE</i> §§401, 402); Lacks Foundation and/or Personal Knowledge (<i>FRE</i> §602); Improper Opinion (<i>FRE</i> § 701); Speculation (<i>FRE</i> §602); Argumentative; Assumes Facts Not In Evidence; Improper Characterization of Evidence.</p>	<p>Sustained _____ Overruled _____</p>
<p>2. Declaration of Morgan E. Pietz, pg. 2 ¶ 2, as follows: I also represent other clients in other cases brought by Prenda on behalf of other entities, sometimes along with local counsel, in other courts.</p>	<p>2. Irrelevant (<i>FRE</i> §§401, 402).</p>	<p>Sustained _____ Overruled _____</p>
<p>3. Declaration of Morgan E. Pietz, pg. 2 ¶ 4, as follows: My clients in the Prenda cases, including this case, each received letters from their ISPs</p>	<p>3. Irrelevant (<i>FRE</i> §§401, 402); Lacks Foundation and/or Personal Knowledge (<i>FRE</i> §602); Assumes Facts Not In Evidence;</p>	<p>Sustained _____ Overruled _____</p>

<u>Material Objected to:</u>	<u>Grounds for Objection:</u>	<u>Ruling on Objection</u>
1 2 3 informing them that Prenda 4 was attempting to subpoena 5 their identity as part of a 6 lawsuit.	Improper Characterization of Evidence.	
7 4. Declaration of Morgan 8 E. Pietz, pg. 2 ¶ 4, as follows: 9 Generally, my clients are 10 people who happen to pay the 11 Internet bill for their 12 household, not necessarily the 13 people who actually committed 14 the alleged infringement or 15 other wrongful conduct.	4. Irrelevant (<i>FRE</i> §§401, 402); Lacks Foundation and/or Personal Knowledge (<i>FRE</i> §602); Argumentative; Assumes Facts Not In Evidence; Improper Characterization of Evidence.	Sustained _____ Overruled _____
16 5. Declaration of Morgan 17 E. Pietz, pg. 2 ¶ 4, as follows: 18 However, Prenda constructs its 19 lawsuits so as to make it 20 unclear what exactly is the 21 status of my clients. 22 23 24 25	5. Irrelevant (<i>FRE</i> §§401, 402); Lacks Foundation and/or Personal Knowledge (<i>FRE</i> §602); Improper Opinion (<i>FRE</i> § 701); Speculation (<i>FRE</i> §602); Argumentative; Assumes Facts Not In Evidence; Improper Characterization of Evidence.	Sustained _____ Overruled _____
26 6. Declaration of Morgan 27 E. Pietz, pg. 2 ¶ 4, as follows: 28	6. Irrelevant (<i>FRE</i> §§401, 402); Lacks Foundation	Sustained _____ Overruled _____

<u>Material Objected to:</u>	<u>Grounds for Objection:</u>	<u>Ruling on Objection</u>
<p>1 The complaint does not exactly 2 come out and say that the ISP 3 subscriber equals the John Doe 4 defendant. 5 6 7 8 9 10</p>	<p>and/or Personal Knowledge (<i>FRE</i> §602); Improper Opinion (<i>FRE</i> § 701); Speculation (<i>FRE</i> §602); Argumentative; Assumes Facts Not In Evidence; Improper Characterization of Evidence.</p>	
<p>11 7. Declaration of Morgan 12 E. Pietz, pg. 2 ¶ 4, as follows: 13 However the requests for early 14 discovery seeking leave to 15 issue ISP subpoenas, generally 16 tend to conflate ISP subscriber 17 with Doe defendant. 18 19 20</p>	<p>7. Irrelevant (<i>FRE</i> §§401, 402); Lacks Foundation and/or Personal Knowledge (<i>FRE</i> §602); Improper Opinion (<i>FRE</i> §§701; Speculation (<i>FRE</i> §602); Argumentative; Assumes Facts Not In Evidence; Improper Characterization of Evidence.</p>	<p>Sustained _____ Overruled _____</p>
<p>21 8. Declaration of Morgan 22 E. Pietz, pg. 3 ¶ 6, as follows: 23 Exhibit EE - Attached as 24 <u>Exhibit EE</u> hereto is a true and 25 correct copy of the [Amended] 26 “Motion for Withdrawal and 27 Substitution of Counsel” filed 28</p>	<p>8. Irrelevant (<i>FRE</i> §§401, 402); Lacks Foundation and/or Personal Knowledge (<i>FRE</i> §602); Hearsay (<i>FRE</i> §§801(c), 802); Speculation (<i>FRE</i> §602); Improper Characterization</p>	<p>Sustained _____ Overruled _____</p>

<u>Material Objected to:</u>	<u>Grounds for Objection:</u>	<u>Ruling on Objection</u>
3 by Mr. Gibbs in <i>AF Holdings,</i> 4 <i>LLC v. Andrew Magsumnol,</i> 5 N.D. Cal. No. 3:12-cv-4221- 6 SC ECF No. 22, 1/30/13.	of Evidence; Improper Authentication of Document (<i>FRE</i> §901).	
7 9. Declaration of Morgan 8 E. Pietz, pg. 3 ¶ 6, as follows: 9 On page 2, Mr. Gibbs lists 10 himself as “In-House Counsel, 11 AF Holdings LLC”. 12 13 14 15	9. Irrelevant (<i>FRE</i> §§401, 402); Lacks Foundation and/or Personal Knowledge (<i>FRE</i> §602); Hearsay (<i>FRE</i> §§801(c), 802); Speculation (<i>FRE</i> §602); Argumentative; Improper Characterization of Evidence.	Sustained _____ Overruled _____
16 10. Declaration of Morgan 17 E. Pietz, pg. 3 ¶ 6, as follows: 18 The prior day, January 29, 19 2013, Mr. Gibbs had filed a 20 different version of the same 21 motion (<i>id.</i> at ECF No. 21). 22 23 24 25 26 27 28	10. Irrelevant (<i>FRE</i> §§401, 402); Lacks Foundation and/or Personal Knowledge (<i>FRE</i> §602); Hearsay (<i>FRE</i> §§801(c), 802); Speculation (<i>FRE</i> §602); Argumentative; Improper Characterization of Evidence; Improper Authentication of Document (<i>FRE</i> §901).	Sustained _____ Overruled _____

<u>Material Objected to:</u>	<u>Grounds for Objection:</u>	<u>Ruling on Objection</u>
<p>11. Declaration of Morgan E. Pietz, pg. 3 ¶ 6, as follows: The only apparent difference between the two substitution motions was the addition of the line where Mr. Gibbs signed for AF Holdings, as in house counsel, in the amended motion.</p>	<p>11. Irrelevant (<i>FRE</i> §§401, 402); Lacks Foundation and/or Personal Knowledge (<i>FRE</i> §602); Hearsay (<i>FRE</i> §§801(c), 802); Speculation (<i>FRE</i> §602); Argumentative; Improper Characterization of Evidence.</p>	<p>Sustained _____ Overruled _____</p>
<p>12. Declaration of Morgan E. Pietz, pg. 3 ¶ 7, as follows: Exhibit FF - Attached as <u>Exhibit FF</u> hereto is a true and correct copy of the pleadings that Prenda’s local counsel in St. Clair County, Illinois, Kevin Hoerner, filed in on or around February 13, 2013, in <i>Guava, LLC v. Comcast Cable Communication, LLC</i>, Circuit Court of St. Clair County Illinois, No. 12-MR-417.</p>	<p>12. Irrelevant (<i>FRE</i> §§401, 402); Lacks Foundation and/or Personal Knowledge (<i>FRE</i> §602); Hearsay (<i>FRE</i> §§801(c), 802); Speculation (<i>FRE</i> §602); Improper Characterization of Evidence; Improper Authentication of Document (<i>FRE</i> §901).</p>	<p>Sustained _____ Overruled _____</p>
<p>13. Declaration of Morgan E. Pietz, pg. 3 ¶ 7, as follows: This pleading states on page 5</p>	<p>13. Irrelevant (<i>FRE</i> §§401, 402); Lacks Foundation and/or Personal Knowledge</p>	<p>Sustained _____ Overruled _____</p>

<u>Material Objected to:</u>	<u>Grounds for Objection:</u>	<u>Ruling on Objection</u>
<p>1 that the name of the person 2 who supposedly verified the 3 petition in that action is “Alan 4 Mony.” 5 6 7</p>	<p>(FRE §602); Hearsay (FRE §§801(c), 802); Speculation (FRE §602); Improper Characterization of Evidence.</p>	
<p>8 14. Declaration of Morgan 9 E. Pietz, pg. 3 ¶ 7, as follows: 10 On February 14, 2013, among 11 other questions, I asked 12 Prenda’s lawyers to confirm 13 the spelling of the purported 14 client who had signed the 15 verification, and Mr. Hoerner 16 responded that day (this was 17 the entire response); “The 18 issues have already been 19 briefed. See you in court.”</p>	<p>14. Irrelevant (FRE §§401, 402); Hearsay (FRE §§801(c), 802); Argumentative; Improper Characterization of Evidence.</p>	<p>Sustained _____ Overruled _____</p>
<p>20 15. Declaration of Morgan 21 E. Pietz, pg. 3 ¶ 8, as follows: 22 Exhibit GG - Attached as 23 <u>Exhibit GG</u> hereto is a true and 24 correct copy of the amended 25 verification filed by Prenda on 26 February 21, 2013 in Guava St. 27 Clair County action, 28</p>	<p>15. Irrelevant (FRE §§401, 402); Lacks Foundation and/or Personal Knowledge (FRE §602); Hearsay (FRE §§801(c), 802); Speculation (FRE §602); Argumentative; Assumes Facts Not In Evidence;</p>	<p>Sustained _____ Overruled _____</p>

<u>Material Objected to:</u>	<u>Grounds for Objection:</u>	<u>Ruling on Objection</u>
<p>1 purportedly executed by 2 someone spelling their name 3 “Alan Mooney.” 4 5 6</p>	<p>Improper Characterization of Evidence; Improper Authentication of Document (<i>FRE</i> §901).</p>	
<p>7 16. Declaration of Morgan 8 E. Pietz, pg. 3 ¶ 9, as follows: 9 Exhibit HH - Attached as 10 <u>Exhibit HH</u> hereto is a true and 11 correct copy of an explanatory 12 organization diagram I am 13 prepared for Prenda, etc. I am 14 prepared to explain this 15 document at the hearing and 16 can provide documentary 17 support for the connections. 18</p>	<p>16. Irrelevant (<i>FRE</i> §§401, 402); Lacks Foundation and/or Personal Knowledge (<i>FRE</i> §602); Hearsay (<i>FRE</i> §§801(c), 802); Speculation (<i>FRE</i> §602); Argumentative; Assumes Facts Not In Evidence; Improper Characterization of Evidence; Improper Authentication of Document (<i>FRE</i> §901).</p>	<p>Sustained _____ Overruled _____</p>
<p>19 17. Declaration of Morgan 20 E. Pietz, pgs. 3-4 ¶ 10, as 21 follows: Attached as <u>Exhibit II</u> 22 is a true and correct copy of 23 two Google Earth maps that I 24 prepared. The first map shows 25 the Wagar residence located at 26 1411 Paseo Jacardanda, Santa 27 Maria, California 93458. (ECF 28</p>	<p>17. Irrelevant (<i>FRE</i> §§401, 402); Lacks Foundation and/or Personal Knowledge (<i>FRE</i> §602); Hearsay (<i>FRE</i> §§801(c), 802); Speculation (<i>FRE</i> §602); Assumes Facts Not In Evidence; Improper Characterization of</p>	<p>Sustained _____ Overruled _____</p>

<u>Material Objected to:</u>	<u>Grounds for Objection:</u>	<u>Ruling on Objection</u>
<p>1 2 3 No. 50 ¶ 29). The second map 4 shows the Denton residence 5 located 635 S. Vanderwell 6 Avenue, West Covina, 7 California 91790.</p>	<p>Evidence; Improper Authentication of Document (<i>FRE</i> §901).</p>	
<p>8 18. Declaration of Morgan 9 E. Pietz, pgs. 3-4 ¶ 10, as 10 follows: In order to illustrate 11 the range of a WiFi network, 12 both maps show three circles 13 around the residence, each with 14 different radii: a 100 ft. circle 15 (green), a 300 ft. circle 16 (yellow), and a 500 ft. circle 17 (red).</p>	<p>18. Irrelevant (<i>FRE</i> §§401, 402); Lacks Foundation and/or Personal Knowledge (<i>FRE</i> §602); Hearsay (<i>FRE</i> §§801(c), 802); Speculation (<i>FRE</i> §602); Argumentative; Assumes Facts Not In Evidence; Improper Characterization of Evidence.</p>	<p>Sustained _____ Overruled _____</p>
<p>18 19. Declaration of Morgan 19 E. Pietz, pg. 4 ¶ 11, as follows: 20 Exhibit JJ - Attached as <u>Exhibit</u> 21 <u>JJ</u> hereto is a true and correct 22 copy of the manual, chapter 4, 23 for a wireless router owned by 24 a client of mine in a prior, 25 unrelated case. 26 27 28</p>	<p>19. Irrelevant (<i>FRE</i> §§401, 402); Lacks Foundation and/or Personal Knowledge (<i>FRE</i> §602); Hearsay (<i>FRE</i> §§801(c), 802); Speculation (<i>FRE</i> §602); Assumes Facts Not In Evidence; Improper Characterization of Evidence; Improper</p>	<p>Sustained _____ Overruled _____</p>

<u>Material Objected to:</u>	<u>Grounds for Objection:</u>	<u>Ruling on Objection</u>
	Authentication of Document (<i>FRE</i> §901).	
<p>20. Declaration of Morgan E. Pietz, pg. 4 ¶ 11, as follows: The router at issue there was about ten years old, and specified a range of between 300-500 ft., per page 4-2. This is simply an example of the kind of signal range available on a not-state-of-the-art router.</p>	<p>20. Irrelevant (<i>FRE</i> §§401, 402); Lacks Foundation and/or Personal Knowledge (<i>FRE</i> §602); Hearsay (<i>FRE</i> §§801(c), 802); Speculation (<i>FRE</i> §602); Argumentative; Assumes Facts Not In Evidence; Improper Characterization of Evidence; Improper Authentication of Document (<i>FRE</i> §901).</p>	<p>Sustained _____ Overruled _____</p>

**OBJECTIONS TO DEPOSITION TRANSCRIPT OF AF HOLDINGS LLC
TAKEN ON FEBRUARY 19, 2013**

<u>Material Objected to:</u>	<u>Grounds for Objection:</u>	<u>Ruling on Objection</u>
<p>1. Deposition Transcript of the Deposition of AF Holdings LLC’s designated witness taken on February 19, 2013 and lodged with the Court on March 7 and 8, 2013.</p>	<p>1. Irrelevant (<i>FRE</i> §§401, 402); Lacks Foundation and/or Personal Knowledge (<i>FRE</i> §602); Hearsay (<i>FRE</i> §§801(c), 802); Speculation (<i>FRE</i> §602); Argumentative; Assumes</p>	<p>Sustained _____ Overruled _____</p>

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<u>Material Objected to:</u>	<u>Grounds for Objection:</u>	<u>Ruling on Objection</u>
	Facts Not In Evidence; Improper Characterization of Evidence; Improper Authentication of Document (<i>FRE</i> §901).	

DATED: _____

By: _____
Honorable Otis D. Wright, II
Judge of the United States District Court