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10  
11 **IN THE UNITED STATES DISTRICT COURT**  
12 **FOR THE DISTRICT OF ARIZONA**

13 AF HOLDINGS, L.L.C., a St. Kitts and  
14 Nevis limited liability company,

Case No.: 2:12-cv-02144-PHX – GMS

15 Plaintiff,

**REPLY TO PLAINTIFF'S  
RESPONSE TO MOVANT'S  
MOTION FOR STAY DISCOVERY,  
QUASH THE SUBPOENA, AND FOR  
PROTECTIVE ORDER**

16 v.

17 DAVID HARRIS,

18 Defendant.  
19

20 Movants, who are non-parties and identified by IP Address Nos. 72.223.91.187,  
21 68.230.120.162, 68.106.45.9, 68.2.87.48, 98.165.107.179 and 68.2.92.187, hereby  
22 submit a Reply in support of their Motion for Stay, Motion to Quash the Subpoena and  
23 Entry of a Protective Order. Plaintiff's untimely response makes the same tireless  
24 argument that Movants (as non-parties) lack standing, while concocting a tin foil hat  
25 theory that the Movants are interlopers without connection to the subpoena, and by  
26 doing so, makes a baseless attack on undersigned counsel's integrity.

27 The Movants respectfully request that pursuant to Rule 12 (f)(1), the Court strike  
28 Plaintiff's response that was filed nearly **three weeks** after its deadline to respond  
expired. Without striking the Response, the time afforded Plaintiff to respond under

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1 LRCiv. 7.2(c) and Rule 6(d), Fed. R. Civ. P., becomes meaningless.

2 In the event the Court is inclined to consider the Response, it nevertheless fails to  
3 rebut the Movants' right to bring the motion, or the evidence and argument in support of  
4 their requested remedies. Significantly, yesterday the court in the consolidated cases of  
5 *Ingenuity 13, LLC v. John Doe, C.D. Cal.*, 2:12-cv-08333, entered its Order Issuing  
6 Sanctions. (Doc. No. 130). Included in the order are findings of deceptive and  
7 fraudulent conduct involving Plaintiff and a referral to the United States Attorneys'  
8 Office for the Central District of California and the IRS - Criminal Investigation  
9 Division. This order only reinforces the need for a stay at a minimum, if not an outright  
10 dismissal (*sua sponte*) with prejudice. Because of the findings contained in this order,  
11 the sanctions, namely, referrals to commence additional investigation/proceedings that  
12 will ultimately bear on Plaintiff and Prenda Law's right and ability to continue  
13 prosecuting copyright infringement claims and carrying on with its coercive settlement  
14 business model, the requested remedies are well founded at this juncture. And the  
15 Movants respectfully request leave to bring a Motion for Sanctions against Plaintiff and  
16 Prenda Law for attorneys fees they have been forced to take protective measures to fight  
17 a subpoena requesting their contact information that is based on a facially implausible  
18 conspiracy theory.

19  
20 **I. Motion to Stay**

21 **A. The Movants Have A Legally Protectable Interest To Keep Identity**  
22 **From Plaintiff and Avoid Being Harassed For Settlement Dollars.**

23 *Patrick Collins, Inc. v. John Does 34-51*, 2012 WL 993379 \*2 (S.D. Cal. 2012)  
24 (stating subscribers have interest in subpoena directed to ISP because personal  
25 identifying information at stake). As noted above, the Movants are represented by  
26 undersigned counsel and identified by their respective IP addresses. These same IP  
27 addresses are unequivocally being targeted by Plaintiff's subpoena. (See Subpoena  
28 Attachment, Doc No. 44-1 at Pgs. 5-6). The Movants submitted a redacted letter from  
Cox Communications containing an IP address that is identical to an IP address

1 described above and in the Subpoena Attachment. But to demonstrate that undersigned  
2 counsel is not representing little green people harboring anti-copyright sentiments, but  
3 instead real individuals seeking Court protection to avoid being identified and harassed  
4 for settlement dollars, the remainder of the redacted letters from Cox Communication  
5 are submitted herewith. (See Exhibit 1). The Movants are also happy to provide  
6 unredacted copies of the Cox Communication letters to the Court for in camera review  
7 or provide any other additional proof, should the Court be so inclined to request same.

8  
9 **B. The Movants Have Demonstrated A Right To Seek the Requested Relief.**

10 The Movants, as non-parties, have the right to seek the relief requested in their  
11 Motion. Plaintiff's artificial distinction of the *Best Western International* and *Coty, Inc.*  
12 cases, lacks merit. (See Response, Doc No. 48 at Pg. 2, fn 2.). Plaintiff ignored  
13 Movant's authority supporting the proposition that purported co-conspirators are  
14 essentially John Doe defendants. (Motion, Doc No. 44 at 11:15-16, citing *Millennium*  
15 *TGA v. Paschall*, Southern District of California, 12-cv-0792, Doc No. 7 at 5:10-17).  
16 And Plaintiff's distinction between a subpoena recipient and subpoena target is not  
17 meaningful. Both are non-parties who are involuntarily brought into the discovery  
18 process by a party. And the Movants will undoubtedly be targeted and threatened as  
19 potential defendants in this lawsuit (or in a new filing) unless they agree to settle with  
20 Plaintiff and Prenda Law. **Significantly, Plaintiff cannot point to any authority or**  
21 **rule of Civil Procedure preventing non-parties like Movants from seeking to stay**  
22 **discovery or quashing the subpoena.**

23  
24 And while the requested relief is sweeping, the nature of the collateral  
25 proceedings, namely, the findings of fact by Judge Wright, referral to bar disciplinary  
26 committees and referral to federal law enforcement agencies, as well as the Minnesota  
27 state action seeking damages for a misappropriated identity, more than justify the  
28 requested relief. And frankly justifies the Court's *sua sponte* dismissal of this entire case  
with prejudice.

1           **C. Plaintiff's Claimed Damage Is Largely Unfounded But is Nevertheless**  
2           **Self-Inflicted.**

3           Plaintiff's claim that it will be greatly damaged is unfounded. Plaintiff has  
4 already subpoenaed the ISP, and the ISP has notified those subscribers whom were  
5 assigned an IP address on the date and time of the alleged infringement. The stay acts  
6 to suspend the matter, not dismiss it with prejudice nor discharge the ISP duty to comply  
7 with the subpoena (unless the Court is so inclined). The ISP's have surely preserved this  
8 information, and undoubtedly have competent legal guidance to preserve same until  
9 ordered by this Court to release the information or it no longer maintains a preservation  
10 duty. And although Plaintiff's concern that the electronically stored information on the  
11 purported co-conspirator hard drives has legitimacy on the surface, it is a red herring  
12 here. Plaintiff and Prenda Law primary reason to ascertain identity is to drive settlement  
13 dollars. (See 2:12-cv-08333, Doc No. 130 at Pg. 4, ¶¶ 4-6). And undersigned counsel is  
14 not aware of any specific case out of hundreds or a specific alleged infringer out of tens  
15 of thousands, where either Plaintiff or Prenda Law has actually conducted a forensic  
16 examination of a computer hard drive for evidence of infringing material.

17           **D. The Movants Will be Damaged By Plaintiff's Desperate and Abusive**  
18           **Attempts to Coerce Settlements**

19           Allowing litigation to proceed given the firestorm that Plaintiff and Prenda Law  
20 face will damage the Movants who will be unjustifiably be on the receiving end of  
21 harassing phone calls shaking them down for money. Plaintiff's response rants on about  
22 the assignment meeting the legal requirements, while ignoring the real issue, that it  
23 nevertheless filed an assignment in federal court containing a forged signature. See *Id.*  
24 at 8:9:11 ("although a recipient of a copyright assignment need not sign the document, a  
25 forgery is still a forgery. And trying to pass that forged document by the Court smacks  
26 of fraud"). And it does nothing to dispel concerns that it will use subscriber contact  
27 information to coerce settlements.

28           Given the severity of Judge Wright's sanctions against Plaintiff and Prenda Law,  
both will desperately continue using the federal courts to generate revenue unless and

1 until they are stopped from doing so. Judge Wright used the term "vexatious litigation,"  
2 to describe Prenda Law's cookie cutter "litigation strategy designed to coerce  
3 settlements." (2:12-cv-08333, Doc. No. 130 at Pg. 4, ¶ 5). Based on Plaintiff and  
4 Prenda Law's demonstrated practice in coercing settlements and Judge Wright's findings  
5 and sanctions, it's clear the damage that will be caused to Movants and other subscribers  
6 if the litigation is allowed to continue.

7  
8 **E. Disposition of the Collateral Proceedings Will Undoubtedly Determine  
9 Whether Plaintiff Has Right and Ability to Continue Prosecuting  
10 Copyright Infringement Cases.**

11 The orderly course of justice will be served because these other collateral  
12 proceedings will determine whether Plaintiff remains a viable business capable of  
13 bringing federal lawsuits, the breadth of the fraud it (through its de facto principals) has  
14 committed on federal courts and to close off the federal courts as a way to generate  
15 revenue through coerced settlements. Judge Wright made a number of serious factual  
16 findings involving Plaintiff and Prenda Law that cast serious doubt whether Plaintiff  
17 should be allowed to continue with this litigation. Specifically, Judge Wright found:

- 18 • Prenda Law (John Steele, Paul Hansmeier and Paul Duffy) created entities  
19 like Plaintiff to shield them from liability and create an appearance of  
20 legitimacy (Pg. 3, ¶ 1)
- 21 • Plaintiff is a shell organization owned and operated by Prenda Law (Pg. 4 at ¶  
22 2).
- 23 • Plaintiff and Prenda Law used the Copyright Act and federal courts to  
24 effectuate a successful business model designed to maximize returns  
25 (settlement dollars) by leveraging the threat of the Copyright Act's high  
26 statutory damages, embarrassing nature of pornographic materials and pricing  
27 a settlement just below the cost of a bare bones defense while minimizing  
28 costs (cookie cutter litigation), dismissing against determined defendants and  
avoiding disclosure/production of discovery information. (Pg. 4 at ¶¶ 3, 4, 5  
and 6, Pg. 5 at ¶ 11).

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- 1 • Prenda Law used local counsel to prosecute the actions while controlling and  
2 directing the litigation. (Pg. 5 at ¶¶ 7-8, 10).
- 3 • Prenda Law stole the identity of Alan Cooper, held him out as an officer of  
4 Plaintiff and fraudulently signed the copyright assignment using his forged  
5 signature (Pg. 5 at ¶ 9).
- 6 • Plaintiff and Prenda Law have deceived the federal courts in which Plaintiff  
7 has appeared, with "representations about operations, relationships and  
8 financial interests [ranging] from feigned ignorance to misstatements to  
9 outright lies." (Pg. 5 at ¶ 11).

10 And equally significant are what still remains unclear, namely, the breadth and specific  
11 details concerning Plaintiff and Prenda Law's operations and relationships. (See Pg. 8:9-  
12 28). Specifically whether Plaintiff was validly formed (was Alan Cooper's identity and  
13 forged signature used in connection with company formation), the extent to which it was  
14 used as an offshore shell company to engage in criminal behavior (i.e. tax evasion) and a  
15 more thorough detailed examination of the inner-workings of this "enterprise."  
16

17 Based on these lingering questions, caused in significant part by the Prenda Law  
18 principles invoking their 5th Amendment right against self-incrimination, Judge Wright  
19 referred the matter to the United States Attorneys' Office for the Central District of  
20 California and the IRS-CID to open up a criminal investigation and a potential criminal  
21 prosecution. And along with the Minnesota action commenced by Mr. Cooper  
22 concerning his misappropriated identity, these further collateral proceedings will most  
23 likely flush these issues out further.

24 Therefore it's clear that the orderly course of justice will be served by staying this  
25 action.

26 **II. Motion To Quash**

27 The Movants have an expectation of privacy in keeping their identity confidential  
28 from Plaintiff and Prenda Law. (Motion, Doc No. 44 at 15:5-10). See *Patrick Collins*,  
*supra* at 2:23-25; See also *West Coast Prod., Inc. v. Does 1-5829*, 275 F.R.D. 9, 13-14

1 (D.D.C. 2011) (internet subscribers right to remain anonymous balanced against  
2 plaintiff's need for the information to prosecute its copyright infringement claim). The  
3 subpoena undeniably requests confidential information, namely, the Movants' identity  
4 and contact information. Therefore, the Movants have an expectation of privacy. And  
5 although this interest is minimal compared to a copyright holders right to the  
6 information under normal circumstances, any difference is eviscerated by the highly  
7 extraordinary facts and circumstances of this particular case. Plaintiffs need for this  
8 information at this particular point in time is non-existent.

9  
10 Plaintiff's attempt to distract the Court by casting the Movant's motion to quash as  
11 grounded on arguments of "undue burden," is unfounded and unpersuasive. Nowhere do  
12 Movants seek to quash the subpoena on grounds that it will result in an undue burden.  
13 Therefore, the Movant's request to quash the subpoena should be granted.

### 14 **III. Entry of a Protective Order**

15 Plaintiff and Prenda Law's abusive litigation tactics and coercive settlements has  
16 been well established and documented. The protective order is needed to protect the  
17 Movants from being annoyed and harassed by Plaintiff's incessant phone calls and  
18 repeated attempts to coerce settlement dollars. As a threshold matter, should this  
19 litigation resume, Plaintiff should be required to demonstrate that its subpoena meets the  
20 factors set forth in *Sony Music Entm't v. Does 1-40*, 326 F. Supp. 2d 556, 564-565  
21 (S.D.N.Y. 2004) (discussing five important factors involving subpoenas seeking  
22 disclosure of subscriber identity from ISP). For example, the first factor requires that  
23 Plaintiff make a prima facie showing that a conspiracy exists between Mr. Harris and the  
24 Movants (and other subscribers). *Id.* Significantly, the Subpoena Attachment identifies  
25 the Movants allegedly downloaded Plaintiff's work on different dates between  
26 November 10, 2012 and February 1, 2013. How are they part of a conspiracy with Mr.  
27 Harris who allegedly downloaded Plaintiff's work on June 3, 2011? Plaintiff has  
28 presented no evidence that Mr. Harris has continued infringing Plaintiff's copyright (or  
directing others to do so), or that the Movants (and other subscribers) were part of this

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1 purported conspiracy back in June 2011. The facial implausibility of this so called  
2 conspiracy only reinforces that notion that the subpoena and the purported rationale (see  
3 Doc No. 39) is merely a pretext to unmask subscribers to coerce settlement money from  
4 them. A protective order is necessary to prevent Plaintiff and Prenda Law from using  
5 federal courts to continue its abusive litigation tactics and business model dependent on  
6 coercive settlements.

7  
8 **IV. Movants Request Leave to Bring Motion Requesting Sanctions for Attorneys  
Incurred Attorneys' Fees**

9 The Movants respectfully request that the Court grant leave for the Movants to  
10 bring a motion for sanctions requesting attorneys' fees under Rule 11, Fed. R. Civ. P.  
11 and the Court's inherent authority. see *Chambers v. NASCO, Inc.*, 501 U.S. 32, 45-46,  
12 111 S. Ct. 2123, 2133, 115 L. Ed. 2d 27 (1991) (a court may assess attorney's fees when  
13 a party has acted in bad faith, vexatiously, wantonly, or for oppressive reasons). Given  
14 that Plaintiff has unnecessarily and unjustifiably targeted the Movants, among others,  
15 under the pretext of an extremely questionable conspiracy claim, coupled with Judge  
16 Wright's findings of fact, demonstrate the bad faith nature of this subpoena.

17 **V. Conclusion**

18 Based on the foregoing, the Movants respectfully request that the Court grant  
19 their requested remedies and grant leave to bring a motion for sanctions against Plaintiff  
20 and Prenda Law.

21 RESPECTFULLY submitted this 7th day of May, 2013.

22  
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24  
25 By /s/ Paul D. Ticen  
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**CERTIFICATE OF FILING AND SERVICE**

Pursuant to the Case Management/Electronic Case Filing Administrative Policies and Procedures Manual (“CM/ECF Manual”) of the United States District Court for the District of Arizona, I hereby certify that on May 7th, 2013, I electronically filed:

**REPLY TO PLAINTIFF'S RESPONSE TO MOVANT'S MOTION FOR STAY DISCOVERY, QUASH THE SUBPOENA, AND FOR PROTECTIVE ORDER**  
with the U.S. District Court clerk’s office using the ECF system, which will send notification of such filing to the assigned Judge and to the following counsel of record:

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