1 2 3 4 5 6 7 8 9	ANDREW J. WAXLER, SBN 113682 BARRY Z. BRODSKY, SBN 93565 WON M. PARK, SBN 194333 WAXLER • CARNER • BRODSKY LLP 1960 East Grand Avenue, Suite 1210 El Segundo, California 90245 Telephone: (310) 416-1300 Facsimile: (310) 416-1310 e-mail: awaxler@wcb-law.com e-mail: bbrodsky@wcb-law.com wpark@wcb-law.com Specially Appearing for Respondent BRETT L. GIBBS  UNITED STATES I	
10		
11	INGENUITY 13 LLC, )	Case No. 2:12-CV-8333-ODW (JCx)
12		[Assigned to Judge Otis D. Wright, II]
13	Plaintiff, )	
14	VS.	[PROPOSED] ORDER RE BRETT L. GIBBS' OBJECTIONS TO THE
15	JOHN DOE,	REPLY DECLARATION OF MORGAN E. PIETZ AND
16	Defendant.	EXHIBITS THERETO AND THE TRANSCRIPT OF THE
17		DEPOSITION OF AF HOLDINGS, LLC TAKEN ON FEBRUARY 19, 2013
18 19		[OSC Filed: August 1, 2012]
20		Trial date: None set
21		
22	TO ALL PARTIES AND THEIR ATTO	RNEYS OF RECORD HEREIN:
23	Respondent Brett L. Gibbs submits t	he following proposed order re objections
24	to the Reply Declaration of Morgan E. Piet	z and Exhibits thereto and the Deposition
25	Transcript of the deposition of AF Holding	s LLC taken on February 19, 2013
26	submitted in response to the Court's Februa	ary 7, 2013 Order to Show Cause.
27	Î	
28		
	1	

1	OBJECTIONS TO DECLARATION OF MORGAN E. PIETZ		
2	Material Objected to:	Grounds for Objection:	Ruling on
3			<b>Objection</b>
4	1. Declaration of Morgan	1. Irrelevant (FRE §§401,	Sustained
5	E. Pietz, pg. 2 ¶ 2, as follows:	402); Lacks Foundation	Overruled
6	I represent ISP subscribers who	and/or Personal Knowledge	
7	have been targeted by	(FRE §602); Improper	
8	Ingenuity 13, LLC, through its	Opinion (FRE § 701);	
9	counsel Prenda Law, Inc. f/k/a	Speculation (FRE §602);	
10	Hansemeier PLLC ("Prenda")	Argumentative; Assumes	
11	in copyright infringement cases	Facts Not In Evidence;	
12	Ingenuity 13 filed in both the	Improper Characterization	
13	Central District of California,	of Evidence.	
14	and the Northern District of		
15	California.		
16	2. Declaration of Morgan	2. Irrelevant (FRE §§401,	Sustained
17	E. Pietz, pg. 2 ¶ 2, as follows:	402).	Overruled
18	I also represent other clients in		
19	other cases brought by Prenda		
20	on behalf of other entities,		
21	sometimes along with local		
22	counsel, in other courts.		
23	3. Declaration of Morgan	3. Irrelevant (FRE §§401,	Sustained
24	E. Pietz, pg. 2 ¶ 4, as follows:	402); Lacks Foundation	Overruled
25	My clients in the Prenda cases,	and/or Personal Knowledge	
26	including this case, each	(FRE §602); Assumes	
27	received letters from their ISPs	Facts Not In Evidence;	
28			
		2	

<ul> <li>Material Objected to:</li> <li>informing them that Prenda</li> <li>was attempting to subpoena</li> <li>their identity as part of a</li> <li>lawsuit.</li> <li>4. Declaration of Morgan</li> <li>E. Pietz, pg. 2 ¶ 4, as follows:</li> </ul>	Grounds for Objection:  Improper Characterization of Evidence.  4. Irrelevant (FRE §§401,	Ruling on Objection
was attempting to subpoena their identity as part of a lawsuit.  4. Declaration of Morgan	of Evidence.	Objection
was attempting to subpoena their identity as part of a lawsuit.  4. Declaration of Morgan	of Evidence.	
their identity as part of a lawsuit.  4. Declaration of Morgan		
lawsuit.  4. Declaration of Morgan	4. Irrelevant (FRE §§401,	
4. Declaration of Morgan	4. Irrelevant (FRE §§401,	
	4. Irrelevant (FRE §§401,	
E. Pietz, pg. 2 ¶ 4, as follows:		Sustained
· ·	402); Lacks Foundation	Overruled
Generally, my clients are	and/or Personal Knowledge	
people who happen to pay the	(FRE §602);	
Internet bill for their	Argumentative; Assumes	
household, not necessarily the	Facts Not In Evidence;	
people who actually committed	Improper Characterization	
the alleged infringement or	of Evidence.	
other wrongful conduct.		
5. Declaration of Morgan	5. Irrelevant (FRE §§401,	Sustained
E. Pietz, pg. 2 ¶ 4, as follows:	402); Lacks Foundation	Overruled
However, Prenda constructs its	and/or Personal Knowledge	
lawsuits so as to make it	(FRE §602); Improper	
unclear what exactly is the	Opinion (FRE § 701);	
status of my clients.	Speculation (FRE §602);	
	Argumentative; Assumes	
	Facts Not In Evidence;	
	Improper Characterization	
	of Evidence.	
6. Declaration of Morgan	6. Irrelevant (FRE §§401,	Sustained
E. Pietz, pg. 2 ¶ 4, as follows:	402); Lacks Foundation	Overruled
	people who happen to pay the Internet bill for their household, not necessarily the people who actually committed the alleged infringement or other wrongful conduct.  5. Declaration of Morgan E. Pietz, pg. 2 ¶ 4, as follows: However, Prenda constructs its lawsuits so as to make it unclear what exactly is the status of my clients.  6. Declaration of Morgan	people who happen to pay the Internet bill for their household, not necessarily the people who actually committed the alleged infringement or other wrongful conduct.  5. Declaration of Morgan E. Pietz, pg. 2 ¶ 4, as follows: However, Prenda constructs its lawsuits so as to make it unclear what exactly is the status of my clients.  (FRE §602); Improper Characterization of Evidence.  5. Irrelevant (FRE §\$401, 402); Lacks Foundation and/or Personal Knowledge (FRE §602); Improper Opinion (FRE § 701); Speculation (FRE §602); Argumentative; Assumes Facts Not In Evidence; Improper Characterization of Evidence.  6. Declaration of Morgan  6. Irrelevant (FRE §\$401,

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

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

1	Material Objected to:	Grounds for Objection:	Ruling on
2	iviaterial Objected to:	Grounds for Objection:	Objection
3	11. Declaration of Morgan	11 Implement (EDE \$\$401	Sustained
4		11. Irrelevant (FRE §§401,	
	E. Pietz, pg. 3 ¶ 6, as follows:	402); Lacks Foundation	Overruled
5	The only apparent difference	and/or Personal Knowledge	
6	between the two substitution	(FRE §602); Hearsay (FRE	
7	motions was the addition of the	§§801(c), 802);	
8	line where Mr. Gibbs signed	Speculation (FRE §602);	
9	for AF Holdings, as in house	Argumentative; Improper	
10	counsel, in the amended	Characterization of	
11	motion.	Evidence.	
12	12. Declaration of Morgan	12. Irrelevant (FRE §§401,	Sustained
13	E. Pietz, pg. 3 ¶ 7, as follows:	402); Lacks Foundation	Overruled
14	Exhibit FF - Attached as	and/or Personal Knowledge	
15	Exhibit FF hereto is a true and	(FRE §602); Hearsay (FRE	
16	correct copy of the pleadings	§§801(c), 802);	
17	that Prenda's local counsel in	Speculation (FRE §602);	
18	St. Clair County, Illinois,	Improper Characterization	
19	Kevin Hoerner, filed in on or	of Evidence; Improper	
20	around February 13, 2013, in	Authentication of	
21	Guava, LLC v. Comcast Cable	Document (FRE §901).	
22	Communication, LLC, Circuit		
23	Court of St. Clair County		
24	Illinois, No. 12-MR-417.		
25	13. Declaration of Morgan	13. Irrelevant (FRE §§401,	Sustained
26	E. Pietz, pg. 3 ¶ 7, as follows:	402); Lacks Foundation	Overruled
27	This pleading states on page 5	and/or Personal Knowledge	
28			

1	Material Objected to:	Grounds for Objection:	Ruling on
2			<u>Objection</u>
3	that the name of the person	(FRE §602); Hearsay (FRE	
4	who supposedly verified the	§§801(c), 802);	
5	petition in that action is "Alan	Speculation (FRE §602);	
6	Mony."	Improper Characterization	
7		of Evidence.	
8	14. Declaration of Morgan	14. Irrelevant (FRE §§401,	Sustained
9	E. Pietz, pg. 3 ¶ 7, as follows:	402); Hearsay (FRE	Overruled
10	On February 14, 2013, among	§§801(c), 802);	
11	other questions, I asked	Argumentative; Improper	
12	Prenda's lawyers to confirm	Characterization of	
13	the spelling of the purported	Evidence.	
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."		
20	15. Declaration of Morgan	15. Irrelevant (FRE §§401,	Sustained
21	E. Pietz, pg. 3 ¶ 8, as follows:	402); Lacks Foundation	Overruled
22	Exhibit GG - Attached as	and/or Personal Knowledge	
23	Exhibit GG hereto is a true and	(FRE §602); Hearsay (FRE	
24	correct copy of the amended	§§801(c), 802);	
25	verification filed by Prenda on	Speculation (FRE §602);	
26	February 21, 2013 in Guava St.	Argumentative; Assumes	
27	Clair County action,	Facts Not In Evidence;	
28	L		

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

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

1	Material Objected to:	<b>Grounds for Objection:</b>	Ruling on
2			<b>Objection</b>
3		Authentication of	
4		Document (FRE §901).	
5	20. Declaration of Morgan	20. Irrelevant (FRE §§401,	Sustained
6	E. Pietz, pg. 4 ¶ 11, as follows:	402); Lacks Foundation	Overruled
7	The router at issue there was	and/or Personal Knowledge	
8	about ten years old, and	(FRE §602); Hearsay (FRE	
9	specified a range of between	§§801(c), 802);	
10	300-500 ft., per page 4-2. This	Speculation (FRE §602);	
11	is simply an example of the	Argumentative; Assumes	
12	kind of signal range available	Facts Not In Evidence;	
13	on a not-state-of-the-art router.	Improper Characterization	
14		of Evidence; Improper	
15		Authentication of	
16		Document (FRE §901).	
17			

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

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

\_\_\_\_10

#.2013		
Material Objected to:	Grounds for Objection:	Ruling on Objection
	Facts Not In Evidence;	
	Improper Characterization	
	of Evidence; Improper	
	Authentication of	
	Document (FRE §901).	
DATED:	By:	
	Honorable Otis D. Wri Judge of the United Sta	
	Judge of the Officed Sta	ates District Court
	1 1	
	11	and the contract of the contra