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9 Axel Braun

10 **UNITED STATES DISTRICT COURT**  
11 **NORTHERN DISTRICT OF CALIFORNIA**

12 AXEL BRAUN,

13 Plaintiff,

14 vs.

15 PRIMARY DISTRIBUTOR DOE  
16 NUMBER 1 and DEFENDANT DOES 2  
17 through 69,

18 Defendants.

19 )  
20 ) **Case No.: 12-3690 YGR (JSC)**

21 )  
22 ) **CASE MANAGMENT CONFERENCE**  
23 ) **STATEMENT**  
24 ) **AND [PROPOSED] ORDER**

25 ) **Date: Feb. 25, 2012**

26 ) **Time: 2:00 p.m.**

27 ) **CtRm: 5, 2<sup>nd</sup> Floor**  
28 )

19 Plaintiff provides this Separate Case Management Case which deviates from the  
20 Northern District's form Joint Case Management Conference statement because of the unique  
21 nature of the case.

22 Plaintiff requested leave to take early discovery in order to identify the Internet  
23 subscribers whose accounts the Doe Defendants used to access the Internet and engage in the  
24 infringing activity alleged in the Complaint. See Docket No. 4. The Court granted Plaintiff's  
25 request and Plaintiff subpoenaed a number of Internet Service providers. See Docket No. 7.

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1 Plaintiff resolved its claims with some potential Defendants and dismissed those  
2 Defendants with prejudice. See Docket Nos. 27 and 33.

3 In cases where the ISPs did not have information for the IP address, where the name of  
4 the subscriber did not lead to the identity of the infringer, or where after investigation the  
5 infringer is found to reside within California but outside of the Northern District, Plaintiff  
6 dismissed the representative Does without prejudice. See Docket Nos. 28 and 34. Plaintiff  
7 will re-file against some of those individuals in their home districts.

8 Some of the service providers have not yet provided information. One Comcast  
9 subscriber, identifying himself as Doe Y, filed a motion to dismiss for lack of joinder.  
10 Docket No. 19. One December 18, 2012, Magistrate Judge Corley issued a Report and  
11 Recommendation denying the motion. Docket No. 32. The subscriber did not file any  
12 objections. However, the Court has not yet issued an order adopting or rejecting the  
13 Magistrate's Recommendations. In the meantime, Comcast, has refused to produce  
14 information for any of the 13Comcast subscribers until a final ruling on the Motion to  
15 Dismiss. Although Plaintiff believes this action by Comcast is improper, Plaintiff thought  
16 the best use of judicial resources would be to wait on the final ruling rather than bring a  
17 motion to compel. Once Comcast provides subscriber information, Plaintiff will quickly  
18 investigate to determine if it will proceed against any of the Comcast subscribers.

19 Currently Plaintiff intends to seek to amend the Complaint to name at least three  
20 Defendants, perhaps more depending on the information produced pursuant to the Comcast  
21 subpoena.

22 Although Plaintiff believed the it would be in a better position to move forward against  
23 named defendants by this point, the delay in obtaining the Comcast information has stymied  
24 Plaintiff's progress. Plaintiff believes it would be best to amend the Complaint once naming  
25 all parties it intends to proceed against rather than amend multiple times as Plaintiff makes  
26 each determination that it will proceed against an individual.

1 Plaintiff therefore respectfully requests that the Court issue an Order adopting the  
2 Report and Recommendation of Magistrate Corley and allow Plaintiff an additional 63 days  
3 to investigate the remaining subscribers and file its motion to amend the Complaint.  
4

5  
6 Dated: 2/8/2013

/s/ D. Gill Sperlein

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Counsel for plaintiff  
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9  
10 **[PROPOSED] CASE MANAGEMENT ORDER**

11 The Case Management Conference currently scheduled for February 25, 2013 at  
12 2:00 p.m. is rescheduled for April 29, 2013 at 2:00 p.m.  
13

14 IT IS SO ORDERED.

15 Dated:

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YVONNE GONZALEZ ROGERS  
UNITED STATES DISTRICT JUDGE  
16  
17  
18  
19

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