1

2

3

4

5   IN THE UNITED STATES DISTRICT COURT

6   FOR THE EASTERN DISTRICT OF CALIFORNIA

7

8   FIRST TIME VIDEOS, LLC,   )
)   2:11-cv-03478-GEB-EFB
9   Plaintiff,   )
)   ORDER CONTINUING STATUS
10   v.   )   (PRETRIAL SCHEDULING)
)   CONFERENCE
11 JOHN DOE,   )
)
12   Defendant.   )
    _____   )

13

14   Plaintiff states in its Status Report filed August 8, 2012, in

15 relevant part as follows:

16   Plaintiff is unable to serve the unidentified
         John Doe at this time. On December 30, 2011,
17   Plaintiff filed its Complaint. (Doc. No. 1.) On
         January 6, 2011, Plaintiff filed its Amended
18   Complaint. (Doc. No. 6.) Attached as Exhibit A to
         the Amended Complaint were a list of Internet
19   Protocol addresses associated with John Doe and his
         co-conspirators. (Doc. No. 6-1.) Per the Amended
20   Complaint, Plaintiff's agents observed these IP
         addresses unlawfully reproducing Plaintiff's
21   copyrighted work via the BitTorrent protocol. As
         further stated, "Plaintiff cannot ascertain the
22   identities of John Doe or his co-conspirators
         without information from their respective Internet
23   Service Providers ('ISPs')." (Doc. No. 6 at ¶ 4.)

24   Due to this need for information, on January
         12, 2012, Plaintiff filed its Ex Parte Application
25   for Leave to Take Expedited Discovery requesting
         the ability to discover[] the identifying
26   information of the IP address holders from the
         relevant ISPs. (Doc. No. 7.) On January 19, 2012,
27   the Court issued its Order granting in part and
         denying in part Plaintiff's Application. (Doc. No.
28   9, "January 19 Order.") While not allowing
         Plaintiff to serve subpoenas on ISPs to identify

1   the coconspirators—thus eliminating the possibility
     of naming and/or serving those individuals in this
2   case—the Court did allow Plaintiff to obtain the
     identifying information of the account holder whose
3   IP address was used by John Doe to infringe on
     Plaintiff's   copyrighted   works.   (Doc. No. 9.)
4   . . . .

5   On April 4, 2012, after discovering that the
     Court's January 19 Order erroneously identified the
6   Internet Protocol relating to John Doe, Plaintiff
     filed its Motion for Administrative Relief for an
7   Order Correcting a Clerical Error Under FRCP Rule
     60(a) to allow Plaintiff to serve a subpoena on
8   John Doe's Internet Service Provider, Comcast Cable
     Communications ("Comcast") to identify him (Doc.
9   No. 16). On April 16, 2012, the Court corrected the
     Internet Protocol address (Doc. No. 18, "April 16
10   Order"). Subsequently, Plaintiff served a copy of
     the April 16 Order and the relevant subpoena on
11   Comcast. . . .

12   Most recently, Plaintiff received notice from
     Comcast that, in light of the delay described
13   above, the subscriber information related to John
     Doe was no longer in their records. As of now,
14   therefore, that time-sensitive information no
     longer exists. Currently, Plaintiff is exploring
15   its options in this case in light of Comcast's
     recent response.

16

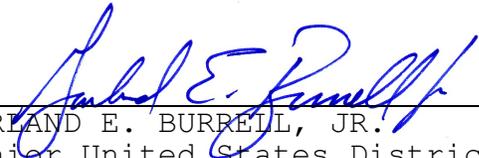17   (Status Report 1:33-3:6.)

18   These representations reveal this case is not ready to be

19   scheduled. Therefore, the Status (Pretrial Scheduling) Conference

20   scheduled for hearing on August 20, 2012, is continued to October 29,

21   2012, at 9:00 a.m. A further status report shall be filed no later than

22   fourteen (14) days prior to the Status Conference, in which Plaintiff

23   shall address its efforts to prosecute this action.

24   Further, if Plaintiff fails to take sufficient steps to

25   identify John Doe prior to the October 29, 2012 Status Conference,

26   Plaintiff shall show cause in its status report why this action should

27   not be dismissed for failure of prosecution. This action may be

28

1 dismissed with prejudice under Federal Rule of Civil Procedure 41(b) if

2 Plaintiff fails to respond to this Order.

3   IT IS SO ORDERED.

4 Dated: August 14, 2012

5

6 _____
   GARLAND E. BURRELL, JR.

7 Senior United States District Judge

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28