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7 IN THE UNITED STATES DISTRICT COURT FOR THE
8 NORTHERN DISTRICT OF CALIFORNIA
9 SAN FRANCISCO DIVISION

10 AF HOLDINGS LLC,
11 Plaintiff,

12 v.

13 DOES 1-96,
14 Defendants.

) **No. C-11-03335 JSC**

) Magistrate Judge: Hon. Jacqueline S. Corley

) **PLAINTIFF’S RESPONSE TO**
) **THE COURT’S REQUEST FOR**
) **SUPPLEMENTAL DECLARATION**

15 Hearing Date: n/a
16 Time: n/a

17 **PLAINTIFF’S RESPONSE TO THE COURT’S REQUEST FOR SUPPLEMENTAL**
18 **DECLARATION**

19 Plaintiff AF Holdings LLC, (“AF Holdings”) hereby submits, per the Court’s July 27, 2011,
20 Order Requesting Further Declaration (Doc. No. 10), the following Supplemental Declaration of
21 Peter Hansmeier Addressing the Court’s July 27, 2011 Order (hereinafter “Supplemental
22 Hansmeier Declaration”, attached hereto as Exhibit A). The Court will note that the Supplemental
23 Hansmeier Declaration is timely and sworn as required in the Court’s Order. Should the Court
24 require a hearing on the matter or further briefing, Plaintiff would be more than happy to oblige.

25 While the Court’s Order also allowed for Plaintiff, “if desired,” to file supporting
26 memorandum addressing the issues outlined in the Order, Plaintiff believes that such briefing would
27 be duplicative and unnecessary. Plaintiff feels that the Supplemental Hansmeier Declaration fully
28 covers the factual inquiries of the Court.

1 Plaintiff would, however, like to remind the Court of the general structure of its case. This
2 case is entirely built upon Plaintiff’s conservative motto to only sue individual doe defendants who
3 only exist in the same swarm and upload/download the same exact file amongst each other in the
4 State of California. This is evidenced in Plaintiff’s Complaint (See, e.g., Compl. ¶ 5, Plaintiff
5 alleged, ““Plaintiff used *geolocation technology* to trace the IP addresses of each Doe Defendant to a
6 point of origin *within the State of California*. . . . The series of transactions in this case involved the
7 Doe Defendants exchanging pieces of the Work over the Internet amongst one another with each
8 Doe Defendant sharing pieces of Plaintiff’s copyrighted file with each other and numerous third
9 parties [otherwise known as “torrent swarming”] to obtain a complete copy of Plaintiff’s Work
10 Doe Defendants in this case, in order to download Plaintiff’s Work, intentionally engaged in []
11 concerted action with other Doe Defendants by entering *the torrent swarm*.” (Compl. ¶¶ 3, 5
12 [emphasis added].) In other words, California-based Doe Defendants observed in this case interacted
13 in a single swarm exchanging bits and pieces of a unique file containing Plaintiff’s copyrighted
14 video. (*Id.*)

15 A swarm can only exist with respect to a single hash value (a hash value is simply a string of
16 characters that uniquely identifies a collection of data, such as a video—not unlike how a social
17 security number can be used to uniquely identify an individual—and videos of different resolutions,
18 for example, would be assigned different hash values). Plaintiff, thus, adequately alleged that the
19 defendants participated in a single swarm, which would naturally be associated with a single set of
20 data. Parenthetically, the nature of the BitTorrent protocol is that small swarms tend to die off while
21 large swarms tend to blossom. The reason for this is that BitTorrent experiences positive “network”
22 externalities (i.e., as a swarm grows the effectiveness of data transfer improves exponentially
23 because there are more sources of pieces of a file, and vice-versa). Thus, it is not unsurprising or
24 implausible, but in fact likely that files, such as the file observed containing Plaintiff’s video, were
25 exchanged in a single swarm—as opposed to multiple disparate swarms.

26 While the Court did not raise “single swarm, single file” questions, Plaintiff does understand
27 that other Courts in this District have. While the Court’s in those cases ultimately conclude that
28 Plaintiff’s counsel’s cases do qualify for joinder because, in fact, all doe defendants did participate in

1 the same swarm and exchanged the same file, there is usually a fair amount of confusion, as well as
2 time spent, getting there. *See, e.g., Hard Drive Productions v. Does 1-53*, C 11-2330 EDL Order
3 Granting Plaintiff Leave to Take Early Discovery (N.D. Cal. August 3, 2011). Plaintiff hopes that
4 this confusion can be avoided in this case by the prior explanations of the innate connectivity of the
5 Doe Defendants in this case who did in fact participate in the same swarm, downloading the same
6 file containing Plaintiff's copyrighted video.

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9 Respectfully Submitted,

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11 STEELE HANSMEIER, PLLC,

12 **DATED: August 12, 2011**

13 By: /s/ Brett L. Gibbs, Esq.
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