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10 Attorneys for Plaintiff,
11 Liberty Media Holdings, LLC

12 **IN THE UNITED STATES DISTRICT COURT**
13 **DISTRICT OF NEVADA**

14 Liberty Media Holdings, LLC, a California)
15 Corporation)
16 Plaintiff,)
17 vs.)
18 FF Magnat Limited d/b/a Oron.com; Maxim)
19 Bochenko a/k/a Roman Romanov; and John)
20 Does 1-500,)
21 Defendants.)

Case No.: 2:12-cv-01057

FILED UNDER SEAL

MOTION FOR ATTORNEY’S FEES

22 Please take notice that Plaintiff Liberty Media Holdings, LLC (“Liberty”) respectfully
23 moves for an order awarding attorney’s fees against Defendant FF Magnat Limited d/b/a Oron.com
24 (“Oron”). This motion is supported by the accompanying memorandum of points and authorities,
25 the contemporaneously filed Motion to Enforce Settlement, and any other matters that the Court
26 deems appropriate when considering the motion.

27 **MEMORANDUM OF POINTS AND AUTHORITIES**

28 **I. INTRODUCTION**

This dispute arose from pervasive copyright infringement of Plaintiff’s works on websites
owned and/or operated by Defendants. As discussed in the contemporaneously filed Motion to
Enforce Settlement, Liberty and Oron reached the terms of a settlement agreement.

1 Despite this settlement and Liberty's performance of terms of the settlement, Oron refused
2 to perform as agreed to and asked its lawyers in Hong Kong to re-commence litigating the matter in
3 the High Court of Hong Kong. Liberty hereby requests that this Court order Oron to pay Liberty
4 for the costs and fees associated with continuing litigation in Hong Kong, and for the costs and fees
5 associated with the instant motion and the contemporaneous Motion to Enforce Settlement and
6 Motion to Seal. The undersigned telephonically conferred with Mr. Lieberman (counsel for FF
7 Magnat) regarding this motion. Lieberman's position was, "go for it" when informed that the
8 motion would be filed. Drafts of this motion were also provided to Mr. Lieberman on Thursday,
9 July 5, 2012 at 3:31 PM. The undersigned attempted to meet and confer with Mr. Lieberman
10 regarding the instant motion and contemporaneously filed motions from 3:00 PM on July 5, 2012
11 until 11:05 AM on July 6, 2012, but Mr. Lieberman refused to answer his phone. The staff
12 manning the phone line at his office did not know why he was not answering.

13 **II. LEGAL ARGUMENT**

14 17 U.S.C. § 505 provides that the Court may "award a reasonable attorney's fee to the
15 prevailing party as part of the costs." See also, *Warner Bros. Ent, Inc. v. Duhy*, 2009 U.S. Dist.
16 LEXIS 123332, 8-9 (C.D. Cal. Nov. 30, 2009), citing *Kepner-Tregoe, Inc. v. Vroom*, 186 F.3d 283,
17 289 (2d Cir. 1999) (finding a district court's award of attorneys' fees under Section 505 to be
18 "justified based on the court's finding of willfulness and [] in line with the statutory goal of
19 deterrence"). While this matter was resolved through settlement, the Defendant's refusal to honor
20 the terms of the agreement has resulted in significant unnecessary attorney's fees being expended.
21 FF Magnat's objective unreasonableness requires that the fees and costs incurred in forcing it to
22 adhere to an agreement, proposed by its own counsel, should be taxed to it, not to the moving party.

23 Defendant's violation of the settlement has caused Plaintiff to expend attorney time and
24 resources in drafting the contemporaneously filed Motion to Enforce Settlement, Motion to Seal,
25 and in the Hong Kong litigation. Forcing the Plaintiff to expend these fees is frivolous, motivated
26 by a desire to avoid the agreed upon settlement, and objectively unreasonable. See *Fogerty v.*
27 *Fantasy, Inc.*, 510 U.S. 517, 534 n.19 (1994).

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1 While Liberty does not need to show frivolousness to be entitled to a fees award, *see*
2 *Fogerty*, 510 U.S. at 532 n.18, that label accurately describes Oron’s attempts to avoid the agreed
3 upon settlement and force litigation to continue in Hong Kong. Oron’s motivation is to avoid the
4 agreed upon settlement, despite the contractual obligations they have entered into and that the
5 Plaintiff has already partially performed in accordance with those terms.

6 The objective unreasonableness of Oron’s actions also favors a fee award. *See Perfect 10,*
7 *Inc. v CCBill, LLC*, 488 F.3d 1102, 1120 (9th Cir. 2007) (requiring the court to consider the
8 objective unreasonableness of a party’s claims, “both in the factual and in the legal components of
9 the case”); *see also Entertainment Research Group, Inc. v. Genesis Creative Group, Inc.*, 122 F.3d
10 1211, 1229 (9th Cir. 1997) (“because the evidence in the record reveals that [the losing plaintiff]
11 never had any evidence to support its ... claims, the district court properly found that it was
12 objectively unreasonable for [the plaintiff] to have maintained these claims”). Oron has agreed to
13 settlement; refuses to perform the terms of settlement; and forces Plaintiff to motion practice in the
14 U.S. and to attend and prepare for hearings in Hong Kong.

15 **III. CONCLUSION**

16 For the foregoing reasons, Plaintiff requests the Court enter an Order instructing Defendant
17 to pay Plaintiff its reasonable attorney’s fees in drafting the instant Motion and contemporaneously
18 filed Motion for Settlement Enforcement and Motion to Seal. The Plaintiff further requests that the
19 Court enter an Order instructing Defendant to pay Plaintiff its reasonable attorney’s fees for
20 attending to the unnecessary hearing in Hong Kong and the associated preparation for the hearing.

21 Upon the Court granting this Order, Plaintiff will file records of attorney time and
22 declarations on attorney billing rates to demonstrate the fees expended.

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Dated: July 6, 2012

Respectfully Submitted,

s/Marc J. Randazza

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