

1 Steven James Goodhue (#029288)
Law Offices of Steven James Goodhue
2 9375 East Shea Blvd., Suite 100
Scottsdale, AZ 85260
3 Telephone: (480) 214-9500
Facsimile: (480) 214-9501
4 E-Mail: sjg@sjgoodlaw.com

5 *Attorney for Plaintiff*
AF Holdings, L.L.C.

6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**

9 AF HOLDINGS, L.L.C., a St. Kitts and Nevis
10 limited liability company,

11 Plaintiff,
v.

12 DAVID HARRIS,
13 Defendant.

CASE NO.: 2:12-CV-02144-PHX-GMS

**PLAINTIFF'S RESPONSE TO
DEFENDANT'S MOTION FOR
SHOW CAUSE ORDER AND
SANCTIONS**

15 **PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION**
16 **FOR SHOW CAUSE ORDER AND SANCTIONS**

17 Defendant filed a motion for show cause order and sanctions against Plaintiff. (ECF No. 50.)
18 Defendant launches several derogatory remarks against Plaintiff and Plaintiff's counsel, but does not
19 articulate any plausible basis under the law for the relief he seeks. (*Id.*) Because the Court has
20 already addressed several of Defendant's inquiries in the May 17, 2013, order to show cause (ECF
21 No. 51), Plaintiff incorporates that response to the extent of such overlap as if set forth fully herein.
22 Defendant makes two arguments regarding standing that were not addressed in the Court's order to
23 show cause. Plaintiff respectfully addresses these two arguments below.

ARGUMENT

Defendant raises two arguments regarding standing: 1) that Plaintiff did not identify the Defendant before bringing this action, and 2) Plaintiff cannot identify him by an IP address or determine which IP addresses with which he conspired. As an initial matter, it is obvious that Defendant's arguments do not relate to standing, as the concept is properly understood, but are more focused on Rule 11-style concerns.

I. PLAINTIFF IDENTIFIED DEFENDANT PRIOR TO BRINGING THIS LAWSUIT

Defendant's first argument is that "[t]his court has not allowed the Plaintiff to subpoena Defendants ISP in order to obtain the information necessary to bring suit against him, Troll Goodhue cannot produce even a scintilla of legally obtained personal information belonging to Defendant, therefore Troll Goodhue must show cause why this court should not sanction him for misrepresenting a material fact." (ECF No. 50 at 2.) Plaintiff did not need to issue subpoenas in this case to obtain Defendant's identity, because Plaintiff identified Defendant *prior* to bringing this action. Defendant's argument, therefore, has no relevance to this action.

II. DEFENDANT MISUNDERSTANDS THE RELEVANT PROCEDURES AND TECHNOLOGY

Defendant's second argument is that "Troll Goodhue must show cause why this court should not sanction him for misrepresenting he has standing to allege these 71 IP addresses are connected to Defendant in any way shape or form." (ECF No. 50 at 2.) Defendant challenges both Plaintiff's ability to identify him by an IP address and Plaintiff's ability to connect his infringing activity with numerous other IP addresses. (*Id.*) Defendant first states "there is no way on God's green Earth Troll Goodhue could possibly know what, if any IP address was assigned to me as it is different than the IP address Plaintiff based this case on (70.176.202.3) at the time and date of the alleged conspiracy." (*Id.*) This is incorrect as Defendant's Internet service provider ("ISP") can, and has, identified

1 Defendant as the subscriber infringing on Plaintiff's copyrighted work. Defendant bases his
2 argument on the claim that "[e]verytime [sic] that I reboot my modem I am assigned a different IP
3 address." (*Id.*)¹ Even with an ever-changing IP address, an ISP can identify the subscriber if they are
4 provided the IP address *and* the date and time of the unlawful activity because the ISP will know
5 what IP address is assigned to a subscriber at any given time even if the IP address were to later
6 change. Plaintiff provided Defendant's ISP with this information and the ISP identified Defendant as
7 the infringer. Defendant's claim that "[s]ince the date of the alleged copyright infringement I have
8 been assigned no less than five new and different IP addresses" is not relevant to whether or not
9 his ISP can identify him.

10 Defendant further states that the IP addresses of his co-conspirators "may be involved in a
11 conspiracy with the aforementioned IP address, but it has nothing to do with Defendant or this case
12 whatsoever." (*Id.*) Again this is incorrect. To obtain a digital work through a BitTorrent swarm users
13 must broadcast their IP addresses to one another. Anyone participating in the swarm or observing the
14 swarm can identify the IP addresses participating in the downloading and uploading of the digital
15 work. Therefore, any reasonably technology-savvy individual could identify the IP addresses that
16 participated with Defendant in the BitTorrent swarm. Plaintiff observed the IP address associated
17 with Defendant interacting with numerous other IP addresses in a BitTorrent swarm that contained
18 Plaintiff's copyrighted work. Defendant fails to provide any evidence to the contrary.

19 **III. DEFENDANT FAILS TO PROVIDE A VALID BASIS FOR WHY AN** 20 **AWARD OF SANCTIONS IS APPROPRIATE**

21 In addition to the fact that Defendant's arguments are erroneous, Defendant fails to explain
22 why he is entitled to sanctions based on his arguments. (*See generally* ECF No. 50.) Even if

23 ¹ To highlight Defendant's confusion regarding how ISPs handle IP addresses, immediately prior to claiming
24 that his IP address regularly changes upon rebooting his modem, Defendant states that he "is assigned a static
IP address from his ISP, a cable company." (*Id.*) By definition, a static IP address is one that *does not* change
every time a modem is rebooted—Defendant likely has a dynamic IP address, as most consumers do.

1 Defendant's arguments were accurate—which they are not—they are not a basis to award sanctions
2 against Plaintiff or Plaintiff's counsel. Instead Defendant's arguments are arguments on the merits of
3 Plaintiff's claims that he could raise in his defense. As a result, Defendant's motion should be
4 denied.

5 **CONCLUSION**

6 The Court should deny Defendant's motion. Plaintiff identified Defendant prior to bringing
7 this lawsuit against him. Defendant's arguments regarding sanctions are incorrect and are based on a
8 misunderstanding of the procedures of ISPs and the relevant BitTorrent technology. Further,
9 Defendant provides no valid legal basis for why his arguments, even if accepted, would entitle him
10 to an award of sanctions against Plaintiff or Plaintiff's counsel.

11
12 DATED: May 25, 2013

Law Offices of Steven James Goodhue

13
14 By: /s/ Steven James Goodhue
15 Steven James Goodhue (#029288)
16 9375 East Shea Blvd., Suite 100
17 Scottsdale, AZ 85260
18 *Attorney for Plaintiff*
19 *AF Holdings, LLC*
20
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22
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CERTIFICATE OF SERVICE

I hereby certify that on May 25, 2013, I electronically filed the foregoing with the Clerk of the Court for filing and uploading to the CM-ECF system which will send notifications of such filing to all parties of record.

A COPY of the foregoing was mailed (or served via electronic notification if indicated by an “*”) on May 25, 2013, to:

Honorable G. Murray Snow *(snow_chambers@azd.uscourts.gov)
U.S. District Court
Sandra Day O’Connor Courthouse Suite 324
401 West Washington Street, SPC 82
Phoenix, Arizona 85003-7550

David Harris* (troll.assassins@cyber-wizards.com)
4632 East Caballero Street, #1
Mesa Arizona 85205

/s/ Steven James Goodhue