

1 Morgan E. Pietz (SBN 260629)  
THE PIETZ LAW FIRM  
2 3770 Highland Ave., Ste. 206  
Manhattan Beach, CA 90266  
3 [mpietz@pietzlawfirm.com](mailto:mpietz@pietzlawfirm.com)  
Telephone: (310) 424-5557  
4 Facsimile : (310) 546-5301

5 Attorney for Putative John Doe

6 **UNITED STATES DISTRICT COURT**  
7 **CENTRAL DISTRICT OF CALIFORNIA**

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9 **INGENUITY 13, LLC, a Limited Liability**  
Company Organized Under the Laws of the  
10 Federation of Saint Kitts and Nevis,

11 Plaintiff,

12 v.

13  
14 **JOHN DOE,**

15 Defendants.

Case Number(s): 2:12-cv-08333-DMG-PJW

Assigned to: Judge Dolly M. Gee  
Referred to: Magistrate Judge Patrick J.  
Walsh

**JOHN DOE'S *EX PARTE***  
**APPLICATION FOR A STAY OF THE**  
**SUBPOENA RETURN DATE**

[*No Hearing Requested*]

**JOHN DOE'S EX PARTE APPLICATION**  
**FOR STAY OF SUBPOENA RETURN DATE**

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3           Undersigned counsel was retained by the putative John Doe defendant in this  
4 matter—meaning the ISP subscriber who received a letter notice from Verizon that  
5 plaintiff was seeking his identity—on Monday November 26, 2012. According to the  
6 notice from Verizon, Movant's deadline to object or otherwise respond to the subpoena is  
7 Thursday November 29, 2012, after which time, absent objection, Verizon will disclose  
8 Movant's identity to plaintiff. This request for a stay of the subpoena return is necessary in  
9 order to keep Movant's meritorious objections to the subpoena from being rendered moot  
10 (which is what will happen if Verizon discloses Movant's identity to the plaintiff as  
11 planned by Verizon on Friday November 30, 2012, absent a court filing by Movant before  
12 then).

13           Promptly upon being retained on Monday November 26, 2012, undersigned counsel  
14 began reviewing the pleadings, and contacted plaintiff's counsel, Mr. Brett Gibbs, to  
15 request an extension, as a professional courtesy, in order to provide the undersigned with  
16 time to examine the case. Mr. Gibbs wrote back on Monday that he would have to check  
17 with his client about an extension and that he "may or may not be able to respond" to the  
18 extension request before the November 29, 2012 deadline for the subpoena response. Mr.  
19 Gibbs further suggested that an extension would be more likely if Movant was interested in  
20 a settlement. In response, undersigned counsel referred Mr. Gibbs to this District's civility  
21 standards suggesting a liberal approach to routine requests for an extension that do not  
22 prejudice clients, and explained that if Mr. Gibbs could not promise provide an answer on  
23 the extension request by Wednesday November 28, 2012, he should say so now (on  
24 Monday) and the undersigned would move *ex parte* for an extension on Tuesday  
25 November 27, 2012. Mr. Gibbs wrote back (and Monday) and promised that he would  
26 respond to the extension request by Wednesday November 28, 2012. As of 8:00 p.m. on  
27 Wednesday November 28, 2012, Mr. Gibbs still had not responded to the extension  
28 request. Accordingly, the undersigned is compelled to file this *ex parte* application and

1 burden the Court with the kind of thing that attorneys really ought to be able to work out on  
2 their own.

3 Good cause exists to support a stay of the subpoena return for the following reasons:

4 (1) Movant will soon be filing a motion to quash the subpoena in this action.

5 The only reason Movant has not done so already is that Movant had difficulty locating  
6 competent counsel for this kind of John Doe mass infringement case, and the undersigned  
7 counsel was not engaged until Monday November 28, 2012. Further, the Movant here was  
8 not the only client who engaged the undersigned counsel this week on short notice in a  
9 mass-Doe copyright infringement case. Specifically, the undersigned spent Tuesday and  
10 Wednesday of this week working on a motion to quash to be filed in the Eastern District of  
11 Michigan on Thursday November 29, 2012, in *Malibu Media v. John Does 1-30*, E.D. Mi.  
12 Case No. 12-cv-13312.

13 (2) The motion to quash the subpoena that Movant plans to soon file in this  
14 action has merit. For reasons that will soon be elaborated in the motion to quash itself, the  
15 subpoena should be quashed for a number of reasons, including the following: (i) the  
16 discovery is not “very likely” to lead to the identification of an actual defendant as required  
17 by *Gillespie v. Civiletti*, 629 F.2d 637, 642–43 (9th Cir. 1980); and (ii) the subpoena  
18 implicates Movant’s limited First Amendment right to anonymity, but the subpoena fails  
19 on the requisite First Amendment balancing test prescribed by *Semitoool, Inc. v. Tokyo*  
20 *Electron America, Inc.*, 208 F.R.D. 273, 276 (N.D. Cal. 2002).

21 (3) If the Court does not grant the requested stay of the subpoena return Verizon,  
22 per its policy in these kinds of cases, will disclose Movant’s identity to plaintiff. If that  
23 happens, if past experience is any guide, plaintiff will then turn Movant’s information over  
24 to its professional third party “settlement negotiators”, who are basically unlicensed debt  
25 collectors, who will begin harassing Movant for a settlement directly, regardless of the fact  
26 that he is represented by counsel, including by using illegal Robocalls. Since Mr. Gibbs  
27 cannot grant a routine extension on his own authority, or even provide an answer on an  
28 extension request after two business days, Court intervention is now required to prohibit

1 the motion to quash Movant intends to file from becoming moot. Since Movant wishes to  
2 remain anonymous, at least until a few preliminary issues are resolved, the motion to quash  
3 will be a waste of time if plaintiff has already learned Movant's identity.

4 (4) Plaintiff is not prejudiced whatsoever by this extension. The only possible  
5 prejudice plaintiff could claim is that the stay of the subpoena return date eats into the Rule  
6 4(m) 120-day deadline for service of process. However, given that this case was filed on  
7 September 27, 2012 (only 60 days ago) plaintiff still has ample time to effect service on an  
8 appropriate defendant, if it chooses to do so.

9 The undersigned's attempts to meet and confer emails with Mr. Gibbs on this issue  
10 and avoid having to bother the Court with an *ex parte* extension request on what should be  
11 a routine matter are attached as Exhibit A to the accompanying Declaration of Morgan E.  
12 Pietz. As of 8:00 p.m. Thursday when this application was finalized, Mr. Gibbs had not  
13 responded to the final email in the chain. Even if Mr. Gibbs had refused an extension on  
14 Monday, on his own authority, rather than leaving the undersigned hanging for two more  
15 business days, the undersigned would still have needed to request an extension, in light of  
16 the new issues raised in the Ingenuity 13, LLC cases, as well as the undersigned's  
17 workload.

18 This *ex parte* application consists of this application, the accompanying declaration  
19 of Morgan E. Pietz, and Exhibit A thereto, which are the meet and confer emails.

20 For the foregoing reasons, Movant respectfully requests that the return date on the  
21 subpoena authorized by this Court (ECF No. 9) and issued by plaintiff to Verizon, which  
22 seeks Movant's identity, be stayed for thirty (30) days, or until the Court has an  
23 opportunity to rule on the Motion to Quash that Movant will soon be filing.

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DATED: November 28, 2012

Respectfully submitted,

/s/ Morgan E. Pietz

Morgan E. Pietz (Cal. Bar No. 260629)  
THE PIETZ LAW FIRM  
3770 Highland Ave., Ste. 206  
Manhattan Beach, CA 90266  
[mpietz@pietzlawfirm.com](mailto:mpietz@pietzlawfirm.com)  
Telephone: (310) 424-5557  
Facsimile: (310) 546-5301

*Attorney for Putative John Doe*