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**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

PRENDA LAW, INC.,  
  
Plaintiff-Respondent,  
  
v.  
  
PAUL GODFREAD, ALAN COOPER,  
and JOHN DOES 1-10  
  
Defendant-Movant.

Case No. \_\_\_\_\_

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
MOTION TO QUASH THE SUBPOENA  
TO WILD WEST DOMAINS SEEKING  
IDENTITY INFORMATION**

[Fed. R. Civ. Pro. 45(c) and L.R. Civ. 7.2]

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION AND SUMMARY**

**A. Prenda Law**

Plaintiff Prenda Law, Inc.'s business is entirely devoted to filing against lawsuits against Doe defendants alleging that they downloaded embarrassing adult films, and using the threat of naming those defendants to leverage cost-of-defense settlements. It purports to represent clients such as "AF Holdings," an LLC registered in the Federation of St. Kitts and Nevis in the Caribbean. Prenda's business model has been described by a United States District Court as follows:

(1) a plaintiff sues anywhere from a few to thousands of Doe defendants for copyright infringement in one action; (2) the plaintiff seeks leave to take early discovery; (3) once the plaintiff obtains the identities of the IP subscribers through early discovery, it serves the subscribers with a settlement demand; (4) the subscribers, often embarrassed about the prospect of being named in a suit involving pornographic movies, settle. Thus, these mass copyright infringement cases have emerged as a strong tool for leveraging settlements – a tool whose efficiency is largely derived from the plaintiffs' success in avoiding the filing fees for multiple suits and gaining early access en masse to the identities of alleged infringers.

*MCGIP, LLC v. Does 1-149*, No. 11-cv-2331, 2011 WL 4352110, at \*4 n.5 (N.D. Cal. Sept. 16, 2011) (citation omitted).<sup>1</sup>

Other federal courts have been just as skeptical of Prenda's business model. As just one example, the United States District Court for the Northern District of Illinois noted that "Judges within this district have recognized that plaintiffs in these types of cases might

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<sup>1</sup> This case was filed by Brett Gibbs, who was a contract attorney first for the Steele Hansmeier PLLC law firm and then, after the business was sold to Prenda Law, for Prenda Law (working under the direction of John Steele and Paul Hansmeier). March 1, 2013, Declaration of Brett Gibbs, *Ingenuity 13 v. Does*, C.D. Cal. No. 12-cv-8333, Dkt. No. 58 (Request for Judicial Notice, ¶ 1) ("RJN"); April 11, 2013, Declaration of Brett Gibbs, *Sunlust v. Nguyen*, M.D. Fla. No. 8:12-cv-01685, Dkt. 49-1 (RJN ¶ 2). During the pendency of an order to show cause why he should not be sanctioned for his conduct in similar cases, Mr. Gibbs filed a declaration stating that he no longer works for Prenda Law. March 1 Gibbs Decl. (RJN ¶ 1), at ¶ 5 (describing affiliation with Prenda Law in the past tense).

1 unfairly threaten to disclose defendants' identities in order to improperly leverage  
 2 settlement negotiations." *Sunlust Pictures, LLC v. Does 1-75*, No. 12-cv-1546, 2012 WL  
 3 3717768, at \*5 (N.D. Ill. Aug. 27, 2012) (a Prenda Law case); *see also Hard Drive Prods.*  
 4 *v. Does 1-48*, No. 11-9062, 2012 WL 2196038, at \*6 (N.D. Ill. June 14, 2012) (same).

5 **B. AF Holdings, Alan Cooper's Lawsuit for Identity Theft, and Prenda's**  
 6 **Retaliation.**

7 In connection with many of its lawsuits, Prenda Law has represented—falsely—that  
 8 Defendant Alan Cooper is an officer and corporate representative of one of its purported  
 9 clients, AF Holdings. *See, e.g., AF Holdings v. Does*, C.D. Cal. No. 5:12-cv-6636, Dkt. 1  
 10 (Exhibit B)(RJN ¶ 3); *see also* Transcript of March 11 Sanctions Hearing, *Ingenuity 13 v.*  
 11 *Does*, C.D. Cal. No. 12-cv-8333, Dkt. No. 93, at 27-32 (Mr. Cooper testifying regarding  
 12 some of these documents) (RJN ¶ 4). After Mr. Cooper filed suit against Prenda's  
 13 principals for identity theft,<sup>2</sup> and after Judge Wright of the Central District of California  
 14 invited Mr. Cooper to testify about what he knew, Prenda attempted to intimidate its  
 15 detractors into silence by filing this defamation suit against Mr. Cooper, his attorney Paul  
 16 Godfread, and Does 1-10. When brought before Judge Wright and given a chance to rebut  
 17 Mr. Cooper's testimony and other damning evidence of fraud, Prenda's principal Paul  
 18 Duffy, "of counsel" attorneys Paul Hansmeier and John Steele, and paralegal Angela Van  
 19 Den Hemel refused, asserting their Fifth Amendment right not to incriminate themselves.  
 20 Transcript of April 2, 2013 Sanctions Hearing, *Ingenuity 13 v. Does*, C.D. Cal. No. 2:12-  
 21 CV- 8333, Dkt. 103 (RJN ¶ 5).

22 Prenda's defamation suit is no more than a desperate attempt to punish and  
 23 intimidate into silence those who have spoken out against it. The Complaint incorrectly  
 24  
 25

26 <sup>2</sup> In that case, *Alan Cooper v. John Lawrence Steele, et al.*, No. 27-CV-13-3463, served on  
 27 February 25, 2013 in the Fourth Judicial District Court, County of Hennepin, Minnesota,  
 28 Mr. Cooper asserted claims for invasion of privacy and deceptive trade practices, as well as  
 civil conspiracy and alter ego theories.

1 asserts that Defendant Die Troll Die<sup>3</sup> (“DTD”) made tortious statements on his<sup>4</sup> blog, none  
2 of which are actually actionable, and Prenda immediately attempted to use this ill-  
3 conceived lawsuit to require the production of DTD’s identity. This Court should quash the  
4 Subpoena so as not to become a handmaiden to what Judge Wright called Prenda’s  
5 “misconduct which I think brings discredit to the profession.” Transcript of April 2 OSC  
6 Hearing (RJN ¶ 5), at 6.

7 Accordingly, pursuant to Fed. R. Civ. P. 45(c), DTD hereby moves to quash Prenda  
8 Law’s discovery subpoena which seeks DTD’s identity and contact information, issued  
9 from the Circuit Court of Cook County, Illinois<sup>5</sup> on February 27, 2013 to Wild West  
10 Domains, an Arizona based subsidiary of Go Daddy Operating Company, LLC, and the  
11 registrar of the domain on which Die Troll Die’s message board is hosted, dietrolldie.com.

### 12 C. Procedural History

13 On February 12, 2013, Prenda filed the defamation suit in the Circuit Court of the  
14 Twentieth Judicial Circuit, St. Clair County, Illinois, Case No. 13-L-75, against Alan  
15 Cooper, Cooper’s attorney Paul Godfread, and Does 1-10 (“Defendants”). Prenda alleges  
16 that named Defendants and pseudonymous Does criticized Prenda on “Internet  
17 communities run and operated by Defendants[,]” including the online message board  
18 operated by Doe Defendant DTD at dietrolldie.com. *See* Declaration of Nathan Cardozo,  
19

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20 <sup>3</sup> DTD is the provider of an Internet message board (located at dietrolldie.com) on which  
21 pseudonymous online speakers have criticized the practices of Prenda Law and other  
22 similar copyright enforcement law firms (known colloquially as “copyright trolls”).

23 <sup>4</sup> For simplicity’s sake, Defendant-Movant DTD will be referred to for the remainder of the  
24 brief using masculine pronouns. This is not an admission as to “his” gender.

25 <sup>5</sup> After a case is removed, “the state courts shall proceed no further unless and until the case  
26 is remanded.” 28 U.S.C. § 1446(d). All outstanding state court orders in a removed case  
27 are transformed into federal court orders by operation of law, subject to the limitations of  
28 the Federal Rules of Civil Procedure. *Granny Goose Foods, Inc. v. Bhd. of Teamsters  
Local No. 70*, 415 U.S. 423, 435-437 (1974). Accordingly, the Cook County subpoena is  
now deemed a federal Rule 45 subpoena. Because Wild West Domains is located in  
Arizona, a Rule 45 subpoena would have to have been issued here. Accordingly, this Court  
is the appropriate court to hear this motion to quash.

1 Ex. A (Amended Complaint) ¶ 30.<sup>6</sup> The domain name dietrolldie.com is registered with  
2 Wild West Domains. The Amended Complaint raised eight causes of action, consisting of  
3 libel *per se*, false lights, tortious interference with a contract, tortious interference with a  
4 business expectancy, and civil conspiracy. *Id.* at ¶¶ 100-144.

5 On February 27, 2013, Prenda issued a subpoena to non-party company Wild West  
6 Domains from the Circuit Court of Cook County, Illinois<sup>7</sup> seeking DTD's identity and  
7 contact information. Specifically, the subpoena seeks "the name, current (and permanent)  
8 addresses, billing addresses, telephone numbers and e-mail addresses associated with the  
9 individual who registered dietrolldie.com." Cardozo Decl., Ex. B. The subpoena demanded  
10 production by March 6, 2013. Plaintiff did not provide notice to DTD of its discovery  
11 request, notifying only Defendants Godfread and Cooper. *Id.*, Ex. H (notice sent to  
12 Godfread and Cooper).

13 On March 1, 2013 the case was removed to the District Court in the Southern  
14 District of Illinois, No. 3:13-cv-207 (S.D. Ill.). On March 12, counsel for DTD informed  
15 Mr. Duffy and Prenda that they represent DTD in connection with subpoenas for identity  
16 information. Prenda did not respond. *Id.*, Ex. C.

17 On March 22, 2013, Wild West Domains notified DTD of the subpoena, but did not  
18 provide him with a copy. *Id.*, Ex. D. Later that day, counsel for DTD wrote to Mr. Duffy,  
19 seeking a copy of the subpoena. *Id.*, Ex. E. Prenda responded by claiming there was a typo  
20 in DTD's counsel's email, and failed to provide a copy of the subpoena. *Id.*, Ex. F.  
21 Counsel for DTD reiterated the request in another email. *Id.*, Ex. G. To date, Prenda has  
22

23 \_\_\_\_\_  
24 <sup>6</sup> Prenda contends that it properly amended the complaint to add a new paragraph listing the  
25 Alpha Law Firm LLC as a Plaintiff on February 21, 2013 in an attempt to destroy diversity.  
26 Accordingly, this motion references the Amended Complaint. Because none of the alleged  
27 statements reference Alpha Law and the subpoena was issued by Prenda Law, this brief  
28 will focus on Prenda's claims. However, the legal analysis below would apply equally to  
Alpha Law if it actually had stated a claim against DTD.

<sup>7</sup> Cook County is neither the location of the litigation nor the witness, and thus was the  
wrong court under Illinois law. 735 Ill. Comp. Stat. 5/2-1101.

1 never provided notice or a copy of the subpoena. Fortunately, DTD was able to obtain a  
2 copy from counsel for Godfread and Cooper.

3 Because the statements attributed to DTD are not actionable, and because he cannot,  
4 pursuant to Section 230 of the federal Communications Decency Act of 1996, 47 U.S.C.  
5 § 230, be treated as the “publisher or speaker” of the statements attributed to commenters  
6 on the site dietrolldie.com, DTD now files this motion to quash Plaintiff’s Subpoena.

## 7 **II. LEGAL STANDARD**

8 Under the Federal Rules, a court may quash a subpoena if the subpoena “requires  
9 disclosure of privileged or other protected matter” or “subjects a person to undue burden.”  
10 Fed. R. Civ. P. 45(c)(3)(A)(iii), (iv); *see, e.g., Mattel, Inc. v. Walking Mountain Prods.*, 353  
11 F.3d 792, 814 (9th Cir. 2003). This Court is the appropriate venue for this motion because  
12 subpoenas must be challenged before the issuing court, not the court that oversees the  
13 underlying litigation. *See* Fed. R. Civ. P. 45(c)(3)(A); *Orthoflex, Inc. v. Thermotek, Inc.*,  
14 No. 12-MC-00013-PHX-JAT, 2012 WL 1038801, at \*1 (D. Ariz. Mar. 28, 2012) (“Upon a  
15 party’s motion to quash a subpoena issued under Rule 45, ‘the issuing court, and not the  
16 court where the underlying action is pending, has the authority to consider motions to quash  
17 or modify subpoenas.’”) (quoting *SEC v. CMKM Diamonds, Inc.*, 656 F.3d 829, 832 (9th  
18 Cir. 2011)). As discussed above, by operation of the removal of the underlying action, this  
19 Court is considered to be the issuing court.

## 20 **III. ARGUMENT**

### 21 **A. The Right to Engage in Anonymous Speech is Protected By the First** 22 **Amendment.**

23 Under the broad protections of the First Amendment, speakers have not only a right  
24 to publicly express criticism, but also the right to do so anonymously. Accordingly, the  
25 First Amendment requires that those who seek to unmask vocal critics demonstrate a  
26 compelling need for such identity-related information before obtaining such discovery. No  
27 such need is implicated in this case.  
28



1           1.       The Right to Speak Anonymously Is Constitutionally Guaranteed.

2           The United States Supreme Court has consistently defended the right to anonymous  
3 speech, noting that “[a]nonymity is a shield from the tyranny of the majority . . . [that]  
4 exemplifies the purpose [of the First Amendment] to protect unpopular individuals from  
5 retaliation . . . at the hand of an intolerant society.” *McIntyre v. Ohio Elections Comm’n*,  
6 514 U.S. 334, 357 (1995); *see also, e.g., id.* at 342 (“[A]n author’s decision to remain  
7 anonymous, like other decisions concerning omissions or additions to the content of a  
8 publication, is an aspect of the freedom of speech protected by the First Amendment.”);  
9 *Talley v. California*, 362 U.S. 60, 64 (1960) (finding a municipal ordinance requiring  
10 identification on hand-bills unconstitutional, noting that “[a]nonymous pamphlets, leaflets,  
11 brochures and even books have played an important role in the progress of mankind.”).

12           Anonymity receives the same constitutional protection whether the means of  
13 communication is a political leaflet or an Internet message board. *See Reno v. ACLU*, 521  
14 U.S. 844, 870 (1997) (there is “no basis for qualifying the level of First Amendment  
15 scrutiny that should be applied to” the Internet); *see also, e.g., Doe v. 2theMart.com*, 140 F.  
16 Supp. 2d 1088, 1092 (W.D. Wash. 2001). As discussed below, these fundamental rights  
17 protect anonymous speakers from forced identification.

18           2.       Anonymous Speakers Enjoy a Privilege Under the First Amendment.

19           Because the First Amendment protects anonymous speech and association, efforts to  
20 use the power of the courts<sup>8</sup> to pierce anonymity are subject to a qualified privilege. Courts  
21 must “be vigilant . . . [and] guard against undue hindrances to . . . the exchange of ideas.”  
22 *Buckley v. Am. Constitutional Law Found.*, 525 U.S. 182, 192 (1999). This vigilant review  
23 “must be undertaken and analyzed on a case-by-case basis,” where the court’s “guiding  
24 principle is a result based on a meaningful analysis and a proper balancing of the equities  
25 and rights at issue.” *Dendrite Int’l v. Doe No. 3*, 775 A.2d 756, 761 (N.J. Super. Ct. App.

26 \_\_\_\_\_  
27 <sup>8</sup> A court order, even if granted to a private party, is state action and hence subject to  
28 constitutional limitations. *See, e.g., New York Times v. Sullivan*, 376 U.S. 254, 265 (1964);  
*Shelley v. Kraemer*, 334 U.S. 1, 14 (1948).



1 Div. 2001). Just as in other cases in which litigants seek information that may be  
2 privileged, courts must consider the privilege before authorizing discovery. *See, e.g., Sony*  
3 *Music Entm't, Inc. v. Does 1-40*, 326 F. Supp. 2d 556, 563 (S.D.N.Y. 2004). In the Internet  
4 context, “[p]eople who have committed no wrong should be able to participate online  
5 without fear that someone who wishes to harass or embarrass them can file a frivolous  
6 lawsuit and thereby gain the power of the court’s order to discover their identity.”  
7 *Columbia Ins. Co. v. Seescandy.com*, 185 F.R.D. 573, 578 (N.D. Cal. 1999).

8 While plaintiffs may properly seek information necessary to pursue meritorious  
9 litigation, *id.* at 578; *Doe v. Cahill*, 884 A.2d 451, 456 (Del. 2005), litigants may not use  
10 the discovery power to uncover the identities of people who have simply made statements  
11 the litigants dislike. Accordingly, courts evaluating attempts to unmask anonymous  
12 speakers in cases similar to this one have adopted standards that balance one person’s right  
13 to speak anonymously with a litigant’s legitimate need to pursue a claim.

14 This Court has previously applied the test identified by the Delaware Supreme Court  
15 in *Doe v. Cahill* to determine a litigant’s ability to compel an online service provider to  
16 reveal an anonymous party’s identity when, as here, the Doe Defendants were engaged in  
17 purely expressive conduct, *i.e.*, “expressing their views . . . in a forum specifically designed  
18 for an exchange of opinions and ideas anonymously.” *See Best W. Int’l, Inc. v. Doe*, No.  
19 CV-06-1537-PHX-DGC, 2006 WL 2091695, at \*4 (D. Ariz. July 25, 2006) (“Given the  
20 significant First Amendment interest at stake, the Court agrees with the Delaware Supreme  
21 Court in *Cahill*, and concludes that a summary judgment standard should be satisfied before  
22 [a plaintiff] can discover the identities of the John Doe Defendants.”). Under *Cahill*, in  
23 order to compel Wild West Domains to reveal Die Troll Die’s identity, Prenda must both:

- 24 (1) undertake reasonable efforts to notify the anonymous defendant of the  
25 discovery request and must withhold action to allow the defendant an  
opportunity to respond; and
- 26 (2) submit sufficient evidence to establish a *prima facie* case for each  
27 essential element of the claim in question. . . . [*i.e.*], [Plaintiff] must  
28 introduce evidence creating a genuine issue of material fact for all  
elements of [the] claim within plaintiff’s control.

1 See *Cahill*, 884 A.2d at 461-63. This Court found that other tests, such as that adopted by  
 2 the New Jersey Appellate Division in *Dendrite International v. Doe No. 3*, are similar to the  
 3 summary judgment standard of *Cahill*. *Best W. Int'l*, 2006 WL 2091695, at \*5 (citing  
 4 *Dendrite*, 775 A.2d at 760).

5 As *Cahill* accurately and cogently outlines the important First Amendment interests  
 6 raised by DTD, and as this Court has already endorsed this approach in the past, the holding  
 7 and reasoning of *Cahill* should be applied here.

8 **B. As Prenda's Subpoena Cannot Survive the Scrutiny Required By the**  
 9 **First Amendment, It Must Be Quashed Under Fed. R. Civ. P. 45.**

10 Prenda fails both prongs of the *Cahill* First Amendment test that litigants must meet  
 11 in order to compel the disclosure of the identities of anonymous speakers; consequently, the  
 12 Subpoena should be quashed.

13 1. **Prenda Has Not Made Any Effort to Provide Notice of the Discovery**  
 14 **Request to the Doe Defendants.**

15 First, Prenda has not undertaken reasonable efforts to notify DTD of its discovery  
 16 request. In fact, Prenda has not made any attempt at all to notify DTD that he is the subject  
 17 of a subpoena, and has failed to respond to requests to provide a copy of the subpoena.

18 Cardozo Decl., ¶¶ 11-17. As the Delaware Supreme Court noted in *Cahill*:

19 [T]o the extent reasonably practicable under the circumstances, the plaintiff  
 20 must undertake efforts to notify the anonymous poster that he is the subject  
 21 of a subpoena. . . . [W]hen a case arises in the internet context, the plaintiff  
 22 must post a message notifying the anonymous defendant of the plaintiff's  
 23 discovery request on the same message board where the allegedly  
 24 defamatory statement was originally posted.

25 *Cahill*, 884 A.2d at 461. Prenda has not posted such a message on DTD's message board at  
 26 dietrolldie.com, nor has Prenda undertaken any other effort to provide DTD or any of the  
 27 other Does with notice. Indeed, when counsel for DTD directly asked for a copy of the  
 28 subpoena, Prenda refused to provide one. Cardozo Decl. ¶¶ 13-16. Thus, Plaintiff's  
 discovery request fails First Amendment scrutiny under the first prong of the *Cahill* test.

2. Prenda Has Not Provided Prima Facie Evidence in Support of the Elements of Its Claims.

Second, and fatal to not only its subpoena but also its Complaint, Prenda cannot introduce evidence creating a genuine issue of material fact for all elements of the claims within plaintiff's control, as required under the First Amendment test discussed above.

Pursuant to the limitations imposed by the First Amendment, only a statement of fact that is provably false can be subject to liability. A statement is constitutionally protected if it cannot be reasonably interpreted as stating actual facts. *Bryson v. News Am. Publ'ns., Inc.*, 672 N.E.2d 1207, 1220 (Ill. 1996).<sup>9</sup> Opinions are protected speech. As the Supreme Court explained in *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974):

Under the First Amendment there is no such thing as a false idea. However pernicious an opinion may seem, we depend for its correction not on the conscience of judges and juries but on the competition of other ideas.

*Id.* at 339-40; *see also Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 20 (1990) (“[A] statement of opinion relating to matters of public concern which does not contain a provably false factual connotation will receive full constitutional protection.”). Under the rigorous First Amendment standard, “rhetorical hyperbole,” “vigorous epithet[s],” “lustly and imaginative expression[s] of . . . contempt,” and language used “in a loose, figurative sense” have all been afforded First Amendment protection by the U.S. Supreme Court. *See, e.g., Greenbelt Coop. Publ’g. Assn. v. Bresler*, 398 U.S. 6, 14 (1970) (finding the use of the word “blackmail” in a debate to be constitutionally protected); *Old Dominion Branch No. 496, Nat’l Assn of Letter Carriers, v. Austin*, 418 U.S. 264, 284, 286 (1974) (use of the word “traitor” and “scab” to protest anti-union workers held not to be actionable).

The burden of proving falsity rests on the plaintiff. *Philadelphia Newspapers, Inc. v. Hepps*, 475 U.S. 767, 776 (1986); *see also Cort v. St. Paul Fire and Marine Ins. Cos., Inc.*, 311 F.3d 979, 985 (9th Cir. 2002) (“An essential element of defamation is that the publication in question must contain a false statement of fact.”). Consistent with the

<sup>9</sup> Because the original action alleged a violation of Illinois law, Illinois law applies to the determination of whether Prenda filed a valid complaint.

1 standard for unmasking anonymous speakers, this means that Prenda must provide evidence  
2 within its control to back its claims of falsity.

3 The statements must be considered in context, because they may not be regarded as  
4 defamatory if the statements are reasonably capable of an innocent construction. *Bryson*,  
5 672 N.E.2d at 1215. In the context of Internet message boards, readers are far less likely to  
6 assume that statements mean actual verifiable facts. *See, e.g., Global Telemedia Int'l., Inc.*  
7 *v. Doe I*, 132 F. Supp. 2d 1261, 1270 (C.D. Cal. 2001) (“[W]hile [the online poster’s]  
8 sentiments are not positive, the statement contains exaggerated speech and broad  
9 generalities, all indicia of opinion. Given the tone, a reasonable reader would not think the  
10 poster was stating facts about the company, but rather expressing displeasure with the way  
11 the company is run.”); *accord Rocker Mgmt. LLC v. John Does 1 Through 20*, No. 03–MC–  
12 33, 2003 WL 22149380, \*3 (N.D. Cal. May 28, 2003) (holding that “vague” and  
13 “hyperbolic” statements posted online were not defamatory); *Underwager v. Channel 9*  
14 *Australia*, 69 F.3d 361, 366-367 (9th Cir. 1995) (comments made in context of heated  
15 debate would be viewed as spirited critique and audience would expect emphatic language  
16 on both sides).

17 Prenda is a public figure. It essentially concedes as much when it asserts it is “one  
18 of the largest and most successful copyright infringement firms in the country,” Complaint  
19 ¶ 5. *See Brown & Williamson Tobacco Corp. v. Jacobson*, 713 F.2d 262, 273 (7th Cir.  
20 1983) (“If the purpose of the public figure-private person dichotomy is to protect the  
21 privacy of individuals who do not seek publicity or engage in activities that place them in  
22 the public eye, there seems no reason to classify a large corporation as a private person.”).

23 Furthermore, Prenda is at least a limited public figure because it has thrust itself into  
24 a public controversy. *See Kessler v. Zekman*, 620 N.E.2d 1249, 1254-55 (Ill. App. Ct.  
25 1993). As discussed in the background section above, its litigation methods, employed in  
26 hundreds of cases against tens of thousands of defendants, are extremely controversial.<sup>10</sup>

27 <sup>10</sup> In addition, Prenda and its attorneys have been the subject of numerous news articles.  
28 *See, e.g.,* Kashmir Hill, *How Porn Copyright Lawyer John Steele Has Made A ‘Few*  
*(footnote continued on following page)*

1 As such, Prenda must prove malice. *Republic Tobacco, L.P. v. North Atlantic Trading Co.,*  
 2 *Inc.*, 254 F. Supp. 2d 985 (N.D. Ill. 2002) (“Substantial truth is an absolute defense to a  
 3 defamation claim.”).

4 While the burden of proving falsity remains with the plaintiff, truth remains an  
 5 absolute defense. *New York Times*, 376 U.S. at 271; *Time Inc. v. Hill*, 385 U.S. 374, 382-  
 6 84 (1967). The test of truth or falsity is substantial truth, where the “gist or sting” of the  
 7 report is true. *Lotrich v. Life Printing and Publ’g Co.*, 117 Ill. App. 2d 89, 94-96 (1969);  
 8 *Masson v. New Yorker Magazine*, 501 U.S. 496, 516 (1991) (“[A] statement is not  
 9 considered false unless it ‘would have a different effect on the mind of the reader from that  
 10 which the pleaded truth would have produced.’”) (quoting Robert D. Sack, *Libel, Slander,*  
 11 *and Related Problems* 138 (1980)).

12 Prenda complains of dozens of separate statements made by various identified and  
 13 unidentified defendants. Amended Complaint ¶¶ 33-99. With the high standards Prenda  
 14 must meet in mind, DTD will now explain how each statement that Plaintiff has alleged  
 15 was actually made by DTD is lawful.

16 **Paragraph 36:** “Some ships are designed to sink ... others require our  
 17 assistance.”

18 This is not a statement of a fact, because it contains no actual verifiable facts about  
 19 Prenda. A statement is constitutionally protected if it cannot be reasonably interpreted as  
 20 stating actual facts. *Bryson*, 672 N.E.2d at 1220.

21  
 22  
 23 *(footnote continued from preceding page)*

24 *Million Dollars’ Pursuing (Sometimes Innocent) ‘Porn Pirates,’* Forbes Mag. (Oct. 15,  
 25 2012) (Cardozo Decl. Ex. I); Dan Browning, *Federal judge: Copyright troll attorneys hiding*  
 26 *something*, Minneapolis Star-Trib. (Mar. 12, 2013) (Cardozo Decl. Ex. J); Timothy Lee, *Man*  
 27 *charges porn trolling firm Prenda Law with identity theft*, Ars Technica (Dec. 6, 2012)(  
 28 Cardozo Decl. Ex. K); Timothy Lee, *Porn copyright troll sues AT&T and Comcast, says they*  
*side with pirates*, Ars Technica (Aug. 10, 2012)( Cardozo Decl. Ex. L); Steve Schmadeke,  
*Chicago lawyer leads fight against porn piracy*, Chi. Trib. (Nov. 15, 2010) (Cardozo Decl.  
 Ex. M).

1           **Paragraph 37:** “This section [of a Prenda court filing] is truly a  
2           masterpiece of equine excrement, which even a failing law school student  
3           would think twice before submitting for a grade. Take a read of this section  
4           and try not to choke on what Prenda writes.”

5           This is not a statement of a fact, because it contains no verifiable facts. Whether  
6           something is a “masterpiece of equine excrement” cannot be proven one way or the other.  
7           *See Quinn v. Jewel Food Stores, Inc.*, 658 N.E.2d 1225, 1232 (Ill. App. Ct. 1995) (finding  
8           “A con artist! Watch out for the bullshit!” not actionable).

9           The reference to a failing law school student and that one might “choke” on the  
10          argument is colorful hyperbole, not actionable defamation. *Doherty v. Kahn*, 682 N.E.2d  
11          163, 170-72 (Ill. App. Ct. 1997) (terms like “incompetent,” “dishonest,” “cannot manage a  
12          business” found not to be defamatory); *Newman v. Hansen & Hepel Co.*, No. 01 C 9871,  
13          2002 WL 31455990, \*7-8 (N.D. Ill. Nov. 1, 2002); *Sullivan v. Conway*, 959 F. Supp. 877,  
14          880-81 (N.D. Ill. 1997).

15          Moreover, the Northern District of California looked at the same section of the same  
16          court filing (the new paragraphs of a proposed Second Amended Complaint), and found  
17          “that the new allegations in the revised proposed SAC are vague and speculative, and do  
18          not demonstrate diligence or add any substance to the claims.” Order Denying Motion for  
19          Leave to file Second Amended Complaint, *AF Holdings v. Doe*, N.D. Cal. No. 12-cv-  
20          02049, Dkt. 45 at 11 (RJN ¶ 6). The Court goes on to find various parts of this section  
21          “meaningless,” “conclusory,” “appear[ing] to be based on pure speculation” and  
22          “irrelevant.” *Id.*

23          **Paragraph 38:** Referring to Prenda Law; Troll Schulz- this isn't easy  
24          money and your reputation (if you have one) is going to be associated with  
25          a\$\$hats and criminals.”

26          Calling someone an “a\$\$hat” is not a statement of a verifiable fact. The reference to  
27          “criminals” is simply hyperbole, expressing DTD’s distaste for the business model that a  
28          federal judge has called an “extortion scheme.” *Malibu Media, LLC v. John Does 1-10*,  
29          No. 2:12-cv-3623-ODW(PJWx), 2012 WL 5382304, \*4 (C.D. Cal. June 27, 2012). Nor is



1 it actionable defamation for DTD to express his opinion that one should think about  
2 whether they want to be associated with Prenda.

3 Indeed, several federal judges have questioned whether one should be associated  
4 with Prenda. After Judge Mary Scriven of the Middle District of Florida dismissed *Sunlust*  
5 *Pictures v. Nguyen*, M.D. Fla. No. 8:12-CV-1685-T-35MAP, for “attempted fraud on the  
6 court,” she cautioned an attorney that by appearing as local counsel for Prenda, “you’re  
7 placing your bar number at issue and you’re placing your name and your goodwill at issue  
8 before a Court” and hoped it proved a lesson against associating “with characters such as  
9 the ones that are presented here.” Transcript of Hearing, *Sunlust v. Nuygen*, M.D. Fla. 8:12-  
10 cv-01685, Dkt. 28 at 22. The Court also said it would hear a motion for sanctions against  
11 Prenda’s principal Paul Duffy for his “lack of candor” with the Court. *Id.*

12 After Prenda’s contract attorney Brett Gibbs testified in the Central District of  
13 California about his experience with Prenda Law during a sanctions hearing, Judge Otis  
14 Wright asked him “Do you feel like you have been duped by Hansmeier and Steele?”,  
15 referring to the two attorneys who supervised his work at Prenda. “In a way, yes,” Gibbs  
16 responded. Transcript of Mar. 11 Sanctions Hearing (RJN ¶ 4), at 97. At that hearing, Mr.  
17 Gibbs also confirmed that Prenda had been using a stamp to send letters over Gibbs’s  
18 signature – without his authorization. *Id.* at 90, 111. At a later hearing, Judge Wright  
19 asked several Prenda attorneys, including Mr. Duffy, to respond to evidence of fraud and  
20 “such misconduct which I think brings discredit to the profession.” Transcript of Apr. 2  
21 Sanctions Hearing (RJN ¶ 5), at 6. The attorneys, including Mr. Duffy, invoked their Fifth  
22 Amendment right against self-incrimination. *Id.* at 7-9. To the extent that the quote  
23 “criminals” was to be taken as a factual statement, this Court is entitled to infer from  
24 Prenda and Mr. Duffy’s invocation of the Fifth Amendment that the “gist or sting” of that  
25 statement is true. *Baxter v. Palmigiano*, 425 U.S. 308, 318 (1976) (“the Fifth Amendment  
26 does not forbid adverse inferences against parties to civil actions when they refuse to testify  
27 in response to probative evidence offered against them.”).

28



1 **Paragraph 39:** Screenshot parodying Simpsons chalkboard scene; Bart  
 2 Simpson repeatedly writing “I will not file frivolous lawsuits,” captioned  
 “Prenda Ethics Training.”

3 As Prenda admits, this is a parody of *The Simpsons*, a satirical cartoon. In that  
 4 context, it is not possible to take it as having a literal defamatory meaning. Moreover, any  
 5 implication about Prenda’s ethics is not a statement of a fact, because it contains no  
 6 verifiable facts. *Gardner v. Senior Living Sys.*, 731 N.E.2d 350, 355 (Ill. App. Ct. 2000)  
 7 (“unethical” could not be “reasonably interpreted as stating actual verifiable facts and  
 8 therefore falls under a constitutionally protected opinion.”).

9 To the extent that this parody could be interpreted as a factual statement, DTD notes  
 10 that least one federal court has found that Prenda filed frivolous claims. Order to Show  
 11 Cause re Sanctions, *Ingenuity 13 v. Does, supra*, Dkt. No. 48 (RJN ¶ 7), at 5. (“If a  
 12 download was not completed, Plaintiff’s lawsuit may be deemed frivolous,” and later  
 13 finding there was no evidence of download being completed).

14 **Paragraph 42:** "Prenda then doesn’t have to prove that the John Doe or  
 15 Mr. Hatfield infringed. It then becomes Mr. Hatfield's responsibility to do  
 16 this and seek legal action against John Doe to make him pay his portion of  
 the fine. Pretty slick idea isn't it- In a slimy bottom feeding lawyer way.  
 Note: not all lawyers are like this, but if the shoe fits ...”

17 This post references Prenda’s legal theory that an Internet subscriber is liable under  
 18 negligence law for the acts of anyone who uses her Internet connection. Under this theory,  
 19 which has been rejected by several courts,<sup>11</sup> Prenda would establish liability without  
 20 proving who in particular infringed. Describing Prenda’s legal theory does not state  
 21 verifiable facts; it is an opinion about a theory. Calling this idea “slick ... in a slimy  
 22

23  
 24 <sup>11</sup> *Liberty Media Holdings, LLC v. Tabora*, No. 12 Civ. 2234(LAK), 2012 WL 2711381, at  
 25 \*1 (S.D.N.Y. July 9, 2012) (“the negligence claim suffers from at least two problems, each  
 26 independently fatal to its survival . . .”); *AF Holdings, LLC v. Hatfield*, No. C 12–2049  
 27 PJH, 2012 WL 3835102, at \*1 (N.D. Cal. Sept. 4, 2012) (dismissing negligence claim  
 based on preemption and lack of legal duty); *AF Holdings, LLC v. Botson*, No. 5:12–CV–  
 28 02048–EJD, 2012 WL 4747170 (N.D. Cal. Oct. 3, 2012) (dismissing negligence claim  
 based on preemption, lack of duty, and CDA §230 immunity).

1 bottom feeding lawyer way” is nothing more than name-calling. Name-calling is not  
2 libelous *per se*. *Delis v. Sepsis*, 292 N.E.2d 138, 142 (1972).

3 **Paragraph 43:** “Funny how Prenda will not actually name its investigators  
4 and the company they employ. Well I will- Company: 6881 Forensics LLC.  
5 Investigator (term very loosely applied): Peter Hansmeier. This is nothing  
6 more than a Prenda cover for the Steele/Hansmeier operations that stinks of  
7 questionable personnel, untested ‘forensic’ software, non-certified  
8 forensic/Investigative personnel, unethical behavior, and an incestuous  
9 relationships of all parties involved.”

10 To raise an issue of material fact with respect to this statement, Prenda must show  
11 that the “gist or sting” of the statement is false, i.e., that it would have a different effect on  
12 the mind of the reader than the truth. *Masson*, 501 U.S. at 516.

13 Prenda will be unable to do so. Paul Hansmeier, an attorney “of counsel” to Prenda  
14 Law and a principal of Prenda’s predecessor firm Steele Hansmeier PLLC,<sup>12</sup> has admitted,  
15 under oath, that his brother Peter Hansmeier operated 6881 Forensics LLC and that both  
16 Prenda and Steele Hansmeier use this company. Hansmeier Deposition (RJN ¶ 8) at 166-  
17 69, 206-08. Peter Hansmeier, the sole technician for 6681 Forensics, does not have a  
18 technical background or training. *Id.* at 167, 172-74. Paul Hansmeier, speaking as a Fed.  
19 R. Civ. P. 30(b)(6) ‘person most knowledgeable’ witness for Penda client AF Holdings, did  
20 not know the name of the software and was unsure about its origins. *Id.* at 176-177. John  
21 Steele and Paul Hansmeier are now “senior lawyers” with Prenda, and Prenda’s contract  
22 attorneys report to them. March 1 Gibbs Decl (RJN ¶ 1), at ¶ 5; April 11 Gibbs Decl. (RJN  
23 ¶ 2), at ¶ 3-4. The CEO of Prenda Law’s purported clients, AF Holdings LLC, Livewire  
24 LLC and Ingenuity 13 LLC, is Mark Lutz, who was formerly a paralegal of Steele  
25 Hansmeier. Hansmeier Depo. (RJN ¶ 8), at 130-32. In a January 2012 letter to the Florida  
26 State Bar in response to a bar complaint against him, Mr. Steele’s attorney wrote that “Mr.  
27 Steele is actually a client of Prenda. Steele maintains an ownership interest in several of  
28

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<sup>12</sup> Deposition Transcript of Paul Hansmeier, *Ingenuity 13 v. Doe*, Dkt. No. 71 (RJN ¶ 8), at 92 (referencing the “sale of Steele Hansmeier . . . to Prenda Law.”).

1 Prenda's larger clients." Motion for Sanctions, Exhibit K, *AF Holdings v. Patel*, No. 2:12-  
2 cv-00262, Dkt. 16-11 (RJN ¶ 9) at 8.

3 While much of these facts are evidenced by a deposition on February 19, 2013, truth  
4 "discovered during the course of litigation is as effective a defense as truth known at the  
5 time of the publication." *Global Relief Found. v. New York Times Co.*, No. 01 C 8821, 2002  
6 WL 31045394, at \*8 (N.D. Ill. Sept. 11, 2002). Moreover, DTD's low opinion of this  
7 operation is not defamatory because it does not state verifiable facts. *Gardner*, 731 N.E.2d  
8 at 255 (characterizing someone as "unethical" is not a verifiable fact).

9 **Paragraph 44:** "Just more FUD from the great minds at Prenda. Keep it up  
10 boys, just more evidence to support the abuse of process and harassment  
11 claims."

12 In context,<sup>13</sup> the statement is preceded by a discussion of a Doe who received a  
13 phone call from Prenda. The post states: "The case this Doe is under was initially filed in  
14 July 2011, and was voluntarily dismissed in 2012. So it looks like Prenda is going after  
15 Does when there is no active case against them." Prenda does not dispute the truth of this  
16 statement, nor the transcript of the phone call published, but rather DTD's opinion that the  
17 call was "FUD" ("fear, uncertainty, and doubt"). This is not a verifiable fact.

18 DTD's opinion that the phone call could provide evidence for an abuse of process  
19 claim is not actionable. Because abuse of process is not a crime, the statement cannot be  
20 libel per se, and therefore is not actionable because Prenda did not allege that this statement  
21 caused it damage. General allegations about damage to reputation and business are not  
22 enough. *Bruck v. Cincotta*, 371 N.E.2d 874, 879 (Ill. Ct. App. 1977). Prenda must show  
23 which statements caused what damage and how such damage was caused. *Spelson v. CBS,*  
24 *Inc.*, 581 F. Supp. 1195, 1199-1200, 1206 (ND Ill. 1984). Prenda fails to make that  
25 showing.

26  
27 <sup>13</sup> The context of this statement is available at [http://dietrolldie.com/2012/06/16/prenda-  
robo-calls-stupidity-gone-automatic/comment-page-1/](http://dietrolldie.com/2012/06/16/prenda-<br/>28 robo-calls-stupidity-gone-automatic/comment-page-1/).

1 Second, it is not libelous because it is simply expresses the opinion, albeit  
2 hyperbolically, that phone calls seeking payment for a closed case, on pain of Prenda Law  
3 filing a “lawsuit with your name in it” involving an adult film, and posting that suit online,  
4 is abusive. As Judge Wright explained, “Even for the innocent, a four-digit settlement  
5 makes economic sense over fighting the lawsuit in court—not to mention the benefits of  
6 preventing public disclosure (by being named in a lawsuit) of allegedly downloading  
7 pornographic videos.” Order To Show Cause Re Sanctions, *Ingenuity 13 v. Does, supra*,  
8 Dkt. No. 48 (RJN ¶ 7), at 7.

9 Finally, DTD notes that Prenda has indeed been found to have abused the subpoena  
10 process by a federal court. In *Ingenuity 13 v. Does*, the Court determined that Prenda had  
11 processed subpoenas after the Court ordered it not to. *Id.* at 8. Moreover, people *have* filed  
12 abuse of process claims arising from Prenda’s lawsuits. *See, e.g.*, Answer and  
13 Counterclaim, *AF Holdings v. Olivas*, D. Conn. No. 3:12-cv-01401-JBA, Dkt. 10 (RJN  
14 ¶ 10).

15 **Paragraph 46:** “Not that Prenda really cares about possible defendant guilt  
16 or innocence. They only want to generate settlements and the possibility of  
17 innocent parties only messes up their business model. In their eyes, all the  
18 defendants are guilty.”

19 In the context of this post,<sup>14</sup> DTD is referencing Prenda’s ‘copyright negligence’  
20 legal theory, which was included in the case discussed in the post. Pursuant to this theory  
21 (which has been rejected by at least five courts and has never survived a contested motion),  
22 the subscriber at a particular IP address is liable for any infringement that occurs on her  
23 network, regardless of whether or not the subscriber herself actually infringed. Thus the  
24 post’s reference to ‘not caring about guilt or innocence’ is, in context, about this incorrect  
25 legal theory by which liability is established regardless of whether the defendant is guilty or

26 \_\_\_\_\_  
27 <sup>14</sup> The context of this statement is available at <http://diertrolldie.com/2012/05/16/prenda-sloppy-seconds-the-phantom-doe-part-2-case-312-cv-02049-af-holdings-llc-v-john-doe-and-josh-hatfield/comment-page-1>.  
28

1 innocent of *infringement*. DTD's analysis of this legal theory does not state a factual  
2 matter, and is not actionable.

3 **Paragraph 47:** Prenda's "repulsive business model started the same way in  
4 the Federal system and now because of our actions, is moving on to new  
5 uncharted ground. I'm sure some of our friendly lawyers will enlighten us  
6 on the veiled '30 day' reference. That or the affected Does will find us via  
7 Google and the fun begins. You claims of great success in the courts is the  
8 usual Troll bravado. Yawn .... We understand we will not be successful all  
9 the time, but we are one hell of a thorn in your side. The thorn will fester  
10 and your operations will suffer for it."

11 Calling Prenda's business model, which Judge Wright has described as a "legal  
12 shakedown" and an "extortion scheme,"<sup>15</sup> "repulsive" is protected opinion speech. While it  
13 may be a verifiable fact whether or not Prenda's litigation program started in the federal  
14 system, this is not defamatory whether true or not. The remaining aspects of this paragraph  
15 are not statements of fact.

16 **Paragraph 54:** "Media Copyright Group, 6881 Forensics, etc.; this is the  
17 basis for what gets Prenda and the other Trolls their subpoenas granted.  
18 Destroy this and their operation takes a dive. Don't lose faith and keep  
19 telling the Trolls to bring it on. They don't want a full-out trial, only your  
20 money."

21 As an initial matter, this was published Jan. 14, 2012.<sup>16</sup> The statute of limitations for  
22 defamation in Illinois is one year. *See* 735 Ill. Comp. Stat. 5/13-201. Since this case was  
23 filed February 11, 2013, a defamation claim based on this statement is time-barred.

24 Furthermore, the notion that Prenda does not want a trial has been established in a  
25 Federal Court: "The federal courts are not cogs in plaintiff's copyright-enforcement  
26 business model. The Court will not idly watch what is essentially an extortion scheme, for  
27  
28

<sup>15</sup> Order Vacating Prior Early Discovery and to Show Cause, *Ingenuity 13 v. Does, supra*,  
Dkt. No. 28 (RJN ¶); *Malibu Media*, 2012 WL 5382304, \*4.

<sup>16</sup> The context of this statement, with date stamp, is available at  
<http://dietrolldie.com/2012/01/14/dtd-torpedo-hits-prenda-case-111-cv-09064-pacific-century-international-ltd-v-does-1-31-troll-paul-duffy/>.

1 a case that plaintiff has no intention of bringing to trial.” *Malibu Media*, 2012 WL  
2 5382304, at \*4.

3 Moreover, Prenda has admitted that, out of its first 200 or so lawsuits, against  
4 approximately 15,000 John Does, not a single defendant was served. *AF Holdings v. Does*  
5 *I-135*, N.D. Cal. No. 5:11-cv-3336, Dkt. No. 43-1 (RJN ¶ 12), at 4 (admitting “our records  
6 indicate that no defendants have been served in the below-listed cases”).

7 **Paragraph 49:** “Well I got to give it to the sneaky minds at Prenda Law.”

8 This is not a statement of a fact, because it contains no verifiable facts. *Quinn*, 658  
9 N.E.2d at 1232 (“A con artist! Watch out for the bullshit!” is not actionable).

10 **Count I:** Libel Per Se – Criminal Offense

11 None of the statements quoted in Paragraph 102 were stated by DTD. We note that  
12 these are generally quotes of hyperbole – for example, comparing Prenda to serial killers  
13 Dahmer and Bundy cannot reasonably be thought of as a factual assertion, and the  
14 description “extortion scheme” is a quote from a federal court order. Furthermore, the  
15 unattributed quotes like “criminal acts” and “crooks” are not libel per se. “In order for  
16 words charging the commission of a crime to be libelous per se, the offense must be  
17 indictable, involve moral turpitude and be punishable by death or imprisonment rather than  
18 by a fine.” *Bruck*, 371 N.E.2d at 878 (citing *Mitchell v. Peoria Journal-Star, Inc.* 221  
19 N.E.2d 516 (Ill. Ct. App. 1966)). Without specifying the particular crime, these quotes are  
20 not sufficient.

21 **Count II:** Libel Per Se – Want of integrity

22 None of the words quoted in paragraph 108 was stated by DTD. DTD notes, as  
23 discussed above, that federal courts have found Prenda has attempted a fraud upon the  
24 court. Transcript of Hearing, *Sunlust v. Nguyen*, Dkt. 28 (RJN ¶ 13). It has acted in “bad  
25 faith.” *Hatfield*, 2013 WL 97755, at \*7 (AF Holdings’ “conduct is at least suggestive of  
26 bad faith.”); *Botson*, 2012 WL 5426091, at \*2 (“the court is concerned that the proposed  
27 amendments are sought in bad faith ... simply to keep the only identified defendant ‘on the  
28



1 hook”). It has violated Rule 11. *Ingenuity 13 v. Does*, Dkt. 48 (RJN ¶, 7) at 5. Most  
2 importantly, as noted above, this Court is entitled to take an adverse inference from the fact  
3 that, when faced with evidence of its fraud, Prenda invoked the Fifth Amendment right  
4 against self-incrimination. *Id.*, Dkt. 103 (RJN ¶5), at 7-9. With this in mind, Prenda  
5 cannot meet its burden of showing that the “gist or sting” of any statement construed to be a  
6 factual assertion of a lack of integrity is false.

7 **Count III: Libel Per Se – Lack of Ability**

8 The only DTD statement quoted here, referencing “criminals,” is addressed above in  
9 the discussion of Paragraph 38. The quoted statements are all opinion or hyperbole, not  
10 actionable defamation. *See Gerrard v. Garda*, No. 08-cv-1146, 2009 WL 269028 at \*3  
11 (C.D. Ill. Jan. 30, 2009) (“incompetence,” “business ineptitude,” and “lack of business  
12 expertise” are vague and conclusory; not reasonably capable of being objectively verified).

13 **Count IV: Libel Per Se - Fornication and adultery**

14 Defamation by assertions of fornication and adultery are not applicable to a  
15 corporation. *Chicago Conservation Ctr. v. Frey*, 40 Fed. Appx. 251, 255 (7th Cir. July 2,  
16 2002) (unpublished). In any event, referring to “incestuous relationships of all parties  
17 involved” and calling Plaintiff’s attorneys “cornholers” is mere name-calling, and not  
18 libelous per se. *Delis v. Sepsis*, 292 N.E.2d 138, 142 (1972).

19 **Count V: False Lights**

20 First, Plaintiff has not alleged that any of the statements quoted in Paragraph 125  
21 were made by DTD, nor in fact were they. Second, as a corporation, Prenda is not entitled  
22 to assert false light claims under Illinois law. *See Oberweis Dairy, Inc. v. Democratic*  
23 *Cong. Campaign Comm., Inc.*, No. 08 C 4345, 2009 WL 635457, at \*1 (N.D. Ill. March 11,  
24 2009).

25 **Count VI and VII: Tortious Interference**

26 The Illinois Supreme Court has described defamation and tortious interference  
27 claims as “analytically intertwined.” *Mittelman v. Witous*, 552 N.E.2d 973, 987 (Ill. 1989).

28



1 For this reason, courts have applied constitutional considerations to tortious interference  
2 claims:

3 Any libel of a corporation can be made to resemble in a general way this  
4 archetypal wrongful-interference case, for the libel will probably cause  
5 some of the corporation's customers to cease doing business with it. . . . But  
6 this approach would make every case of defamation of a corporation  
actionable as wrongful interference, thereby enabling the plaintiff to avoid  
the specific limitations [of the law of defamation]

7 *Brown & Williamson Tobacco Corp. v. Jacobson*, 713 F.2d 262, 273-74 (7th Cir. 1983).

8 Accordingly, Prenda may not maintain a tortious interference claim based upon  
9 protected speech.<sup>17</sup>

10 Likewise, courts do not permit tortious interference claims based on truthful speech.  
11 *Delloma v. Consolidation Coal Co.*, 996 F.2d 168 (7th Cir. 1993). A “statement is not  
12 considered false unless it would have a different effect on the mind of the reader from that  
13 which the pleaded truth would have produced.” *Masson*, 501 U.S. at 516. Given that  
14 Prenda has been found to violated discovery orders and Rule 11, had a case dismissed for  
15 “attempted fraud on the courts,” had its practices called by courts a “legal shakedown” and  
16 an “extortion scheme,” and been forced to take the Fifth in the face of unrebutted evidence  
17 of fraud, Prenda cannot show that the statements in its complaint would have a different  
18 effect on the mind of the reader than the truth.

19 **Count VIII: Civil Conspiracy**

20 Under Illinois law, the elements of a civil conspiracy are: (1) a combination of two  
21 or more persons, (2) for the purpose of accomplishing by some concerted action either an  
22 unlawful purpose or a lawful purpose by unlawful means, (3) in the furtherance of which  
23

24  
25 \_\_\_\_\_  
26 <sup>17</sup> Courts around the country agree. See *Med. Lab. Mgmt. Consultants. v. Am. Broad. Cos.*,  
27 306 F.3d 806, 821-22 (9th Cir. 2002); *Unelko Corp. v. Rooney*, 912 F.2d 1049, 1058 (9th  
28 Cir.1990); *Redco Corp. v. CBS, Inc.*, 758 F.2d 970, 973 (3d Cir.1985); *Beverly Hills  
Foodland, Inc. v. United Food & Commercial Workers Union, Local 655*, 39 F.3d 191, 196  
(8th Cir. 1994).

1 one of the conspirators committed an overt tortious or unlawful act. *Adcock v. Brakegate,*  
 2 *Ltd.*, 645 N.E.2d 888, 894 (Ill. 1994).

3 “Plaintiff’s statement that they conspired is insufficient—the complaint must contain  
 4 more than the conclusion that there was a conspiracy, it must allege specific facts from  
 5 which the existence of a conspiracy may properly be inferred.” *Fritz v. Johnston*, 807  
 6 N.E.2d 461, 471 (Ill. 2004); *see also Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007);  
 7 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (complaint must allege “factual content that  
 8 allows the court to draw the reasonable inference that the defendant is liable for the  
 9 misconduct alleged”).

10 Here Prenda fails to allege any specific facts to show that a conspiracy existed, or  
 11 that there was any concerted action.<sup>18</sup> Moreover, as discussed above, the alleged posts  
 12 were not tortious, and thus are not an unlawful purpose or means.

13 3. Defendants’ First Amendment Interests Strongly Outweigh Plaintiff’s  
 14 “Need” for Their Identities.

15 Pursuant to *Dendrite*, 775 A.2d at 760-61, the Court should “balance the defendant’s  
 16 First Amendment right of anonymous free speech against the strength of the *prima facie*  
 17 case presented and the necessity for the disclosure of the anonymous defendant’s identity to  
 18 allow the plaintiff to properly proceed.”

19 As noted above, the *prima facie* case is weak. Balanced against that is the severe  
 20 First Amendment harm if Prenda is allow to unmask its critics.

21 **C. Die Troll Die Is Not Liable for Statements of Third Party Commentators**  
 22 **Under Section 230 of the Communications Decency Act, and so Those**  
 23 **Statements Provide No *Prima Facie* Evidence in Support of Plaintiff’s**  
 24 **Claims.**

25 DTD cannot be held liable for the allegedly defamatory statements posted on his  
 26 online message board, and thus those statements provide no *prima facie* evidence in support  
 27

28 <sup>18</sup> In addition, Prenda has admitted that it does not have sufficient information to allege  
 specific facts: “Plaintiff has no way of knowing if multiple individuals use the pseudonym  
 to make comments, of [sic] if one writer uses multiple pseudonyms to libel Plaintiff.”  
 Amended Complaint (Cardozo Decl. Ex. A), at ¶ 31. Without more than one individual,  
 there can be no conspiracy.

1 of Plaintiff's claims against him, as required under the First Amendment test discussed  
2 above. Pursuant to subsection (c) of Section 230 of the federal Communications Decency  
3 Act ("Section 230"), "[n]o provider or user of an interactive computer service shall be  
4 treated as the publisher or speaker of any information provided by another information  
5 content provider." 47 U.S.C. § 230(c). "The term 'information content provider' means  
6 any person or entity that is responsible, in whole or in part, for the creation or development  
7 of information provided through the Internet or any other interactive computer service[,]"  
8 including, for example, the third party commentators on Die Troll Die's message board.  
9 *See id.* § 230(f)(3); *see also Universal Commc'n Sys., Inc. v. Lycos, Inc.*, 478 F.3d 413, 419  
10 (1st Cir. 2007) (holding that "message board postings do not cease to be 'information  
11 provided by another information content provider' merely because the 'construct and  
12 operation' of the web site might have some influence on the content of the postings").

13 The practical effect of the statute is that it immunizes online service providers –  
14 providers of "interactive computer services" – from attempts to hold them liable for the  
15 behavior of and materials provided by third parties; i.e., other "information content  
16 providers." *See, e.g., Fair Hous. Council of San Fernando Valley v. Roommates.com, LLC*,  
17 521 F.3d 1157, 1179 (9th Cir. 2008) (en banc) ("By its plain language, § 230 creates a  
18 federal immunity to any cause of action that would make service providers liable for  
19 information originating with a third-party user of the service.") (citing *Zeran v. Am. Online,*  
20 *Inc.*, 129 F.3d 327, 330 (4th Cir. 1997)). Furthermore, under Section 230, "lawsuits  
21 seeking to hold a service provider liable for its exercise of a publisher's traditional editorial  
22 functions – such as deciding whether to publish, withdraw, postpone or alter content – are  
23 barred." *Zeran*, 129 F.3d at 330. The *Zeran* court observed that in enacting Section 230,  
24 Congress chose not to "deter harmful online speech through the separate route of imposing  
25 tort liability on companies that serve as intermediaries for other parties' potentially  
26 injurious messages." *Id.* at 330-31.

27 DTD's message board website at dietrolldie.com is an "interactive computer  
28 service" within the meaning of Section 230, and so he is immune from suit for causes of

1 action arising from comments posted by third party users. *See* 47 U.S.C. § 230(f)(2) (“The  
 2 term ‘interactive computer service’ means any information service, system, or access  
 3 software provider that provides or enables computer access by multiple users to a computer  
 4 server . . . .”); *see also Fair Hous. Council*, 521 F.3d at 1162 n.6 (“Today, the most common  
 5 interactive computer services are websites.”); *Id.* at 1163 (noting that Congress passed  
 6 Section 230 in order to prevent an Internet service provider from being held liable for a  
 7 “libelous message posted on one of its . . . message boards”); *Universal Commc’n Sys.,*  
 8 *Inc.*, 478 F.3d at 418 (In enacting Section 230, “Congress intended that, within broad limits,  
 9 message board operators would not be held responsible for the postings made by others on  
 10 that board.”).

11 Moreover, courts have recognized that the causes of action Plaintiff asserts against  
 12 DTD are among those that fall within the immunity provided by Section 230.<sup>19</sup> Because  
 13 Plaintiff’s causes of action for defamation, false light, tortious interference, and civil  
 14 conspiracy do not fall among these exceptions, DTD is immune to any liability that third-  
 15 party users may face under these causes of action for statements those third-party users  
 16 posted on dietrolldie.com. *See Carafano v. Metrosplash.com, Inc.*, 339 F.3d 1119, 1125  
 17 (9th Cir. 2003) (holding provider of online matchmaking service immune from defamation  
 18 suit under Section 230); *Barnes v. Yahoo!, Inc.*, 570 F.3d 1096, 1101-02 (9th Cir. 2009)  
 19 (“The cause of action most frequently associated with the cases on section 230 is  
 20 defamation. . . . [But] a provider of information services might get sued for . . . false light . .  
 21 . . [W]hat matters is not the name of the cause of action[,] [but whether it] requires the court  
 22 to treat the defendant as the ‘publisher or speaker’ of content provided by another. . . . If it  
 23 does, section 230(c)(1) precludes liability.”); *Zango, Inc. v. Kaspersky Lab, Inc.*, 568 F.3d  
 24 1169, 1178 (9th Cir. 2009) (holding distributor of Internet security software entitled to

25  
 26 \_\_\_\_\_  
 27 <sup>19</sup> Some limited exceptions to Section 230’s protections are written into the statute: carve-  
 28 outs for intellectual property claims, § 230(e)(2); for enforcement of the federal Electronic  
 Communications Privacy Act, § 230(e)(4); and for federal criminal law, § 230(e)(1). None  
 of these carve outs apply here.

1 Section 230 immunity from claim of tortious interference with contractual rights); *Shrader*  
 2 *v. Beann*, No. 12-1109, 2012 WL 5951617, at \*3 (10th Cir. Nov. 29, 2012) (holding owner  
 3 of an Internet trade website entitled to Section 230 immunity from civil conspiracy claim);  
 4 *accord Cornelius v. Deluca*, No. 1:09CV72 SNLJ, 2009 WL 2568044, at \*2 (E.D. Mo.  
 5 Aug. 18, 2009) (Section 230 barred the plaintiffs' civil conspiracy claim.).

6 Thus, although Plaintiff attempts to conflate the statements made by third party users  
 7 of dietrolldie.com with statements made by DTD and the other Defendants, DTD cannot be  
 8 held liable for any cause of action arising out of statements made by third-party  
 9 commenters on his site. As such, these statements by third parties provide no evidence to  
 10 support Plaintiff's claims, and so should not factor into the First Amendment analysis under  
 11 *Cahill*, as discussed above.

#### 12 **IV. CONCLUSION**

13 For the reasons stated above, Defendant respectfully requests that this Court quash  
 14 Plaintiff's subpoena to Wild West Domains.

15 DATED: April 16, 2013

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