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

Liberty Media Holdings, LLC, a California
Corporation
Plaintiff,
vs.
FF Magnat Limited d/b/a Oron.com; Maxim
Bochenko a/k/a Roman Romanov; and John
Does 1-500,
Defendants.

Case No.: 2:12-cv-01507

**PARTIAL OPPOSITION TO EMERGENCY
MOTION FOR PARTIAL STAY FROM
TEMPORARY RESTRAINING ORDER**

Plaintiff Liberty Media Holdings (“Liberty” or “LMH”), by and through its counsel, opposes Defendants FF Magnat Limited d/b/a Oron.com (“Oron”) and Maxim Bochenko a/k/a Roman Romanov (“Bochenko”)’s Emergency Motion for Partial Relief from Temporary Restraining Order and For Extension of Time; or, in the Alternative, to Advance Hearing on Preliminary Injunction. (Doc. # 15).

I. INTRODUCTION

Oron has moved this Court to allow it to withdraw funds without oversight, accounting, documentation, or even much of an *explanation* as to how and where the money will be used – or

1 with any sworn statements that the money is necessary for Oron's short-term legal expenses and to
2 pay its operating costs. While plaintiff does not disagree that Oron is entitled to retain counsel and
3 mount a defense to this action, Oron's demonstrated attempts to dissipate its assets after learning of
4 this dispute (Doc. # 2-5) undermine its demands in the instant Motion, as they are impermissibly
5 vague and cloaked in the unmistakable aroma of fraud.

6 Oron has sought leave from this Court to withdraw nearly \$400,000 in funds to represent
7 itself for, at most, ten (10) days. This is an exorbitant amount of money for such a short period of
8 time. Moreover, Oron fails to provide this Court with any basis, calculations or rationale for how it
9 concluded that this fantastic sum was necessary.¹ Further, Oron claims that it has no other funds,
10 when the Plaintiff is in possession of a statement provided by PayPal, Inc., showing more than \$5
11 million have passed through FF MAGNAT's account (Exhibit C). Furthermore, the Plaintiff has
12 information suggesting that Oron has multiple other accounts and stashes of funds from which it
13 could draw this amount of money. (Exhibits D-G) Yet Oron wants to withdraw funds from PayPal
14 – the one banking institution over which this Court likely has jurisdiction. Oron's deception is
15 transparent.

16 Oron is asking for \$25,000 per day over the next week in order to brief and prepare for its
17 hearing on the order to show cause regarding Plaintiff's requested preliminary injunction. Despite
18 Oron's purported "confidence" in relieving itself of LMH's injunction, it seeks nearly enough
19 money over then next week to see the average litigation case through trial and appeal. Moreover,
20 Oron requests this money without accounting for how it will be spent on counsel, business
21 expenses, or anything other than merely removing it from frozen accounts for the sheer sake of
22 doing so.

23 As stated, LMH does not disagree that Oron is entitled to have representation in this matter.
24 However, there is no need for the company to withdraw \$375,000 from its only coffers over which
25 the Court may exercise its equitable powers, without justification, sworn statements, or an

26 ¹ Plaintiff LMH notes that, while Defendants' Motion discusses their opinion regarding the
27 propriety of the Temporary Restraining Order, that discussion is not relevant to the relief that
28 Defendants currently demand of this Court. Plaintiff strongly disagrees with Oron's premature
conclusions and will respond to them in due course.

1 accounting, particularly given Oron's demonstrated proclivity to remove its assets beyond this
2 Court's jurisdiction.

3 **II. THE COURT SHOULD DENY ORON'S REQUEST TO RELEASE \$375,000**

4 **A. This Court May and Should Deny Oron's Unreasonable Attorneys' Fees Request.**

5 Oron seeks to withdraw far more funds than are reasonably necessary to represent itself and
6 continue its business activities through the hearing on LMH's preliminary injunction motion. This
7 Court is entitled to determine whether the funds that Oron requests are reasonable. *CFTC v. Noble*
8 *Metals Int'l, Inc.*, 67 F. 3d 766 (9th Cir. 1995). If the Court so finds, it should deny the request.
9 District courts have discretion to forbid or limit payment of attorneys' fees out of frozen assets.
10 *FSLIC v. Ferm*, 909 F.2d 372, 375 (9th Cir. 1990); *FTC v. World Wide Factors, Ltd.*, 882 F.2d 344,
11 347 (9th Cir. 1989) (observing that "courts regularly have frozen assets and denied attorney fees or
12 limited the amount for attorney fees").

13 It is unreasonable for Oron to demand a nearly \$400,000 withdrawal from its known
14 accounts for payment of its attorneys' fees and operating expenses when, according to Oron's
15 counsel, that amount is purportedly very close to Oron's value as a going concern. Specifically,
16 Oron's counsel represented that a settlement demand of \$500,000 was "an unreasonable amount"
17 to the defendants and "more than the company itself was worth" in previous discussions (See
18 Exhibits A and B).² In this situation, the Court is justified in exercising its discretion to deny
19 Oron's request, as allowing it to withdraw \$375,000 would, by the defendants' own admission,
20 nearly completely dissipate – if not eliminate altogether – the funds available to compensate LMH
21 for its losses. Where a release of funds would exhaust the resources available to satisfy the
22 plaintiff's likely or potential recovery, it must be denied, and the freeze on assets upheld. *World*
23 *Wide Factors*, 882 F.2d at 348 (approving limitation on attorney fees "out of concern for
24 preserving funds for ultimate distribution to defrauded customers") citing *FSLIC v. Dixon*, 835
25 F.2d 554, 564-65 (5th Cir. 1987).

26
27 ² These exhibits are heavily redacted since they represent settlement discussions. However, they
28 are not presented to demonstrate liability – only to impeach Oron's request for the release of funds.
The documents are completely redacted except for the portions necessary to do so.

1 In Stevan Lieberman's blanket declaration verifying the motion's contents, there is no
2 representation made that the fees sought for Oron's defense are reasonable (Doc. # 15-1). Not even
3 by him, much less by his client or an independent party or attorney. The simple reason illustrated
4 by the math above is that they are *not* reasonable. As Lieberman is counsel to the defendant and
5 coordinating with the other attorneys, he would have knowledge as to their hourly rates – yet he
6 fails to state them (*id.*). Similarly, as defense counsel, Liberman would presumably have
7 knowledge as to the costs and fees needed to sustain Oron's business operations, their necessity,
8 and their reasonableness. Yet, he provides no specific information as to any of these issues in his
9 declaration (*id.*). Not only does the lack of information in Lieberman's declaration fail to
10 substantiate Oron's purported need to withdraw \$375,000 in otherwise frozen funds, but it
11 undercuts Lieberman's claim to have personal knowledge of the matters set forth in the motion as
12 well (*id.*). It is a glaring omission that we have no declaration from anyone at FF Magnat / Oron
13 providing any information about their alleged business expenses. In fact, the only testimony we
14 have is that of counsel, provided in the broadest and most conclusory manner possible. This is
15 insufficient.

16 Oron's funds are all the proceeds of an illegal enterprise. At the upcoming hearing, the
17 Plaintiff is prepared to present evidence to support this. Furthermore, the Plaintiff intends to
18 present a witness who can testify to the fact that Oron.com, with its promises of anonymity for its
19 users, is a repository for child pornography, as well as infringing content.³ It owns and operates
20 indexes of this material on forumophilia.com and pornbb.com. Accordingly, Oron has filled its
21 coffers with at least \$5 million in ill-gotten gains derived from monetizing wholesale copyright
22 infringement and the distribution of illegal child pornography. Now, with only \$1.6 million of this
23 cache located, Oron wants the Court to permit it to dissipate nearly \$400,000 in one week. It
24 should not do so.

25 \\\

26 \\\

27 _____

28 ³ This witness' name is Nate Glass.

B. The Defendants' Requested Relief Smacks of Impropriety and Should be Denied.

While Defendants' emergency motion goes on at length about the nature of Oron's business and the substantive defenses Oron plans to raise, it does little to explain how the money it apparently urgently needs to release will be used. Defendants have not supplied any invoice documenting the charges due to their hosting company, which provides its online services, nor any information concerning this company's billing cycle, or that Oron's hosting services will be terminated immediately upon non-payment. No officer, representative or other employee of Oron has given a declaration as to what harm, if any, the maintenance of this Court's TRO would cause the company.

For all of Oron's rhetoric, Defendants have not provided this Court with any evidence that the services it offers will be disrupted, and its business harmed, if it does not withdraw the requested funds. Defendants have also not provided the Court with a schedule of their attorneys' fees for the Court or LMH to evaluate their reasonableness. While the Defendants' motion discusses for nearly 20 pages the alleged harms it will suffer without the immediate withdrawal of \$375,000, it engages in a calculated misdirection: Oron creates a sense of urgency without providing any evidence or relevant facts that actually substantiate any harm whatsoever.

Pursuant to a lawful subpoena (issued pursuant to the Digital Millennium Copyright Act) to PayPal Incorporated, LMH has received an accounting of Oron's assets for the account associated with the e-mail address "paypal@oron.com." A true and correct copy of this subpoena response is attached as Exhibit C. On the first page of this report, PayPal states that Oron has received more than \$5,000,000, with a current balance of more than one million Euro – well in excess of \$1,000,000. The court should contrast these provable assets in just one of Defendants' PayPal accounts to Oron's prior representations that the company is worth less than \$500,000 (Exhibit B). This creates a serious question as to what the Defendants' assets truly are, and what degree of credibility should be given to their statements without sworn testimony and authenticated records. It is clear that Oron has multiple funding sources. (Exhibit C) Oron receives funds from direct wire transfers, SMS/Phone billing, WebMoney, and a laundry list of "resellers." (Exhibits D and E) Meanwhile, Oron discloses no information about funds in those accounts or from those sources,

1 and expects this court to believe that the only funds to which it has any access at all are those in the
2 account that the Plaintiff happens to have managed to locate so far. Oron certainly has plenty of
3 funds squirreled away – it simply prefers to keep these accounts hidden.

4 Based on Oron’s demonstrable cash on hand (Exhibit C at 2), failure to account for more
5 than \$5,000,000 in received payments, most likely lack of candor with respect to its available
6 funds, and lack of critical detail in its motion, a plausible rationale for Oron’s request is that it
7 seeks to obtain money from under this Court’s injunction for dissipation and concealment. *Dixon*,
8 935 F.2d at 565. By vaguely asserting the need to pay counsel, Oron demands more money from
9 this Court than is reasonably necessary to prepare for the upcoming hearing and to continue
10 business operations for one week. Given its demonstrated attempts to conceal its assets, the
11 vagueness, lack of detail and lack of substantive information within its demand is telling. This
12 impropriety, evident from the motion’s intentional lack of detail and any substantive information
13 that informs both the Court and LMH as to how Oron’s frozen funds will be used, bars Oron from
14 withdrawing the amount of funds requested while an injunction is in place. *Dixon*, 935 F.2d at 565,
15 accord *Noble Metals Int’l, Inc.*, 67 F. 3d 766; *World Wide Factors*, 882 F.2d at 348.

16 The funds in the PayPal account seen in Exhibit C, corresponding to the e-mail address
17 “paypal@oron.com,” along with the evidence already on record demonstrating Oron’s efforts to
18 move large amounts of money outside the reach of this Court (Doc. # 2-5), reveal that Oron has not
19 abandoned its strategy of hiding its assets from the Court. In similar situations, where it was
20 obvious that the intent of the enjoined party was to move funds beyond the reach of domestic
21 jurisdiction, courts have upheld asset freezes. Where, as here, there is evidence of a “history of
22 spiriting [funds] away” in a manner “intentionally designed to frustrate United States courts’
23 powers to grant effective relief to prevailing parties,” upholding a standing injunction is proper.
24 *FTC v. Affordable Media*, 179 F.3d 1228, 1236-37 (9th Cir. 1999). In light of these circumstances
25 (Exhibit C; Doc. # 2-5), it takes no stretch of the court’s imagination to see the defendant’s true
26 intention of concealing its assets and continuing to dissipate them piecemeal. *Id.*; *Dixon*, 935 F.2d
27 at 565. If Oron will blow \$400,000 in one week of operation, two more requestes cannot be far
28

1 behind – leaving the criminals with all of their ill-gotten gains and the Court with no ability to
2 exercise equity over the funds.

3 Oron expects the Court to take as an article of faith that the Defendant will put its funds to
4 appropriate use. However, all that Oron has presented to the Court as evidence is its claim that it
5 needs to retain counsel. Absent a documentation of what its attorneys and hosting services would
6 cost Oron, the terms of payment, and consequences of non-payment, the Court is given no direction
7 to analyze the propriety of Oron's request. Without any kind of accounting for what funds are
8 demonstrably needed, how they will be allocated, or where all of their other funds are hidden, the
9 Court is incapable of engaging in the analysis required to authorize the requested release of funds
10 from underneath an injunction. *Dixon*, 935 F.2d at 565, accord *Noble Metals Int'l, Inc.*, 67 F. 3d
11 766; *World Wide Factors*, 882 F.2d at 348.

12 **C. Contrary to Their Representations, Defendants Still Are Earning Massive Revenue.**

13 Defendants have not sworn, shown, nor otherwise established that they are not receiving
14 ongoing revenue through Oron.com and their related services. The reason for this failing is
15 because the Defendants continue to profit off of the site, and resale of LMH's copyrighted works.
16 Oron.com's payment page still has numerous options for payment directly to the site, by which
17 customers can purchase premium memberships to expedite their consumption of stolen copyrighted
18 content. (Exhibit D) In addition to these direct payment options, Oron affords potential customers
19 the option of purchasing its premium memberships through resellers based in countries throughout
20 the globe (Exhibit E).

21 As Oron still receives funds through these portals, they can be used to generate revenue for
22 the defendant. In fact, the funds raised from these premium membership sales can also be used to
23 pay Oron's legal expenses and operating costs. Oron, however, apparently prefers not to do so.

24 Defendants have other services with which they are generating revenue during the pendency
25 of this litigation. Defendant FF Magnat Limited is the registrant, or owner, of a virtually identical
26 site, <GoOron.com> (Exhibit F). This site's name and domain name wholly contains the name of
27 defendant's "Oron" service name, and operates on the same affiliate model as the main Oron
28 business. On the splash page of <GoOron.com>, the service advertises to potential users that they

can “Promote and Sell [Their] Content!” (Exhibit G) Thus, using the same model as Oron, the defendant’s GoOron.com service allows users to monetize uploaded infringing content by inducing others to download it. The defendants continue to earn revenue through this service, but apparently will not contribute it to the cost of their legal defense.

D. Oron Must Provide an Accounting to the Court Before Releasing any Funds.

LMH alleges more than \$38,000,000.00 in damages against the Defendants for their infringement upon LMH’s intellectual property; even if their infringement is not found to be willful, Oron will still face more than \$6,000,000 in liability. Additionally, at least four other parties have identified Oron as their main source of copyright infringement and intend to join this action as plaintiffs before the motion for preliminary injunction is filed. Oron’s potential statutory damage liability for copyright infringement will range well into the tens of millions of dollars, and the equitable relief of disgorgement of ill-gotten profits will be impossible to effect if Oron manages to sweep its illegal profits into hidden bank accounts or other places where criminals hide their money. MegaUpload, A file locker service with an affiliate program similar to Oron’s, was recently indicted by the U.S. Department of Justice along with its principals on counts of racketeering and money laundering, distinct from its widespread copyright infringement.⁴ The only difference between Megaupload and Oron is that Oron is even more brazenly violating the law.

Exhibit C represents only one PayPal account known to LMH, yet it contains in excess of \$1,000,000. For this Court to analyze the propriety of Oron’s withdrawal of funds, it must be fully appraised of all of its holdings and assets so that the Court can ensure that equitable relief in the form of depriving Oron of the proceeds of its piracy will not be impotent. By virtue of the Complaint, and forthcoming Amended Complaint, the Court has knowledge of the damages claims against the Defendants. To analyze the reasonableness of Oron’s withdrawals of frozen assets and their potential for denying Liberty and other plaintiffs a right to redress their damages, the full

⁴ Sean Gallagher, Megaupload Shut Down by Feds, Seven Charged, Four Arrested, Ars Technica (Jan. 19, 2012), *available at* <http://arstechnica.com/tech-policy/2012/01/megaupload-shut-down-by-feds-seven-charged-four-arrested/> (last accessed June 26, 2012) (“Megaupload is also charged with **money laundering by paying uploaders through an ‘uploader reward program,’** and paying other companies to host the pirated content”) (emphasis added).

1 extent of Oron's assets must be disclosed to the Court. *Noble Metals Int'l, Inc.*, 67 F. 3d 766;
 2 *World Wide Factors*, 882 F.2d at 348; see *Dixon*, 935 F.2d at 565.

3 Requiring Oron to account for all of its world wide assets before withdrawing funds to pay
 4 for unspecified and outrageous attorneys' fees and business expenses is a necessary step to avoid
 5 their likely dissipation and concealment. *Noble Metals Int'l, Inc.*, 67 F.3d 766; *World Wide*
 6 *Factors*, 882 F.2d at 348; see *Dixon*, 935 F.2d at 565. Without an appraisal of Oron's actual and
 7 un-hidden assets as weighed against its liabilities, the Court may inadvertently deprive Liberty and
 8 other incipient plaintiffs from any right to redress while allowing Oron to withdraw funds
 9 purportedly used for legal representation. Unless Oron fully and adequately informs the Court of
 10 the true resources and assets it has available, the Court is unable to properly assess the
 11 reasonableness of releasing any attorneys' fees and business expenses to Oron, let alone the
 12 requested amount of \$375,000.

13 **E. Liberty Consents to an Extended Briefing Schedule and Maintenance of the TRO.**

14 In order to afford Oron far more courtesy than it has shown to Liberty, plaintiff will consent
 15 to extending the briefing schedule by one week, upon the conditions that a) the current TRO
 16 remains in effect, and b) at the conclusion of the briefing, an evidentiary hearing on the plaintiff's
 17 motion for preliminary injunction / this Court's order to show cause is held. Defendants' counsel
 18 appears amenable to this arrangement, which would preserve the status quo and allow both parties
 19 adequate time to prepare for the court's scheduled hearing. (Doc. # 15 at 15:10-18) Liberty would
 20 have extended this accommodation to defendant's counsel if requested informally, but Oron's
 21 counsel declined to seek any prior discussions with the Plaintiff prior to filing the instant motion.
 22 Accordingly, Liberty stipulates to a one-week extension of the briefing schedule subject to the two
 23 conditions set forth above.

24 **III. CONCLUSION**

25 Defendants have fallen far short of their burden to establish the need and propriety for the
 26 Court to release funds for their legal and business expenses. In addition to not specifying the
 27 attorneys' fees charged by Oron's counsel and their reasonableness, nor stating the costs, due dates
 28 or non-payment consequences of Oron's business expenses, the defendant's claimed need for

1 emergency relief is undermined by its stark absence of specific evidence. In order for this Court to
2 engage in adequate analysis of what funds (if any) are to be released from the injunction, the
3 defendant must provide the Court a full accounting of its assets – including its incoming revenue.

4 Oron's request for a release of \$375,000 must be denied unless it provides a complete and
5 full accounting of its assets are made to the Court. Only then will the Court be able to engage in
6 the proper analysis of what funds may be released to preserve the plaintiff's right to recovery.
7 Consistent with the plaintiff's stipulation, the briefing schedule may be extended for one week and
8 immediately followed by an evidentiary hearing for a preliminary injunction, with the TRO
9 maintained in anticipation of this hearing.

10
11 Dated: June 26, 2012

12 Respectfully Submitted,

13 s/Marc J. Randazza

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was filed and served using this Court's CM/ECF system on June 21, 2012.

Dated: June 26, 2012

Respectfully Submitted,

s/Marc J. Randazza

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