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10 Attorneys for Plaintiff,  
11 Liberty Media Holdings, LLC

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

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

Case No.: 2:12-cv-01057

**OPPOSITION TO SECOND EMERGENCY  
MOTION TO DISBURSE FUNDS**

21 Plaintiff Liberty Media Holdings, LLC (“LMH” or “Liberty”), by and through its counsel of  
22 record, hereby opposes the Emergency Motion for Disbursement of Additional Funds filed by  
23 Defendant FF Magnat Limited d/b/a Oron.com (“Oron”) (Doc. # 20). This Opposition is based  
24 upon the attached memorandum of points and authorities, the attached declarations, the papers and  
25 pleadings on file in this matter, and any oral argument permitted by this Court.

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MEMORANDUM OF POINTS AND AUTHORITIES

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2 **I. INTRODUCTION**

3 On June 26, 2012, this Court denied Oron's previous demand for disbursement of nearly  
4 \$400,000.00 from its frozen accounts because Oron did "not provide any itemization or accounting  
5 for the Court to consider in making its determination if the amount requested is reasonable." (*See*  
6 *Order Re: ECFs 15 and 16, at 1 (Doc. # 19).*) Now, less than forty-eight hours later, Oron has  
7 demanded that this Court release the nearly identical amount of EUR 348.845,29<sup>1</sup> for identically  
8 undocumented payments to LeaseWeb, Oron's hosting provider – and, not incidentally, the  
9 Internet's premier hosting service for high-volume copyright infringement (*see generally* Decls. of  
10 Glass, Phinney, Thompson, and Tucker).  
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13 Notably, Oron once again fails to properly justify its request for disbursement. This is no  
14 mere accident or oversight, as the exhibits referenced by the Motion still fail to justify Oron's  
15 second attempted demand for hundreds of thousands of dollars from this Court.

16 For example, Oron argues that this Court must disburse the money because Oron's Hong  
17 Kong bank is refusing to release funds pursuant to the injunction issued by the Hong Kong court,  
18 which permits withdrawal of funds for the payment of business expenses. (*See* Motion, at 2.) Oron  
19 has offered no explanation for why it has not sought relief from the Hong Kong court with respect  
20 to its own injunction, and to make its Hong Kong bank disburse these "business expenses" –  
21 particularly when the Hong Kong court would have been in session after the United States' courts  
22 closed. In fact, instead of seeking relief from the Mareva Injunction, Oron has sought to delay that  
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27 <sup>1</sup> In Oron's prior Motion (Doc # 15), it converted the funds it requested from Euros to American  
28 Dollars. Presumably, it did not do so in the instant Motion in the hope that the Court would not  
notice that it was requesting *almost the exact same amount*.

1 hearing. Did Oron's Hong Kong bank or the Hong Kong court determine that the money Oron  
2 demands is not for the payment of legitimate business expenses?<sup>2</sup> Oron does not say.

3 Oron additionally fails to explain or document why LeaseWeb, its hosting company, is  
4 requiring an "advance payment" of several hundred thousand dollars - even though this Court has  
5 already released ample funds for Oron to pay its hosting fees for the month of July. (*See* Motion, at  
6 1-2.) LeaseWeb's demand of more than \$275,000 on the 9th day of a month is highly irregular,  
7 and an extreme deviation from the normal business practices within the legitimate web hosting  
8 industry (*see* Thompson Decl. ¶¶ 13-25). Logic suggests that LeaseWeb is either (a) colluding with  
9 Oron to assist Oron in removing hundreds of thousands of dollars from this Court's jurisdiction; (b)  
10 extorting Oron; or (c) Oron is not being entirely forthcoming with the Court. (*Id.* ¶¶ 12-25). In  
11 either case, Oron cannot expect this Court to permit disbursement of this unreasonable,  
12 unsubstantiated sum – one that all but certainly is not legitimately due and owing to the hosting  
13 company.  
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16 This Court has already provided Oron with \$100,000 this week for alleged payment of its  
17 attorneys' fees and business expenses. Now, a mere two days after release of those funds, Oron  
18 demands the release of nearly four times as much money from this Court. Yet again, conveniently  
19 from the one account that the Plaintiff has found, where the Court could exercise equitable  
20 jurisdiction. (Doc. #17) (However, Oron's alleged need for those funds is lacking not only in  
21 specificity but common sense, particularly given Oron's demonstrated proclivity to remove its  
22 assets beyond the jurisdiction of this Court. The instant Motion should be denied.  
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27 <sup>2</sup> This Court has already clearly held that "the TRO issued in this case does not prevent Defendant  
28 from withdrawing funds from its Hong Kong accounts as authorized by the Hong Kong Court to  
pay its legal fees and business expenses." (*See* Order Re: ECFs 15 and 16, at 2 (Doc. # 19).)

1 **II. ARGUMENT**

2 Two days after its last request to withdraw approximately \$400,000 from its so-far located,  
3 identified, and frozen accounts, Oron has come before this Court demanding it be entitled to  
4 withdraw the same amount. In what appears to be or an act of defiance, it has not provided any of  
5 the evidence expressly required by the Court as a condition for releasing any further funds (Order  
6 re: ECFs 15 and 16, at 2). Oron also failed to demonstrate that these funds will be used for the  
7 payment of legitimate business expenses, rendering its request unreasonable. Oron has again failed  
8 to inform the Court of any of its other dozens of sources of funds, or to account for what happened  
9 to the \$5,000,000.00 it recently had in its PayPal account or what is happening to the funds being  
10 collected by its so-called “resellers.” This Court has discretion to determine whether the funds  
11 Oron requests are reasonable and to deny its request if it so finds. *See CFTC v. Noble Metals Int’l,*  
12 *Inc.*, 67 F.3d 766 (9<sup>th</sup> Cir. 1995).

15 **A. Oron Seeks to Withdraw an Amount Nearly Equal to Its Alleged Worth.**

16 It is unreasonable for Oron to demand approximately \$400,000 be withdrawn from its  
17 accounts for payment of alleged operating expenses when, according to Oron’s counsel, that  
18 amount is purportedly very close to Oron’s value as a going business concern. Specifically, Oron’s  
19 counsel represented that a settlement demand of \$500,000 was “an unreasonable amount” to  
20 Defendant Oron and “more than the company itself was worth” in previous discussions. (*See*  
21 *Exhibits A and B.*)<sup>3</sup> The Court should deny Oron’s request, as disbursement of the funds requested  
22 would, by Oron’s own admission, dissipate – if not eliminate entirely – the funds available to  
23 compensate LMH for its demonstrated losses. Where a release of funds would exhaust the  
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27 <sup>3</sup> These exhibits are heavily redacted as they represent settlement discussions. However, they are  
28 not presented to demonstrate liability – only to impeach Oron’s renewed request for the release of  
funds that was already denied once by this Court. The documents are completely redacted except  
for the portions necessary to do so.

1 resources available to satisfy the plaintiff's likely or potential recovery, it must be denied and the  
2 freeze on assets upheld. *See FTC v. World Wide Factors, Ltd.*, 882 F.2d 344, 348 (9th Cir. 1989),  
3 *citing FSLIC v. Dixon*, 835 F.2d 554, 564-65 (5th Cir. 1987) (approving limitation on disbursement of  
4 frozen accounts "out of concern for preserving funds for ultimate distribution for defrauded  
5 customers").

6  
7 **B. Oron's Hosting Company's Alleged Charges Are Exorbitant and Irregular.**

8 The amount that LeaseWeb, Oron's hosting company, has allegedly demanded that Oron  
9 pay is patently unreasonable. First, Oron alleges that LeaseWeb is demanding a monthly payment  
10 from it on July 1, 2012 of nearly \$75,000. (*See* S. Lieberman Declaration, at ¶ 4; Declaration of  
11 Zachary Thompson, at ¶ 5.) Based upon Oron's size as a website and the amount of traffic it  
12 receives, its hosting costs should not run anywhere close to \$75,000 per month. (Thompson Decl.  
13 ¶¶ 5-12; Silverman Decl. ¶¶ 7-11) Furthermore, even if LeaseWeb is charging Oron \$75,000 per  
14 month for hosting charges, this Court released more than enough for Oron to pay that amount  
15 earlier this week, and Oron is permitted to withdraw funds for legitimate business expenses  
16 pursuant to the Hong Kong injunction. (Thompson Decl. ¶¶ 5-12; Silverman Decl. ¶¶ 7-11)

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19 Oron claims that LeaseWeb seeks a "pre-payment" from Oron of approximately \$280,000  
20 by July 9, 2012. (*See* Lieberman Decl, ¶ 4; Thompson Decl, ¶ 13.) LeaseWeb's allegedly  
21 demanded "pre-payment" is not only inexplicably high but has no parallels in any industry  
22 standard, considering that payment for hosting services is typically a monthly fee. (*See* Thompson  
23 Decl, ¶¶ 15-17.) Pre-payments are not common, and LeaseWeb's alleged demand for such  
24 payment "appears to be a premise for some kind of improper activity." (*See id.*, ¶ 17.)

25  
26 LeaseWeb's demand for pre-payment is particularly suspect given that is a known haven for  
27 copyright infringers and other purveyors of pirated material. (Thompson Decl. ¶ 18; Glass Decl. ¶  
28 9) In fact, LeaseWeb regularly refuses to respond affirmatively to legitimate notices issued

1 pursuant to the Digital Millennium Copyright Act (the “DMCA”) and actively attempts to hinder  
2 enforcement of the rights of copyright owners. (See Glass Decl. ¶¶ 9-12; Phinney Decl. ¶¶ 6-14;  
3 see Thompson Decl. ¶¶ 12-25) Assuming that Oron has not fabricated this “request” out of thin air,  
4 then it follows that LeaseWeb is in collusion with Oron and has dishonestly provided them with a  
5 bill to aid in its quest to siphon funds out of the Court’s control.

6  
7 Given LeaseWeb’s alliance with piracy sites, it is almost inconceivable that it would  
8 abruptly terminate service to Oron, one of its most well-known customers, as doing so could  
9 irreparably damage its relationships with its other clients, who count upon LeaseWeb to host their  
10 online piracy. (Thompson Decl, ¶¶ 19-20; Glass Decl.; Phinney Decl.; Tucker Decl. ¶¶ 9-14) This  
11 is particularly true given that it is common industry practice for hosting companies to give their  
12 customers at least fifteen days notice before terminating service for non-payment. (Thompson  
13 Decl. ¶¶ 23-25.)

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15 **C. Oron Has No Basis for Seeking Additional Disbursements.**

16 Oron’s situation is nowhere near as dire as it would leave to Court to believe. It offers no  
17 explanation for the disappearance of almost \$4,000,000 from just one of Oron’s PayPal accounts  
18 just earlier this week (Exhibit C). What is crystal clear, though, is that Oron is desperate to  
19 bamboozle this Court into releasing nearly \$400,000 into the hands of a foreign organization that  
20 may very well be a co-conspirator in Oron’s infringement mill. Oron has no logical explanation for  
21 why, in the span of four days, it has sought to liquidate almost as much money as the company  
22 previously claimed to be worth (Exhibits A and B). Clearly, however, it is determined to get that  
23 money out of the Court’s control and offshore and into its own hands as quickly as possible.  
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26 In its great haste, Oron deliberately presented no sworn testimony from LeaseWeb  
27 indicating that its service is in imminent danger of being interrupted or terminated, or that it even  
28 owes the amounts it seeks the Court to distribute. LMH respectfully requests that, if Oron actually

1 alleges that LeaseWeb is indeed about to terminate its hosting services, a representative from  
2 LeaseWeb be required to present live testimony to that effect before this Court. That way, the Court  
3 will be capable of independently judging the veracity of LeaseWeb's testimony, rather than relying  
4 upon Oron's conclusory, unsupported statements within the second Emergency Motion it has filed  
5 this week.

6  
7 **D. Oron Must Provide an Accounting to this Court Before Releasing Any Funds.**

8 LMH's lawsuit alleges more than \$38 million in damages against Oron for its intentional  
9 infringement of LMH's intellectual property. Even if the infringement is not found to be willful,  
10 Oron will still face more than \$6 million in liability from LMH's claims alone. However, LMH is  
11 likely only the tip of a massive iceberg for Oron. Multiple other potential plaintiffs have already  
12 identified Oron as their primary source of copyright infringement and intend to join this action as  
13 plaintiffs before the motion for preliminary injunction is filed.  
14

15 Oron's potential statutory damages will conservatively range into the tens of millions of  
16 dollars. The equitable relief of disgorgement of ill-gotten profits will be impossible to effect if  
17 Oron manages to sweep its illegal profits into hidden bank accounts, the hands of an unscrupulous  
18 web hosting company, or the many other crevices where criminals hide the proceeds of their ill-  
19 gotten gains. As this Court knows, MegaUpload, a file locker service with an affiliate program  
20 similar to Oron's, was recently indicted by the U.S. Department of Justice along with its principals  
21 on counts of racketeering and money laundering – separate and distinct from its widespread (and  
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1 widely publicized) copyright infringement.<sup>4</sup> The only apparent difference between MegaUpload  
2 and Oron is that Oron is even more brazenly violating the law.

3 Exhibit C represents only one PayPal account known to LMH, yet it contains in excess of  
4 \$1 million. For this Court to analyze the propriety of Oron's second requested withdrawal of funds  
5 in less than one week, it must be apprised of all of its holdings and assets. Only then can this Court  
6 ensure that equitable relief in the form of depriving Oron of the proceeds of its piracy will not be  
7 rendered impotent. In its Motion, Oron makes no such effort. In fact, its current Motion contains  
8 no more demonstrable support for the requested withdrawal than the motion filed earlier this week.  
9 By virtue of Plaintiff's Complaint, and the forthcoming Amended Complaint with even more  
10 plaintiffs, the Court has knowledge of the massive damages claims against Oron. To analyze the  
11 reasonableness of the withdrawals Oron demands of its frozen assets and their potential for denying  
12 LMH and the future plaintiffs a right to redress their damages, the full extent of Oron's assets must  
13 be honestly and completely disclosed to this Court. *See Noble Metals Int'l, Inc.*, 67 F.3d at 766,  
14 *World Wide Factors*, 882 F.2d at 348, *Dixon*, 935 F.2d at 565.

15 Requiring Oron to account for all of its worldwide assets before withdrawing funds to pay  
16 egregiously high hosting fees is a necessary step to avoid their likely dissipation and concealment.  
17 *See Noble Metals Int'l, Inc.*, 67 F.3d at 766, *World Wide Factors*, 882 F.2d at 348, *Dixon*, 935 F.2d  
18 at 565. Without an appraisal of Oron's actual and unhidden assets as weighted against its likely  
19 liabilities, the Court may inadvertently deprive Liberty and the other incipient plaintiffs any right to  
20 redress while allowing Oron to withdraw funds to purportedly pay for hosting services. Unless  
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26 <sup>4</sup> Sean Gallagher, "MegaUpload Shut Down by Feds, Seven Charged, Four Arrested, *Ars Technica*  
27 (Jan. 19, 2012), available at <arstechnica.com/tech-policy/2012/01/megaupload-shut-down-by-  
28 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.")



1 Oron fully and adequately informs the Court of the true resources and assets it has available, the  
2 Court will be unable to properly assess the reasonableness of releasing any expenses to Oron, let  
3 alone its second request for nearly \$400,000 in a week's time. For certain, the instant motion must  
4 be denied.

5 **III. CONCLUSION**

6 Defendant Oron has fallen far short of its burden to establish the need and propriety for this  
7 Court to release this second round of exorbitant funds. The evidence put forth by the Plaintiff  
8 shows that these expenses fall far outside of the norm for the industry. Something is amiss. Either  
9 Oron is fabricating this newfound need for hundreds of thousands of dollars or LeaseWeb is  
10 conspiring with Oron. But, Oron's claimed request is extreme. Plaintiff LMH respectfully submits  
11 that Defendant's current request should be denied, and any additional requests must be subsequent  
12 to a full accounting and presented with appropriate documentation, as already ordered by the Court.  
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16 Dated: June 29, 2012

17  
18 Respectfully Submitted,

19  
20 s/Marc J. Randazza

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**CERTIFICATE OF SERVICE**

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I hereby certify that the foregoing document was filed using this Court’s CM/ECF system on June 29, 2012.

Dated: June 29, 2012

Respectfully Submitted,

s/Marc J. Randazza

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