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 10 **Pro Hac Vice Applications to be Submitted*

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 18 **ATTORNEYS FOR OPERATORS OF**
 19 **NHENTAL.NET**

20 UNITED STATES DISTRICT COURT
 21 CENTRAL DISTRICT OF CALIFORNIA

22 In re DMCA Subpoena to Cloudflare,
 23 Inc.

24 Case No. 2:24-mc-00084-UA

25 **OPERATORS OF**
 26 **NHENTAL.NET'S NOTICE OF**
 27 **MOTION AND MOTION TO**
INTERVENE, TO QUASH §512(H)
SUBPOENA, FOR PROTECTIVE
ORDER, AND TO STAY
DEADLINE; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF

Filed concurrently herewith:

- 1) Declaration of John Wilson;
- 2) Proposed Order

Action Filed: July 10, 2024


Trial Date: None set

1 TO ALL PARTIES AND ATTORNEYS OF RECORD: PLEASE TAKE NOTICE
 2 that the operators of the nhentai.net website (“Nhentai.net”) whose information is
 3 the subject of Movant PCR Distributing, Co.’s (“Movant” or “PCR”) subpoena to
 4 Cloudflare, Inc. (“Cloudflare”) pursuant to 17 U.S.C. §512 will and do hereby move
 5 to Intervene, to Quash §512(h) Subpoena, for Protective Order, and to Stay Deadline.
 6 Nhentai.net seeks to intervene for the purposes of moving to quash, for seeking
 7 protection from disclosure, and for staying the deadline associated with the §512(h)
 8 subpoena issued by Movant. This Motion is made on the following grounds as
 9 explained in the accompanying Memorandum of Points and Authorities and
 10 supporting papers: Cloudflare is not a “service provider” on whom a §512(h)
 11 subpoena can be served. Further, even if the subpoena was proper or permitted by
 12 the statute, Movant’s request is extremely overbroad and overreaching and seeks
 13 highly sensitive, private information such as the billing information and history, user
 14 history, and posting history for the operators of Nhentai.net.

15 This Motion is based upon this Notice of Motion and Motion; the attached
 16 Memorandum of Points and Authorities; the Declaration of John Wilson and exhibits
 17 thereto; all documents on file in this action; and such further or additional evidence
 18 or argument as may be presented before or at the time of any hearing on this Motion.

19 This Motion is made following conferences of counsel pursuant to Local Rule
 20 7-3. Counsel for Nhentai.net contacted counsel for PCR Distributing, Co. via email
 21 on June 19, 2024 and on two occasions on July 19, 2024 and disclosed the substance
 22 of the motion. Counsel for Nhentai.net and Counsel for PCR Distributing, Co. also
 23 participated in a telephonic meet and confer on July 19, 2024 regarding the bases for
 24 the motions herein and no agreement was reached.

25 Dated: July 19, 2024

By: 

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18 **Attorneys for Operators of**
19 **Nhentai.net**

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **INTRODUCTION**

3 The §512(h) subpoena and accompanying materials filed by Movant
4 (“Subpoena”) is not properly brought by Movant for numerous reasons and thus,
5 should be quashed based on statutory and procedural grounds. Most importantly, the
6 Subpoena for Nhentai.net’s information is directed to Cloudflare, Inc.
7 (“Cloudflare”). Cloudflare is not a “service provider” on whom a §512(h) subpoena
8 can be served. As described further herein, because Cloudflare is not a hosting
9 company and has no ability to store or remove content from Nhentai.net’s website,
10 they do not qualify under the law as a proper party on whom a §512(h) subpoena can
11 be issued or served. Even if the subpoena was proper, Movant’s request is extremely
12 overbroad and overreaching and seeks, for example, billing information and history,
13 user history, and posting history for the operators of Nhentai.net. This highly
14 sensitive, private information must not be disclosed to entities such as Movant or its
15 counsel and accordingly Nhentai.net moves for protection from the Subpoena and
16 any disclosure sought by it.

17 For these reasons and the additional bases described further herein,
18 Nhentai.net respectfully asks the Court to: 1) permit it to intervene; and 2) quash the
19 Subpoena from PCR to Cloudflare impermissibly seeking Nhentai.net’s
20 information; and/or 3) protect Nhentai.net from disclosure pursuant to the Subpoena.
21 Nhentai.net further asks the Court to enter an order staying the deadline for
22 compliance with the Subpoena pending resolution of Nhentai.net’s motion.

23 **FACTUAL BACKGROUND**

24 On July 11, 2024, Movant PCR Distributing, Co. requested a subpoena from
25 the United States District Court for the Central District of California. The subpoena
26 issued on July 15, 2024 from the Clerk of said Court (“Subpoena”). The Subpoena
27 sought pursuant to 17 U.S.C. §512(h) requested “all documents, account records,

1 and any other information” regarding the operator and/or owner of nhentai.net and
2 “identification by names, email addresses, IP addresses, user history, posting history
3 physical addresses, telephone numbers, billing information, billing history, and any
4 other identifying information” of the operator and/or owner of Nhentai.net. Dkt. No.
5 4-1. Nhentai.net has no information as to whether the Subpoena and accompanying
6 materials were properly served on the designated agent of Cloudflare pursuant to 17
7 U.S.C. §512(c)(3)(A) and, as demonstrated below, Nhentai.net disputes that
8 Cloudflare is even a “service provider” subject to a subpoena under this statute.

9 **ARGUMENTS AND AUTHORITIES**

10 **A. MOTION TO INTERVENE**

11 Pursuant to Rule 24 of the Federal Rules of Civil Procedure, Nhentai.net
12 moves to intervene in the above-captioned matter. Courts in this Circuit apply a four-
13 part test in deciding a motion to intervene pursuant to Rule 24(a)(2): 1) the motion
14 must be timely; 2) the applicant must claim a “significantly protectable” interest
15 relating to the property or transaction which is the subject of the action; 3) the
16 applicant must be so situated that the disposition of the action may as a practical
17 matter impair or impede its ability to protect that interest; and 4) the applicant’s
18 interest must be inadequately represented by the parties to the action. *Deng v. Deng*,
19 No. 2:22-CV-01585-FWS-KES, 2024 WL 3314916, at *2 (C.D. Cal. June 24, 2024)
20 (internal citations omitted).

21 ***1. Nhentai.net’s Motion to Intervene is Timely.***

22 In determining whether a motion to intervene is timely, courts evaluate “(1)
23 the stage of the proceeding at which an applicant seeks to intervene; (2) the prejudice
24 to other parties; and (3) the reason for and length of the delay.” *Deng v. Deng*, No.
25 2:22-CV-01585-FWS-KES, 2024 WL 3314916, at *3 (C.D. Cal. June 24, 2024).
26 Here, this miscellaneous action for the §512(h) Subpoena was instituted a matter of
27 days ago, on July 10, 2024. This motion to intervene is also being filed in advance

1 of the July 26, 2024 response date set forth in the Subpoena. There is no prejudice
2 to any party involved in this action, as Cloudflare – the party to whom the Subpoena
3 is directed – is a large, international entity that is not going to represent or in any
4 way seek to protect the rights of Nhentai.net in this Court as to the Subpoena. There
5 is also no prejudice to Movant with respect to timing. This motion to intervene is
6 being filed four (4) days after issuance of the Subpoena. Also, it was Movant’s
7 Subpoena that set an unreasonably short time for Cloudflare to respond to the
8 Subpoena, i.e., eleven (11) *calendar* days from the date of the Subpoena. And there
9 is no delay that would play a factor in a motion to intervene. Therefore, Nhentai.net’s
10 motion is timely.

11 **2. *Nhentai.net’s Interests are Significant.***

12 In assessing the motion to intervene, it is clear that Nhentai.net has and claims
13 a “significantly protectable” interest relating to the subject of this action. The
14 Subpoena seeks the private information of the owners and operators of Nhentai.net
15 including their addresses, phone numbers, user/posting histories, billing information
16 and billing records, for example. There is no legitimate basis on which to request
17 private, sensitive information and Nhentai.net has and claims its significantly
18 protectable interests in safeguarding the requested information from disclosure.
19 There are also significant procedural and substantive issues with Movant’s §512(h)
20 Subpoena that significantly impact Nhentai.net’s rights as described herein and show
21 Movant’s Subpoena to be wholly improper.

22 **3. *Without Intervening, Nhentai.net Cannot Protect Its Rights.***

23 The third factor courts consider in determining whether intervention is
24 appropriate is that “the applicant must be so situated that the disposition of the action
25 may as a practical matter impair or impede its ability to protect that interest.” *Id.*
26 Because the Subpoena was directed at a third party other than Nhentai.net, without
27 intervention, Nhentai.net has no ability whatsoever to protect its rights and interests

1 in preserving the privacy of its confidential and sensitive information. Having issued
2 the Subpoena commanding Cloudflare to produce the requested information about
3 the owners and operators of Nhentai.net, short of being granted permission to
4 intervene in this action, there is no ability for Nhentai.net to protect its interests.

5 **4. *The Subpoenaed Entity Cannot and Will Not Represent***
6 ***Nhentai.net's Interests.***

7 Relatedly, “the applicant’s interest must be inadequately represented by the
8 parties to the action.” *Id.* This is an “in re” proceeding and has no designated adverse
9 party. Here Cloudflare – the party to whom the Subpoena is directed – is a large,
10 international entity that is not going to represent or in any way seek to protect the
11 rights of Nhentai.net in this Court as to the Subpoena. Accordingly, Nhentai.net must
12 be permitted the right to protect its own interests in this matter. Nhentai.net submits
13 that granting its motion to intervene is critical and warranted under these
14 circumstances.

15 Accordingly, the operators of Nhentai.net move to intervene in order to ask
16 the Court to quash and protect Nhentai.net from Movant’s §512(h) Subpoena and to
17 stay the deadline for compliance with the Subpoena.

18 **B. MOTION TO QUASH SUBPOENA, FOR PROTECTION, AND**
19 **STAY OF DEADLINE**

20 The Subpoena at issue is procedurally and substantively improper and should
21 be quashed as: 1) it was served on an improper party that is not subject to subpoena;
22 and 2) is overly broad and seeks sensitive, private information for which Nhentai.net
23 seeks protection.

24 **1. *Cloudflare is Not a Proper Party for a 17 U.S.C. §512(h)***
25 ***Subpoena and it Should Be Quashed.***

26 The procedural mechanism by which Movant requested the Subpoena at issue
27 is found in the Digital Millennium Copyright Act (“DMCA”)—17 U.S.C. section

1 512(h). The DMCA has safe harbor provisions that protect certain internet service
2 providers (“ISP”) from §512(h) subpoenas. Cloudflare, to whom the Subpoena was
3 issued, is one such ISP that is not subject to §512(h) subpoenas. If an ISP acts strictly
4 as a conduit to internet content, they are afforded protection from §512(h)
5 subpoenas. In analyzing the issue in a very detailed fashion, Courts have quashed
6 §512(h) subpoenas where they were served on a party that was not “engaged in
7 storing on its servers material that is infringing or is the subject of infringing
8 activity.” *RIAA v. Verizon Internet Servs*, 351 F.3d 1229, 1233 (D.C. Cir. 2003). The
9 D.C. Circuit further held that “§512(h) **does not** authorize the issuance of a subpoena
10 to an ISP acting as a mere conduit for the transmission of information sent by
11 others.” *Id.* at 1233-38, *passim*.

12 Cloudflare is a §512(a) ISP that acts only as a conduit with respect to
13 Nhentai.net, and accordingly, it is not properly subject to subpoena under §512(h).
14 Specifically, images from Nhentai.net never pass through or are stored on Cloudflare
15 servers in any form. Nhentai.net utilizes Cloudflare's Domain Name System
16 (“DNS”) services as shown by the attached screenshot of Nhentai.net’s DNS
17 management page on Cloudflare. *See* Wilson Decl. at ¶ 4 and **Exhibit A**, Cloudflare
18 describes its DNS services as “the phonebook of the Internet.” Wilson Decl. at ¶ 5.
19 By way of example, when a user’s web browser tries to connect to “i.nhentai.net,”
20 it must first determine the IP address of this domain name. Cloudflare stores this IP
21 address and will send it in reply. It is an IP address security function. Nhentai.net
22 also uses Cloudflare for distributed denial-of-service (DDoS) protection. There is no
23 storage of the material on the Nhentai.net website and Cloudflare does not do any
24 hosting for Nhentai.net.

25 The Subpoena should be quashed and the operators of Nhentai.net be
26 protected from improper use of this statutory procedure by a movant who has not
27 demonstrated itself in any way to be a holder of the rights to which this statute

1 specifically relates.

2 **2. The Subpoena is Overly Broad and Seeks Sensitive**
3 **Information**

4 Even if the §512(h) Subpoena was proper, the information Movant seeks in
5 no way relates to the purpose of the statutory procedure: to identify an accused
6 infringer. Instead, it seeks, for example, the private information of the owners and
7 operators of Nhentai.net including their addresses, phone numbers, user/posting
8 histories, billing information, and billing records. There is no legitimate basis on
9 which to request such sensitive information.

10 Further, First Amendment considerations weigh in favor of quashing the
11 subpoena. “[T]he First Amendment protects the right to speak anonymously.
12 *Baughner v. GoDaddy.com LLC*, No. MC-19-00034-PHX-JJT, 2021 WL 4942658, at
13 *2 (D. Ariz. Oct. 22, 2021) (citing *McIntyre v. Ohio Elections Comm’n*, 514 U.S.
14 334, 342 (1995)). The information sought by Movant’s §512(h) Subpoena violates
15 the right of the operators of Nhentai.net to communicate anonymously. Courts have
16 found that a motion to quash may be brought as to a §512(h) subpoena “on the basis
17 that the subpoena would require disclosure of material protected by the First
18 Amendment.” *In re DMCA § 512(h) Subpoena to Twitter, Inc.*, 608 F. Supp. 3d 868,
19 877 (N.D. Cal. 2022) (internal citations omitted). The Court in the Northern District
20 of California stated that “it is possible for a speaker’s interest in anonymity to extend
21 beyond the alleged infringement” and that “it is not enough to say that a speaker
22 could assert their right to anonymity after their identity has been revealed; at that
23 point, the damage will have been done.” *Id.* at 877-878.

24 Nhentai.net seeks and moves for protection from the Court in this regard,
25 should the Court not find the entire Subpoena to be invalid.


26 **CONCLUSION**

27 Based on the foregoing, Nhentai.net respectfully asks the Court to quash the

1 Subpoena and protect the private and sensitive information of the operators of
2 Nhentai.net from disclosure. And, in light of the significant considerations addressed
3 herein, Nhentai.net also asks the Court to stay the deadline associated with the
4 Subpoena.

5
6 **DATED:** July 19, 2024

Respectfully submitted,

7 By: 

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25 Nhentai.net**

CERTIFICATE OF SERVICE

On July 19, 2024, I filed the foregoing document with the clerk of court for the U.S. District Court, Central District of California via CM/ECF. I hereby certify that I thereby have served the document on all counsel and/or pro se parties of record by a manner authorized by Federal Rule of Civil Procedure 5(b)(2) and the Local Rules.

/s/ 

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