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 9 **UNITED STATES DISTRICT COURT**  
 10 **CENTRAL DISTRICT OF CALIFORNIA**

11 PLAYBOY ENTERTAINMENT  
 12 GROUP, INC., a Delaware corporation,

13 Plaintiff,

14 v.

15  
 16 HAPPY MUTANTS, LLC, a Delaware  
 limited liability company; and DOES 1  
 17 through 10,

18 Defendants.

Case No. 2:17-cv-08140-FMO-PLA  
Hon. Fernando M. Olguin Presiding

**RESPONSE TO ORDER TO SHOW  
 CAUSE**

19  
 20 On February 14, 2018 this Court issued an Order granting Defendant’s motion  
 21 to dismiss with leave to amend. That Order appeared to give Plaintiff the option of  
 22 either filing a Second Amended Complaint by February 26, 2018 or having the case  
 23 dismissed without prejudice. Plaintiff thus believed that this case would simply be  
 24 dismissed without prejudice should it not file a Second Amended Complaint and is  
 25 unclear as to why this Order to Show Cause threatening sanctions has issued.

26 Given this Court’s statement in its February 14, 2018 Order that it was  
 27 “skeptical that plaintiff has sufficiently alleged facts to support either its inducement  
 28

1 or material contribution theories of copyright infringement” (docket No. 26, page 2,  
2 lines 7-8), which referenced the 2014 *Tarantino v. Gawker Media, LLC* case (which  
3 in turn held that a plaintiff asserting contributory infringement claims based on  
4 linking to third party content had to plead specific facts that the linking led to further  
5 acts of infringement),<sup>1</sup> Plaintiff has elected to pursue third party subpoenas under,  
6 *inter alia*, The Digital Millennium Copyright Act Section 512(h) in order to obtain  
7 further facts before determining how to proceed on its claims against Happy Mutants.

8 Based on the foregoing, Plaintiff submits that there is no basis for sanctions;  
9 however, the case can and should be dismissed without prejudice at this juncture per  
10 this Court’s February 14, 2018 Order.

11 Respectfully submitted,

12 Dated: March 12, 2018

13 By: /s/ Stephen M. Doniger  
14 Stephen M. Doniger, Esq.  
15 Howard S. Han, Esq.  
16 DONIGER /BURROUGHS  
17 Attorneys for Plaintiff

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23 <sup>1</sup> As discussed in Plaintiff’s opposition to Defendant’s motion to dismiss, it appears  
24 to Plaintiff that Judge Walter’s decision in *Tarantino v. Gawker Media, LLC* finding  
25 that evidence of further infringements is required is inconsistent with the plain  
26 language of the Ninth Circuit’s holding in *Perfect 10, Inc. v. Amazon.com, Inc. et*  
27 *al.*, 508 F.3d 1146 (9th Cir. 2007) that “Google could be held contributorily liable if  
28 it had knowledge that infringing Perfect 10 images were available using its search  
engine, could take simple measures to prevent further damage to Perfect 10’s  
copyrighted works, and failed to take such steps.” 508 F.3d at 1172.