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8  
9 IN THE UNITED STATES DISTRICT COURT FOR THE  
10 CENTRAL DISTRICT OF CALIFORNIA  
11

12 AF HOLDINGS LLC,

13 Plaintiff,

14 v.

15 JOHN DOE,

16 Defendant.

17 **Case No. 2:12-cv-05720-PSG-RZ**

18 **PLAINTIFF’S RESPONSE TO**  
19 **ORDER TO SHOW CAUSE**

20 **INTRODUCTION**

21 The Court ordered Plaintiff to show “why this case should not be dismissed for  
22 lack of personal jurisdiction over Defendant John Doe.” (ECF No. 7.) The Court  
23 should not dismiss the case for two independent reasons. First, using the only  
24 technology available to it, Plaintiff has determined that the Defendant is located in this  
25 District. Second, Plaintiff is not required to prove personal jurisdiction at this stage of  
26 the litigation.

27 **DISCUSSION**

28 **I. The Only Technology Available to Plaintiff Indicates that Movant is Located in this District**

The only identifying information Plaintiff has regarding Defendant John Doe is his Internet Protocol (“IP”) address. IP address lookup tools (geolocation technology), put Defendant John Doe in the Central District of California. *See WhatIsMyIPAddress*, <http://whatismyipaddress.com/ip/70.187.138.200> (indicating

1 that Defendant John Doe, associated with IP address 70.187.138.200, is located in  
2 Rancho Santa Magartia, California). Rancho Santa Magartia, California is located  
3 within the Central District of California. This case should not be dismissed for lack of  
4 personal jurisdiction because physical presence establishes personal jurisdiction.  
5 *Burnham v. Superior Court of Cal., Cnty. of Marin*, 495 U.S. 604, 619 (1990) (“The  
6 short of the matter is that jurisdiction based on physical presence alone constitutes due  
7 process . . .”).

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9 **II. Personal Jurisdiction is an Affirmative Defense That Can be Raised or**  
10 **Waived at the Appropriate Stage of the Litigation.**

11 Plaintiff is not required to prove personal jurisdiction at this stage of the  
12 litigation. It is well-established that personal jurisdiction does not even have to be  
13 pled. *See e.g., Hagen v. U-Haul Co. of Tenn.*, 613 F. Supp. 2d 986, 1001 (W.D. Tenn.  
14 2009) (“The burden of establishing the existence of personal jurisdiction lies with the  
15 party asserting such jurisdiction, i.e. the plaintiff. Although, a plaintiff is only required  
16 to meet this burden when challenged by a motion under Rule 12(b)(2) . . .”); *Hansen*  
17 *v. Neumueller GmbH*, 163 F.R.D. 471, 474–75 (D. Del. 1995) (noting Rule 8 does not  
18 require plaintiffs to state grounds on which personal jurisdiction is alleged and that the  
19 plaintiff’s pleading burden changes once the defendant challenges personal  
20 jurisdiction). Federal Rule of Civil Procedure 8(a)(2) requires only “a short plain  
21 statement of the claim showing that the pleader is entitled to relief in order to give the  
22 defendant fair notice of what the . . . claim is and the grounds upon which it rests.” *Bell*  
23 *Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). Personal jurisdiction is a matter to  
24 be challenged through a responsive pleading and not to be raised by the Court *sua*  
25 *sponte*. *Anger v. Revco Drug Co.*, 791 F.2d 956, 958 (D.C. Cir. 1986) (“[T]he Federal  
26 Rules of Civil Procedure indicate that personal jurisdiction is a matter to be raised by  
27 motion or responsive pleading, not by the court *sua sponte*.”). Personal jurisdiction is  
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a waivable defense. This Court should allow the defendant to freedom to decide whether to waive or raise the defense, if such a defense is even plausible.

**CONCLUSION**

The Court should not dismiss the case for lack of personal jurisdiction. Defendant John Doe is likely located in this District. Further, personal jurisdiction is an affirmative defense that can be raised or waived at the appropriate stage of the litigation.

Respectfully submitted,  
PRENDA LAW, INC.

**DATED: August 6, 2012**

By: /s/ Brett L. Gibbs, Esq.  
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on August 6, 2012, all individuals of record who are deemed to have consented to electronic service are being served true and correct copy of the foregoing documents, and all attachments and related documents, using the Court's ECF system.

                /s/ Brett L. Gibbs