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14 **UNITED STATES DISTRICT COURT**
15 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

16 JOHN DOE A/K/A BRIAN SAPIENT,) Case No.: 3:07-cv-02478 VRW
17 Plaintiff,)
18 vs.) NOTICE OF MOTION AND MOTION TO
19) DISMISS FOR LACK OF SUBJECT MATER
20) JURISDICTION; LACK OF PERSONAL
21) JURISDICTION; IMPROPER VENUE AND
22) FAILURE TO STATE A CLAIM UPON
23) WHICH RELIEF CAN BE BASED
24)
25) [Fed. R. Civ. P. 12(b)(1), 12(b)(2), 12(b)(3),
26) 9(b) and 12(b)(6)]
27)
28) Date: December 6, 2007
Time: 2:30 p.m.
Courtroom: 6, 17th Floor

TO PLAINTIFF AND HIS ATTORNEYS OF RECORD:

NOTICE IS HEREBY GIVEN that on December 6, 2007, at 2:30 p.m., or as soon thereafter as counsel may be heard by the above-entitled Court, located in Courtroom 6 on the 17th floor of the United States District Courthouse, 450 Golden Gate Avenue, San Francisco, California 94102, Explorologist, Ltd. and Uri Geller will and hereby does respectfully move

1 this Honorable Court to dismiss this case pursuant to Federal Rules of Civil Procedure 12(b)(1),
2 12(b)(2), 12(b)(3), 9(b) and 12(b)(6). The grounds for this Motion are as follows: First, pursuant
3 to Federal Rule of Civil Procedure 12(b)(1), because this Court lacks subject matter jurisdiction
4 over the extraterritorial acts alleged to be in violation U. S. Copyright Law. Second, pursuant to
5 Federal Rule of Civil Procedure 12(b)(2), because this court lacks personal jurisdiction over
6 Defendants, a British corporation and British resident, neither of whom have ever been
7 jurisdictionally “present” in the State of California. Third, pursuant to Federal Rule of Civil
8 Procedure 12(b)(3), because Sapient’s vexatious choice of forum is solely motivated by a desire
9 to disadvantage and harass Defendants. Even assuming that this Court could exercise
10 jurisdiction over Defendants, this case should be transferred and consolidated with the suit
11 Explorologist filed in Philadelphia under the “first to file” rule. Fourth, and irrespective of
12 where this case is heard, the Complaint is fatally defective because it fails to aver with
13 particularity the circumstances that constitute fraud as required by Fed. R. Civ. P. 9(b); Fifth,
14 the Complaint fails to state a claim upon which relief can be based. Since as a the alleged
15 DMCA takedown was based on three-month old affidavit and otherwise failed to comply with
16 the take down requirements of 17 U.S.C. § 512(g); there can be no liability for a DMCA
17 takedown that is not based on a knowing misrepresentation, especially where an individual
18 neither authorizes nor knows about the takedown; and there can be no liability under 17 U.S.C.
19 § 512(f) where statements made in connection with a DMCA takedown that are true and made
20 in good faith.

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22 This motion is based on this Notice of Motion and Motion, the Memorandum of Points
23 and Authorities, the declarations of Shimshon Shtrang and Uri Geller, the exhibits, the
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1 pleadings, and papers on file herein, and upon such other matters as may be presented to the
2 Court at the time of hearing.

3 Dated: October 2, 2007
4

5
6 /s/
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10 /s/
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16 Attorney for Defendants,
17 Uri Geller and Explorologist, Ltd.

18 **CERTIFICATE OF SERVICE**

19
20 I hereby certify that on this 2nd day of October 2007, a copy of the foregoing Notice of
21 Motion and Motion to Dismiss, Memorandum of Points and Authorities, Proposed Order and
22 Exhibits were mailed, postage prepaid to:

23 Jason Schultz, Esq.
24 Corynne McSherry, Esq.
25 Marcia Hofmann, Esq.
Electronic Frontier Foundation
26 454 Shotwell Street
San Francisco, CA 94110

27 /s/
28 Richard Winelander, Esq.