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3 UNITED STATES DISTRICT COURT
4 NORTHERN DISTRICT OF CALIFORNIA
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7 AF HOLDINGS LLC,
8 Plaintiff,
9 v.
10 JOE NAVASCA, *et al.*,
11 Defendant.

Case No.: [3:12-cv-02396-EMC](#) (NJV)

**ORDER DENYING PLAINTIFF’S
EMERGENCY MOTION TO COMPEL**

Re: Dkt. No. 38

United States District Court
Northern District of California

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13 Plaintiff AF Holdings LLC filed an “emergency motion to compel,” alleging that
14 defendant Joe Navasca was destroying evidence of his copyright infringement activities by
15 running a computer program, CCleaner, on his computer. *See* Doc. Nos. 38, 42. Discovery
16 matters in this action having been referred to the undersigned, the undersigned ordered Navasca to
17 stop running CCleaner on any computer(s) in his custody and/or under his control, ordered the
18 parties to meet and confer, and scheduled a briefing schedule and expedited hearing for January
19 31, 2013 at 2:00 p.m. *See* Doc. No. 44. The parties filed their supplemental briefing as ordered,
20 indicating they had agreed to image Navasca’s hard drive(s), but that other issues remained. *See*
21 Doc. Nos. 46 & 47. However, neither party appeared at the January 31, 2013 hearing. Doc. No.
22 48.

23 The court has reviewed the letter briefs filed by the parties and concludes that its prior
24 order (Doc. No. 44) adequately preserves the *status quo* with regard to the alleged spoliation
25 issue. Navasca shall not run CCleaner on any computer(s) in his custody and/or under his control,
26 and the parties shall image his hard drive(s). As Navasca notes in his letter brief, Plaintiff
27 propounded its first discovery requests on January 24, 2013. Doc. No. 47 at 2. Navasca’s
28 responses are not yet due. Currently, there is nothing to compel. The additional issues Plaintiff

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raised in its letter brief therefore are not ripe for decision, and the court denies the motion to compel without prejudice.

The court once more urges the parties to meet and confer before asking the court to delve into discovery matters that are best resolved by the parties themselves. Furthermore, allegations of spoliation are extremely serious, and the court urges Plaintiff to review the facts very carefully before pursuing this avenue based solely on an eHow.com article. In particular, Plaintiff should review the expert declaration that Navasca filed with his letter brief, to fully understand the purpose and effect of CCleaner.

This order terminates Docket Nos. 38, 46 & 47.

IT IS SO ORDERED.

Dated: February 4, 2013



Nandor J. Vadas
United States Magistrate Judge