

1 **Cara R. Burns (State Bar No. 137557)**
 2 **cburns@hmkblawyers.com**
 3 **HICKS, MIMS, KAPLAN & BURNS**
 4 **2800 28th Street, Ste 383**
 5 **Santa Monica, California 90405**
 6 **Telephone: (310) 314-1721**
 7 **Facsimile: (310) 314-1725**

8 **Attorneys for Plaintiff,**
 9 **BRAVADO INTERNATIONAL GROUP**
 10 **MERCHANDISING SERVICES, INC.**

11 **UNITED STATES DISTRICT COURT**

12 **NORTHERN DISTRICT OF CALIFORNIA**

13 **BRAVADO INTERNATIONAL GROUP**)
 14 **MERCHANDISING SERVICES, INC.,**)

15 **Plaintiff,**)

16 **v.**)

17 **JOHN DOES 1-100, JANE DOES 1-100 AND**)
 18 **XYZ COMPANY,**)

19 **Defendants.**)

Case No. 3:16-cv-00524 JSW

AMENDED ~~PROPOSED~~
TEMPORARY RESTRAINING
ORDER; SEIZURE ORDER; AND
ORDER TO SHOW CAUSE WHY A
PRELIMINARY INJUNCTION
SHOULD NOT ISSUE
AS MODIFIED

20 Based upon the previously filed complaint, memorandum of points and authorities, Declaration
 21 of Thomas Donnell and the Certificate of Counsel of Cara R. Burns and all other pleadings and
 22 proceedings heretofore had herein and good cause being shown:

23 **IT IS HEREBY ORDERED** that defendants, John Does 1-100, Jane Does 1-100 and
 24 XYZ Company their true identities being unknown (collectively "Defendants"), show cause
 25 before the Honorable Jeffrey S. White, United States District Judge, in Courtroom 5 of the
 26 United States District Court for the Northern District of California, located at 1301 Clay
 27 Street, Oakland, California 94612 at 9 . 00. m. on February 19, 2016 or as soon
 28 thereafter as counsel can be heard, why an order pursuant to Fed. R. Civ. P. Rule 65, the
 Lanham Act 15 U.S.C. § 1051 et. seq., and the All Writs Act 28 U.S.C. § 1651, should not be
 entered granting to Plaintiff, Bravado International Group Merchandising Services, Inc. a

Amended TRO and Seizure Order, etc.

1 preliminary injunction to enjoin the Defendants from manufacturing, distributing, selling or
2 holding for sale, any clothing, jewelry, photographs, posters and other merchandise
3 (collectively the "Infringing Merchandise") bearing the federally registered trademarks,
4 service marks, likenesses, logos, and designs, of the group known as "METALLICA"
5 (collectively the "Group's Trademarks"), which are attached hereto as Exhibit A.

6 **AND IT APPEARING TO THE COURT** that Defendants are about to sell and distribute the
7 Infringing Merchandise bearing any or all of the Group's Trademarks as set forth in Plaintiff's
8 complaint and declaration, and will continue to carry out such acts unless restrained by order of the
9 Court;

10 **AND IT APPEARING TO THE COURT** that immediate and irreparable injury, loss or
11 damage will result to the Plaintiff before Defendants can be identified and given notice and their
12 attorneys can be heard in opposition to the granting of the temporary restraining order, in that the
13 Defendants are preparing to manufacture, distribute and sell Infringing Merchandise as set forth in the
14 Plaintiff's complaint, and that, unless said Defendants are enjoined from said manufacture,
15 distribution, and sale, the Plaintiff will suffer immediate and irreparable injury and harm in the form of
16 a loss of income, lessening and dilution of the value of the Group's Trademarks, interference with
17 Plaintiff's ability to exploit, market and license its merchandising rights, confusion in the marketplace
18 as to the duly authorized source of merchandise depicting the Group's Trademarks, and impairment of
19 the good will Plaintiff and its licensors have in the said Groups Trademarks;

20 **IT IS FURTHER ORDERED** that pending hearing and determination of this application, the
21 Defendants, their agents, servants, employees, attorneys, successors and assigns and all persons, firms
22 and corporations acting in concert with them, and each of them, be and hereby are temporarily
23 restrained from manufacturing, distributing and selling Infringing Merchandise bearing the any or all
24 of the Group's Trademarks;

1
2 **AND IT IS FURTHER ORDERED** that the United States Marshal, for this District or any
3 district in which Plaintiff enforces this order, the state police, local police or local deputy sheriffs, and
4 off duty officers of the same, are hereby authorized to seize and impound any and all Infringing
5 Merchandise bearing some or all of the Group's Trademarks, which defendants attempt to sell or are
6 holding for sale, including any from any carton, container, vehicle, or other means of carriage in
7 which the Infringing Merchandise is found from six (6) hours before to six (6) hours after the
8 performance within a ^{one (1)}~~two (2)~~ mile vicinity of the concert to be held February 6, 2016 at AT&T Park,
9 in San Francisco, California;

11 **AND IT IS FURTHER ORDERED** that this order be and is hereby conditioned upon
12 Plaintiff's filing with the Clerk of this Court an undertaking in the form of a surety bond, credit card,
13 certified check, or cash in the amount of \$ 20,000 no later than February 5, 2016, to secure the
14 payment of such costs and damages not to exceed such sum as may be suffered or sustained by any
15 party who is found to be wrongfully restrained hereby;

17 **AND IT IS FURTHER ORDERED** that this temporary restraining order is conditioned upon
18 the Plaintiff's advancing to the law enforcement officers such sum as is required by the same to cover
19 the fees for their said services, in the event Plaintiff seeks their services in this or any other district;

20 **AND IT IS FURTHER ORDERED** that service of a copy of this order to show cause
21 together with the complaint upon which it is based, be made upon the Defendants by the United States
22 Marshal, state or local police, local deputy sheriffs or by any person over the age of eighteen (18)
23 years not a party to this action selected for that purpose by the Plaintiff, at the time of the seizure
24 provided herein is effected and that such service shall be deemed good and sufficient;

1 **AND IT IS FURTHER ORDERED** that the process server shall offer a receipt to each
2 person from whom Infringing Merchandise is seized and that the Plaintiff shall be deemed substitute
3 custodian for all Infringing Merchandise seized; and that Plaintiff shall maintain records of any receipts
4 issued and shall maintain all items seized pending further order of this Court;

5 **AND IT IS FURTHER ORDERED** that each and every defendant served with a copy of this
6 order promptly, courteously and peaceably identify himself or herself to the aforementioned process
7 server and that the process server or agents for Plaintiff be allowed to photograph, video tape or
8 otherwise identify the Defendant;

9 **AND IT IS FURTHER ORDERED** that Defendants' responsive papers, if any, shall be filed
10 with the Clerk of this Court and served upon the attorneys for Plaintiff by delivering copies to its
11 counsel on or before February 12, 2016. Any reply shall be filed by the Plaintiff and served upon
12 each appearing defendant or his/her counsel on or before February 17, 2016. Plaintiff is to
13 provide copies of all other filed pleadings at the request of any identified defendant;

14 **AND IT IS FURTHER ORDERED** that pursuant to F.R.C.P. Rule 65 (b) (4), any Defendant
15 can apply to this Court to dissolve or modify this Order on two (2) days notice or shorter notice as this
16 Court may allow, but no such application shall serve to suspend this Order or stay its terms unless
17 otherwise ordered by this Court.

18
19 **IT IS SO ORDERED.**

20 Dated: February 3 2016

21 At: _____ .m.



JEFFREY S. WHITE
UNITED STATES DISTRICT JUDGE

22 Respectfully Submitted,
23 Bravado International Group
24 Merchandising Services, Inc.
25 /s/Cara R. Burns
26 Cara R. Burns, Esq. (Cal. Bar # 137557)
27 Hicks, Mims, Kaplan & Burns
28 2800 28th Street, Ste 383
Santa Monica, CA 90405
Telephone: (310) 314-1721
Facsimile: (310) 314-1725

**EXHIBIT A TO TEMPORARY RESTRAINING ORDER, SEIZURE
ORDER AND ORDER TO SHOW CAUSE WHY A PRELIMINARY
INJUNCTION SHOULD NOT ISSUE**

Word Mark

METALLICA, Federal Registration Nos. 1819042, *2504291

Design Marks:



Federal Registration No. 2231065



Federal Registration No. 2213592



Federal Registration Nos. 3275659, 3275658



Federal Registration No. 2198824