

1 Scott Hervey, State Bar No. 180188  
 2 Scott M. Plamondon, State Bar No. 212294  
 3 **weintraub genshlea chediak**  
 4 a law corporation  
 5 400 Capitol Mall, 11th Floor  
 6 Sacramento, CA 95814  
 7 (916) 558-6000 – Main  
 8 (916) 446-1611 – Facsimile  
 9 Attorneys for Plaintiff  
 10 Camelot Distribution Group, Inc.

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 13 IN THE UNITED STATES DISTRICT COURT  
 14 IN AND FOR THE CENTRAL DISTRICT OF CALIFORNIA  
 15 WESTERN DIVISION

<p>16 CAMELOT DISTRIBUTION GROUP, INC.,          17 Plaintiff,          18 vs.          19 DOES 1 through 5865, inclusive,          20 Defendants.</p>	}	<p>Case No.: CV11-01949 DDP (FMOx)   <b>PLAINTIFF CAMELOT DISTRIBUTION          GROUP, INC.'S MEMORANDUM OF          POINTS AND AUTHORITIES IN SUPPORT          OF ITS MOTION FOR EXPEDITED          DISCOVERY</b>           Hearing Date: March 16, 2011          Time: 10:00 a.m.          Place: 312 N. Spring St.          Los Angeles, CA 90012</p>
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21 **I. FACTUAL BACKGROUND**

22 Camelot commenced this action by filing a complaint on March 7, 2011. See  
 23 Declaration of Scott M. Plamondon ("Plamondon Dec."), ¶12. Plaintiff Camelot Distribution  
 24 Group, Inc. ("Camelot" or "Plaintiff") is the exclusive United States distributor of the motion  
 25 picture titled *Nude Nuns With Big Guns* (the "Motion Picture"). The Defendants, and each of  
 26 them, engaged in the distribution of the Motion Picture via one or more peer to peer ("P2P")  
 27 networks through the use of software which operates using the BitTorrent protocol. See  
 28 Plamondon Dec. ¶13.

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1           The BitTorrent protocol is a digital communications protocol capable of enabling users  
2 to distribute large files without placing a heavy load on the source computer and network.  
3 Rather than downloading a file from a single source, the BitTorrent protocol allows users to  
4 join a "swarm" comprised of multiple users hosting data on their personal computer to  
5 download and upload data from each other simultaneously. A user who wants to make a file  
6 available that is not already on this type of P2P system will first create a small *torrent* descriptor  
7 file which is then distributed by conventional means (web, email, etc.). He then makes a  
8 complete copy of the file itself available through a BitTorrent node. This original complete  
9 copy is known as a *seed*. Those who have acquired the torrent descriptor file can give it to  
10 their own BitTorrent nodes which, acting as *peers*, download it by connecting to the seed  
11 and/or other peers. The file is then distributed by dividing it into segments called *pieces*. As  
12 each peer receives a new piece of the file, that peer becomes a source of that piece to other  
13 peers, relieving the original seed from having to send a copy to every peer. See Plamondon  
14 Dec. ¶ .

15           With BitTorrent, the task of distributing the file is shared by those who want it. Using the  
16 BitTorrent protocol it is possible for the seed to send only a single copy of the file itself to an  
17 unlimited number of peers. When a peer completely downloads a file, it becomes an  
18 additional seed. This eventual shift from peers to seeders determines the overall "health" of the  
19 file (as determined by the number of times a file is available in its complete form). This  
20 distributed nature of BitTorrent leads to a flood-like spreading of a file throughout peers. As  
21 more peers join the swarm, the downloading speed and the likelihood of a successful  
22 download increases. Relative to standard Internet hosting, use of the BitTorrent protocol  
23 provides a significant reduction in the original distributor's hardware and bandwidth resource  
24 costs. It also provides redundancy against system problems, reduces dependence on the  
25 original distributor and provides a source for the file which is generally temporary and therefore  
26 harder to trace than when provided by the enduring availability of a host in standard file  
27 distribution techniques. See Plamondon Dec. ¶15.

28           The true names of Defendants are unknown to the Plaintiff at this time. Each Defendant

1 is known to the Plaintiff only by the Internet Protocol ("IP") address assigned to that Defendant  
2 by his or her Internet Service Provider on the date and at the time at which the infringing activity  
3 of each Defendant was observed. See Plamondon Dec. ¶16 (Exhibit B).

4 Plaintiff seeks an order granting expedited discovery in order to serve Rule 45  
5 subpoenas on the ISP's directed toward allowing Plaintiff to discover information relating to  
6 each DOE Defendant including name, current (and permanent) addresses, telephone numbers,  
7 and email addresses, to permit the Plaintiff to amend its Complaint to state the true name of  
8 each Defendant, and to meet and confer pursuant to Fed. Rule Civ. Proc. 26(f).

## 9 II. ARGUMENT

### 10 A. Courts Have Broad Discretion With Respect To Discovery

11 Courts have broad discretion with respect to discovery, and the Federal Rules of Civil  
12 Procedure expressly recognize and provide that courts may expedite discovery. See *Ellsworth*  
13 *Assoc., Inc. v. United States*, 917 F. Supp. 841, 844 (D.D.C. 1996); *Pod-Ners, LLC v. N. Feed*  
14 *& Bean of Lucerne, Ltd. Liab. Co.*, 204 F.R.D. 675, 676 (D. Colo. 2002) ("Rule 26(d),  
15 Fed.R.Civ.P., allows [a court] to order expedited discovery..."). Likewise, Federal Rule of Civil  
16 Procedure 34 provides, in regard to document requests, that, "A shorter or longer time may...  
17 be ordered by the court. Fed.R.Civ.P. 34(b).

### 18 B. Good Cause Exists to Grant Expedited Discovery To Camelot

19 Courts in the Ninth Circuit have adopted a "good cause" standard for granting requests  
20 for expedited discovery prior to the Rule 26(f) scheduling conference. See *Semitool, Inc. v.*  
21 *Tokyo Electron America, Inc.*, 208 F.R.D. 273, 274-275 (N.D. Cal. 2002); see also *In re*  
22 *Countrywide Fin. Corp. Derivative Litig.*, 542 F. Supp. 2d 1160, 1179 (C.D. Cal 2009); see  
23 also *Am. LegalNet, Inc. v. Davis*, 673 F. Supp. 2d 1063, 1066 (C.D. Cal 2009); see also *Pod-*  
24 *Ners, LLC v. N. Feed & Bean of Lucerne, Ltd. Liab. Co.*, 204 F.R.D. 675, 676 (D. Colo. 2002)  
25 (all recognizing a good cause standard to expedited discovery requests).

26 *UMG Recordings, Inc. and Zomba Recording LLC v. John Doe*, 2008 U.S. Dist. Lexis  
27 79087 (N.D. Cal 2008) is directly on point and is instructive. In *UMG*, Plaintiffs were record  
28 companies who filed suit against a DOE Defendant for copyright infringement, based on illegal

1 downloading of copyrighted materials through P2P networks similar to BitTorrent. The *UMG*  
2 Plaintiffs had identified defendant by a unique IP address assigned to defendant on the date  
3 and at the time of the infringing activity. *Id.* at 5, 6. Plaintiffs filed a motion for leave to take  
4 immediate discovery prior to a Fed. Rule Civ. Proc. 26(f) conference, seeking leave to serve a  
5 subpoena on Doe Defendant's Internet Service Provider to discover the identity of the DOE  
6 Defendant. *Id.* at 7. The Court found that in internet infringement cases, courts routinely find  
7 good cause exists to issue a subpoena to discover a DOE defendant's identity, prior to a Rule  
8 26(f) conference, where a plaintiff makes a prima facie showing of infringement, there is no  
9 other way to identify the DOE defendant, and there is a risk an ISP will destroy its logs prior to  
10 the conference. *Id.* at 11; see also *Arista Records LLC v. Does 1-43*, 2007 U.S. Dist. LEXIS  
11 97774 at 1. In rendering its decision the court reasoned that early discovery avoids ongoing,  
12 continuous harm to the infringed party and gives plaintiff the ability to advance the litigation  
13 where there otherwise would be no other way. *Id.* at 11. Additionally, with regard to the  
14 defendant(s), there is no prejudice where the discovery request is narrowly tailored to only seek  
15 their identity. *Id.* The *UMG* Court found that the need for expedited discovery outweighed the  
16 possibility of prejudice to defendant, and granted Plaintiffs' motion for expedited discovery. *Id.*  
17 at 14-17.

18 The present situation is nearly identical to the one presented in *UMG*. Camelot knows  
19 only the DOE Defendants' IP addresses, Plaintiff is unable to determine Defendants' true  
20 identities unless and until the Court permits Plaintiff to conduct limited discovery by serving  
21 subpoenas on Defendants' Internet Service Providers, and there is a possibility that the ISP's  
22 may inadvertently destroy the IP logs relevant to this case. Camelot's request is narrowly  
23 tailored to obtain the identity of the IP address holders, and will not prejudice Defendants in  
24 any way. For these reasons, as in *UMG*, Camelot should be granted expedited discovery.

### 25 III. CONCLUSION

26 Camelot seeks narrowly tailored forms of expedited discovery: to conduct discovery in  
27 this matter by serving subpoenas on DOE Defendants' Internet Service Providers in order to  
28 discover the true names and identities of each individual DOE Defendant.

