

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

MALIBU MEDIA, LLC,  
Plaintiff,

v.

JOHN DOE, subscriber assigned IP address  
107.134.110.77,  
Defendant.

Case No. 1:16-cv-01068-AWI-SKO

**ORDER GRANTING PLAINTIFF’S *EX PARTE* MOTION FOR LEAVE TO SERVE A THIRD PARTY SUBPOENA PRIOR TO RULE 26(f) CONFERENCE**

(Doc. 7)

**I. INTRODUCTION**

Plaintiff Malibu Media, LLC (“Plaintiff”) filed a complaint against John Doe (“Defendant”) on July 24, 2016, alleging infringement claims pursuant to the United States Copyright Act of 1976. (Doc. 1.) Plaintiff claims Defendant is a persistent online infringer of Plaintiff’s copyrighted films. On September 28, 2016, Plaintiff filed a motion for leave to serve a third-party subpoena prior to a Rule 26(f) conference. (Doc. 7.) As Defendant has not yet been identified by name, no opposition was filed. Pursuant to Local Rule 230(g), the Court finds Plaintiff’s motion suitable for decision without oral argument, and no hearing on this matter shall

1 be set. For the reasons discussed below, Plaintiff’s motion is GRANTED subject to the noted  
2 restrictions herein.

## 3 II. BACKGROUND

4 Plaintiff is a limited liability company that produces copyrighted adult films. Defendant is  
5 alleged to have used the BitTorrent file distribution network to download adult pornographic films  
6 subject to copyrights held by Plaintiff. Defendant has been identified in this lawsuit only by an  
7 Internet Protocol address (“IP Address”) assigned to a customer on a specific date by an Internet  
8 Service Provider (“ISP”) and through which the copyrighted works were allegedly downloaded.

9 BitTorrent technology has been described by several courts, including the district court in  
10 *Malibu Media, LLC v. Doe*, No. 15-cv-4369 (AKH), 2015 WL 4092417, \*1-2 (S.D.N.Y. July 6,  
11 2015):

12 BitTorrent is a peer-to-peer file-sharing protocol that allows users to  
13 transfer large files over the internet by breaking the complete file (the “Seed”) into  
14 small pieces to be downloaded in parts. Other users (“Peers”) downloaded a small  
15 “torrent” file that contains an index of the pieces and directions for connecting to  
16 the Seed. When Peers connect to the Seed, they download pieces of the file at  
17 random, and begin sharing each piece once it has completed downloading. After  
18 all the pieces are downloaded, the BitTorrent software reassembles the pieces into a  
19 complete file for the Peer to view.

20 BitTorrent is distinguishable from other file sharing protocols by its users’  
21 ability to upload and download files simultaneously. This non-sequential download  
22 structure reduces the bottleneck of traffic, which allows for faster download speeds.  
23 The Peers that are uploading and downloading the same Seed file from each other  
24 at a given point in time are collectively called a “Swarm.” Members of a Swarm  
25 are able to see the IP addresses of other Peers to whom they are connected. In  
26 addition, BitTorrent “tracks” the pieces of a file as it is shared, so Peers can identify  
27 the IP addresses from which the file was downloaded.

28 *Id.* (citing *Patrick Collins, Inc. v. Doe 1*, 288 F.R.D. 233 (E.D.N.Y. 2012), *Next Phase  
Distribution, Inc. v. John Does 1-27*, 284 F.R.D. 165 (S.D.N.Y. 2012), *In re BitTorrent Adult Film  
Copyright Infringement Cases*, 296 F.R.D. 80 (E.D.N.Y. 2012)).

Plaintiff has filed a motion for leave to serve a third-party subpoena prior to a Federal Rule  
of Civil Procedure 26(f) discovery conference, requesting permission to initiate discovery to  
identify the account subscriber associated with the IP Address used to download Plaintiff’s

1 copyrighted films, notwithstanding the provision of Rule 26(d)(1) that precludes a party from  
2 seeking discovery from any source before the parties have conferred as required by Rule 26(f).  
3 Plaintiff contends a Rule 45 subpoena to the ISP must be permitted to obtain the identity of the  
4 customer assigned the IP Address on the dates<sup>1</sup> in question to ascertain the identity of the person  
5 responsible for unauthorized downloading of the copyrighted works produced by Plaintiff.  
6 Plaintiff maintains there is no other way for it to obtain this information.

### 7 **III. DISCUSSION**

#### 8 **A. Legal Standard**

9 Generally, a party may not conduct discovery before the parties have met and conferred  
10 pursuant to Federal Rule of Civil Procedure 26(f) “except in a proceeding exempted from initial  
11 disclosure under Rule 26(a)(1)(B), or when authorized by these rules, by stipulation, or by court  
12 order.” Fed. R. Civ. P. 26(d)(1). The Ninth Circuit has held that when a defendant’s identity is  
13 unknown at the time the complaint is filed, a court may grant the plaintiff leave to take early  
14 discovery to determine the defendant’s identity “unless it is clear that discovery would not uncover  
15 the identit[y], or that the complaint would be dismissed on other grounds.” *Gillespie v. Civiletti*,  
16 629 F.2d 637, 642 (9th Cir. 1980). District courts in the Ninth Circuit have permitted expedited  
17 discovery prior to the Rule 26(f) conference upon a showing of “good cause.” *See, e.g., In re*  
18 *Countrywide Fin. Corp. Derivative Litig.*, 542 F. Supp. 2d 1160, 1179 (C.D. Cal. 2008) (citing  
19 *Semitool, Inc. v. Tokyo Electron Am., Inc.*, 208 F.R.D. 273 (N.D. Cal. 2002)). “Good cause exists  
20 where the need for expedited discovery, in consideration of the administration of justice,  
21 outweighs the prejudice to the responding party.” *In re Countrywide Fin. Corp. Derivative Litig.*,  
22 542 F. Supp. 2d at 1179 (citation and quotation marks omitted).

#### 23 **B. Plaintiff Has Established Good Cause to Serve a Third-Party Subpoena**

24 District courts within the Ninth Circuit have typically found good cause supporting early or  
25 expedited discovery in cases where the plaintiff alleged copyright infringement accomplished  
26 through distribution of the work over a peer-to-peer network, and where the plaintiff sought early

---

27 <sup>1</sup> In its complaint, Plaintiff specifically identifies 129 of its separate works that Defendant allegedly downloaded,  
28 copied, and distributed without authorization from May 1, 2016 to July 4, 2016. (Docs. 1-1 and 1-2, Exhibits A and B.)

1 discovery to obtain the identities and contact information of the alleged infringers from associated  
2 ISPs. *See, e.g., Berlin Media Art E.K. v. Does 1 through 146*, No. S-11-2039 KJM GGH, 2011  
3 WL 4056167, at \*2 (E.D. Cal. Sept. 12, 2011) (unpublished) (granting leave to serve Rule 45  
4 subpoena to identify doe defendant); *Malibu Media, LLC v. John Does 1-10*, No. 2:12-cv-3623-  
5 ODW (PJWx), 2012 WL 5382304 (C.D. Cal. June 27, 2012).

### 6 **1. Balancing Interests in the Context of Copyright Infringement**

7 In applying the good cause standard in cases where the unknown defendant is an  
8 anonymous internet user, courts give careful consideration to the diverging interests of both the  
9 party seeking the discovery and the unknown Doe defendant:

10 With the rise of the Internet has come the ability to commit certain tortious  
11 acts, such as defamation, copyright infringement, and trademark infringement,  
12 entirely on-line. The tortfeasor can act pseudonymously or anonymously and may  
13 give fictitious or incomplete identifying information. Parties who have been  
14 injured by these acts are likely to find themselves chasing the tortfeasor from  
Internet Service Provider (ISP) to ISP, with little or no hope of actually discovering  
the identity of the tortfeasor.

15 In such cases the traditional reluctance for permitting filings against John  
16 Doe defendants or fictitious names and the traditional enforcement of strict  
17 compliance with service requirements should be tempered by the need to provide  
18 injured parties with a[] forum in which they may seek redress for grievances.  
19 However, this need must be balanced against the legitimate and valuable right to  
20 participate in online forums anonymously or pseudonymously. People are  
21 permitted to interact pseudonymously and anonymously with each other so long as  
22 those acts are not in violation of the law. This ability to speak one’s mind without  
23 the burden of the other party knowing all the facts about one’s identity can foster  
open communication and robust debate. Furthermore, it permits persons to obtain  
information relevant to a sensitive or intimate condition without fear of  
embarrassment. People who have committed no wrong should be able to  
participate online without fear that someone who wishes to harass or embarrass  
them can file a frivolous lawsuit and thereby gain the power of the court’s order to  
discover their identity.

24 *Columbia Ins. Co. v. seescandy.com*, 185 F.R.D. 573, 578 (N.D. Cal. 1999). As it pertains to  
25 copyright infringement cases involving the internet, many courts have documented growing  
26 concerns about “copyright trolls,” “roughly defined as plaintiffs who are ‘more focused on the  
27 business of litigation than on selling a product or service or licensing their [copyrights] to third  
28

1 parties to sell a product or service.”<sup>44</sup> *Malibu Media, LLC*, 2015 WL 4092417, at \* 2 (quoting  
2 Matthew Sag, *Copyright Trolling, An Empirical Study*, 100 Iowa L. Rev. 1105, 1108 (2015)).

3 “The paradigmatic troll plays a numbers game in which it targets hundreds or  
4 thousands of defendants, seeking quick settlements priced just low enough that it is  
5 less expensive for the defendant to pay the troll rather than defend the  
6 claim.” [Matthew Sag, *Copyright Trolling, An Empirical Study*, 100 Iowa L. Rev.  
7 1105, 1108 (2015)]. The lawsuits most frequently target anonymous John Does for  
8 alleged infringement related to the use of BitTorrent. Indeed, of “the 3,817  
9 copyright law suits filed in 2013, over 43% were against John Does and more than  
10 three-quarters of those related to pornography.” *Id.* at 1108–09. But almost none  
11 ever reaches a hearing. Rather, the “lawsuits are filed to take advantage of court  
12 ordered discovery [under Fed. R. Civ. P. 26(d)] to break the veil of anonymity that  
13 separates IP addresses from the account information of actual human  
14 beings.” *Id.* at 1109; *see also Digital Sin, Inc. v. Does 1–176*, 279 F.R.D. 239, 241  
(S.D.N.Y.2012). They then use this information to quickly negotiate settlements  
on mass scale without any intention of taking the case to trial. [footnote omitted]  
*See, e.g., Media Prods., Inc., DBA Devil’s Film v. John Does 1–26*, No. 12–cv–  
3719, at 4 (S.D.N.Y. June 18, 2012) (explaining that the settlements in these  
BitTorrent cases are “are for notoriously low amounts relative to the possible  
statutory damages, but high relative to the low value of the work and minimal costs  
of mass litigation. Cases are almost never prosecuted beyond sending demand  
letters and threatening phone calls.”).

15 *Malibu Media, LLC*, 2015 WL 4092417, at \* 2.

16 The danger of copyright trolls is particularly acute in the context of pornography. In these  
17 cases, “there is a risk not only of public embarrassment for the misidentified defendant, but also  
18 that the innocent defendant may be coerced into an unjust settlement with the plaintiff to prevent  
19 the dissemination of publicity surrounding unfounded allegations.” *Media Prods., Inc.*, No. 12-  
20 cv-3719, at 4; *see also Malibu Media, LLC v. Does 1-5*, No. 12-cv-2950 (JPO), 2012 WL  
21 2001968, at \*1 (S.D.N.Y. June 1, 2012) (“This Court shares the growing concern about  
22 unscrupulous tactics used by certain plaintiffs, especially in the adult film industry, to shake down  
23 the owners of specific IP addresses from which copyrighted adult films were allegedly  
24 downloaded.”).

25 The abuses of Malibu Media in particular have been discussed by a court in the Southern  
26 District of New York:

27 However, Malibu’s corporate strategy relies on aggressively suing for  
28 infringement and obtaining accelerated discovery of the IP address holder’s identity  
from the ISP. It then seeks quick, out-of-court settlements which, because they are

1 hidden, raise serious questions about misuse of court procedure. Judges regularly  
2 complain about Malibu. For example, in May, Judge Timothy Black of the  
3 Southern District of Ohio surveyed some of Malibu’s questionable conduct in  
4 litigations across the country. See Order to Show Cause, ECF Doc. No. 15, *Malibu*  
5 *Media, LLC v. Ryan Ramsey*, No. 14–cv–718 (S.D. Ohio May 26, 2015). He found  
6 that, while “Malibu Media asserts that it is necessary to invoke the Court’s  
7 subpoena power to ‘propound discovery in advance of a Rule 26(f) conference’ . . .  
8 [,] not a single one of these 60 cases [filed in this district over the previous 12  
9 months] has even progressed to a Rule 26(f) conference.” *Id.* at 5. Indeed, most  
10 are dismissed even without the issuance of a summons. *Id.* Malibu’s motive is to  
11 use the federal courts only to obtain identifying information in order to coerce fast  
12 settlements. *Id.* at 8 (citing *Malibu Media, LLC v. Does 1–54*, No. 12–cv–1407,  
13 2012 WL 303[03]02, at \*5 (D. Colo. July 25, 2012); *Malibu Media, LLC v. Does*,  
14 923 F. Supp. 2d 1339, 1345–46 (M.D.Fla.2013)).

15 Malibu effectuates its strategy by employing tactics clearly calculated to  
16 embarrass defendants. For example, in recent complaints filed in the Wisconsin  
17 federal courts, an attached “Exhibit C” listed additional pornographic videos  
18 downloaded to the defendants’ IP addresses using BitTorrent. The titles in Exhibit  
19 C were extremely racy and lewd, and the district court sanctioned Malibu when it  
20 learned that Malibu did not even own the copyrights for the titles; rather, it had  
21 gratuitously listed them to coerce larger, faster settlements by further shaming  
22 defendants. See *Malibu Media LLC v. John Doe* subscriber assigned IP address  
23 24.183.51.58, 2013 WL 4821911 (W.D. Wis. Sep. 10, 2013); *Malibu Media, LLC*  
24 *v. Doe*, No. 13–cv–536, 2013 WL 6579338, at \*4 (E.D. Wis. Dec. 12, 2013).

25 When courts have attempted to place restrictions on the subpoena to prevent  
26 Malibu from abusing the process to extort defendants, Malibu has flagrantly  
27 disregarded them. For example, after one court issued “two orders unambiguously  
28 ordering [Malibu] to file [the identified IP-registrant’s name] under seal,” Malibu  
filed it publicly anyway. Order to Show Cause, ECF Doc. No. 17, *Malibu Media, LLC v. Austen Downs*, 14–cv–707 (S.D. Ohio May 26, 2015). And in the Eastern District of New York, Magistrate Judge Gary Brown took additional precautions to protect John Doe’s identity by explicitly instructing that “the subpoenaed information be sent directly to the Court, ex parte and under seal.” *Patrick Collins, Inc. v. Doe 1*, 288 F.R.D. 233, 236 (E.D.N.Y. Nov. 20, 2012). Malibu instead served subpoenas that requested the identifying information be sent directly to Plaintiff’s counsel. *Id.*

29 *Malibu Media, LLC*, 2015 WL 4092417, at \* 4.

30 Despite these concerns, most district courts have permitted Plaintiff to serve ISPs with  
31 third-party subpoenas to discover the identity of the customer associated with the relevant IP  
32 Address. See, e.g., *Malibu Media, LLC v. John Doe*, No. 15-cv-4381 (JFK), 2015 WL 4923114  
33 (S.D.N.Y. Aug. 18, 2015); *Malibu Media, LLC v. John Does 1-16*, No. 12-cv-1847-AJB (DHB),  
34

1 2012 WL 3809128 (S.D. Cal. Sept. 4, 2012).<sup>2</sup> The service of these subpoenas, however, has been  
2 subject to restrictions aimed at protecting the privacy and the interests of the individuals whose  
3 identity is discovered pursuant to the subpoenas. With this interest-balancing framework in mind,  
4 and particularly the concerns highlighted regarding these cases, the Court turns to Plaintiff's  
5 request to serve a third-party subpoena in this case and whether good cause exists to do so.

## 6 **2. Good Cause Factors**

7 In evaluating whether a plaintiff has established good cause to learn the identity of Doe  
8 defendants through early discovery, courts examine whether the plaintiff (1) identifies the Doe  
9 defendant with sufficient specificity that the court can determine that the defendant is a real person  
10 who can be sued in federal court, (2) recounts the steps previously taken to locate and identify the  
11 defendant, (3) demonstrates that the action can withstand a motion to dismiss, and (4) establishes  
12 that the discovery is likely to lead to identifying information that will permit service of process.  
13 *Columbia Ins. Co.*, 185 F.R.D. at 578-80; *Uber Technologies, Inc. v. Doe*, No. C 15-00908 LB,  
14 2015 WL 1205167, at \*2 (N.D. Cal. Mar. 16, 2015).

15 Here, Plaintiff has made a sufficient showing under each of the four factors to permit it to  
16 serve a third-party subpoena to identify Defendant.

### 17 **a. Sufficient Specificity and Recounting Steps to Identify Defendant**

18 Plaintiff has identified Defendant with sufficient specificity and has set forth the steps it  
19 has taken to do so. Its investigator Tobias Fieser is employed by IPP International UG ("IPP"), a  
20 company that provides forensic investigation services to copyright owners. (Doc. 7-4, Fieser  
21 Decl., ¶¶ 1-5.) IPP's forensic software monitors the BitTorrent file distribution network for the  
22 presence of infringing transactions involving Plaintiff's works and identifies IP addresses that are  
23 being used by infringers to distribute Plaintiff's copyrights works within BitTorrent. (Doc. 7-4,  
24 Fieser Decl., ¶ 6.) Upon review of IPP's forensic activity logs, Fieser determined that a computer  
25 using the IP Address identified in Plaintiff's complaint connected to IPP's servers and transmitted  
26 a full copy, or portion, of at least one of the digital media files identified by the file hash values set

---

27 <sup>2</sup> Other district courts, however, have refused to grant Malibu Media's motion to serve a third-party subpoena. *See*  
28 *Malibu Media, LLC v. Doe*, No. 15-cv-4369, 2015 WL 4092417, at \*4-6 (S.D.N.Y. July 6, 2015); *Malibu Media, LLC*  
*v. Doe*, No. 15-cv-1883, 2015 WL 3651566, at \*2-4 (S.D.N.Y. June 5, 2015).

1 forth in Exhibit A to the complaint.<sup>3</sup> (Doc. 7-4, Fieser Decl., ¶¶ 9-11.) The IP Address  
2 identification is sufficient, at this stage, to indicate a real person used the network to download the  
3 copyrighted file. Moreover, Plaintiff sufficiently set forth the steps it has taken to locate and  
4 identify Defendant, despite that it has been unable to further identify Defendant by name. *See*  
5 *Hard Drive Prods., Inc. v. Does 1-118*, No. C 11-01567 LB, 2011 WL 1431612 (N.D. Cal. Apr.  
6 14, 2011). The first two good cause factors are satisfied.

7 **b. Sufficiency of Complaint to Withstand a Motion to Dismiss**

8 **(i) Ability to State a Claim Upon Which Relief Can Be Granted**

9 To be entitled to early discovery, Plaintiff must establish its complaint can withstand a  
10 motion to dismiss. *Columbia Ins.*, 185 F.R.D. at 579. “Copyright is a federal law protection  
11 provided to the authors of original works of authorship.” *Vernor v. Autodesk, Inc.*, 621 F.3d 1102,  
12 1106 (9th Cir. 2010) (quoting 17 U.S.C. §§ 101-103). “To establish [copyright] infringement, two  
13 elements must be proven: (1) ownership of a valid copyright, and (2) copying of constituent  
14 elements of the work that are original.” *Feist Publ’ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340,  
15 361 (1991). Plaintiff alleges it is the owner of the Copyrights-in-Suit (as identified in an exhibit to  
16 the complaint); using BitTorrent, Defendant copied and distributed constituent elements of each of  
17 the original works covered by the Copyrights-in-Suit; and Plaintiff did not permit or consent to  
18 Defendant’s distribution of its works. (Doc. 1, ¶¶ 31-33.) It appears Plaintiff has stated a prima  
19 facie claim for copyright infringement that can withstand a motion to dismiss.

20 **(ii) Personal Jurisdiction**

21 Plaintiff bears the burden to establish jurisdictional facts, which includes personal  
22 jurisdiction over the defendant. *Columbia Ins.*, 185 F.R.D. at 579. Plaintiff has identified the IP  
23 Address associated with the allegedly infringing downloading and copying, and it is located in  
24 Modesto, California. This location is within the geographical boundaries of this judicial district.  
25 (Doc. 1, ¶ 5; Doc. 1-1, Exhibit A (identifying location of IP Address).) Further, the complaint  
26 alleges each of Defendant’s acts of copyright infringement occurred in this district and that  
27

---

28 <sup>3</sup> Exhibit A contains a list of 4 hash numbers associated with particular copyrighted titles and the dates they were  
allegedly downloaded by Defendant. (Doc. 1-1, Exhibit A.)



1 Defendant or its agents reside or may be found in this district. (Doc. 1, ¶ 7.) At this stage, it is  
2 likely that the complaint can withstand a motion to dismiss for lack of personal jurisdiction  
3 because Defendant has an IP Address traced to a location in this district. *See 808 Holdings v.*  
4 *Collective of December 29, 2011*, No. 12-cv-00186, 2012 WL 1648838 (S.D. Cal. May 4, 2012).

5 **(iii) Venue**

6 “In copyright infringement actions, venue is proper ‘in the district in which the defendant  
7 or his agent resides or may be found.’” *Brayton Purcell LLP v. Recordon & Recordon*, 606 F.3d  
8 1124, 1128 (9th Cir. 2010) (quoting 28 U.S.C. §1400(a)). As noted above, Plaintiff has  
9 determined the alleged infringing activity occurred through an IP Address within this judicial  
10 district; thus, it is likely Plaintiff will be able to survive a motion to dismiss for improper venue  
11 under Federal Rule of Civil Procedure 12(b)(3). *See Malibu Media, LLC*, 2012 WL 3809128, at  
12 \*4-5.

13 **c. Subpoena Likely to Lead to Discovery of Identifying Information**

14 It appears Plaintiff has obtained and investigated the available data pertaining to the  
15 alleged infringements and there is no alternative means to ascertain Defendant’s identity other  
16 than by subpoenaing the ISP. (Doc. 7-1, 17:15-24); *Malibu Media, LLC*, 2012 WL 3809128, at \*3  
17 (IP Addresses obtained sufficiently established investigation efforts, particularly where there is no  
18 other practical measures to identify Doe defendants). The information Plaintiff seeks through  
19 service of the subpoena will likely to lead to identifying information, including Defendant’s name  
20 and address, which should allow Plaintiff to effect service of process on Defendant.

21 In sum, Plaintiff has made a sufficient showing on all four good cause factors to permit it  
22 to pursue discovery prior to the Rule 26(f) conference.

23 **3. Cable Privacy Act**

24 The Cable Privacy Act, 47 U.S.C. §551, generally prohibits cable operators from  
25 disclosing personally identifiable information regarding subscribers without the prior written or  
26 electronic consent of the subscriber. 47 U.S.C. §551(c)(1). The cable operator, however, may  
27 disclose this information if the disclosure is made pursuant to a court order and the cable operator  
28

1 provides the subscriber with notice of the order. *Id.* § 551(c)(2)(B). The ISP Plaintiff intends to  
2 subpoena is a cable operator within the meaning of the Act.

3 **4. Conclusion**

4 Based on the factors discussed above, the Court finds the privacy concerns of the  
5 Defendant are balanced with the need for discovery by allowing Malibu to subpoena the ISP to  
6 discover Defendant’s identity using the IP Address associated with the allegedly infringing  
7 downloads. The restrictions set forth below are intended to provide additional safeguards to  
8 Defendant’s privacy interests. This Court takes very seriously the concerns noted by Judge  
9 Hellerstein of the Southern District of New York<sup>4</sup> and Judge Wright of the Central District of  
10 California,<sup>5</sup> among many others, regarding the potential for abuse in cases such as this. Although  
11 Plaintiff is permitted to serve a third-party subpoena, it is cautioned that any abuses of the judicial  
12 system or the discovery process will not be taken lightly.

13 **IV. CONCLUSION AND ORDER**

14 On balance of the interests involved, the Court finds Plaintiff has established good cause  
15 for the issuance of a third-party subpoena in an attempt to identify Defendant. For the reasons set  
16 forth above, IT IS HEREBY ORDERED that:

17 1. Plaintiff’s motion to serve a third-party subpoena is GRANTED subject to the  
18 restrictions noted below;

19 2. Plaintiff may immediately serve a Rule 45 Subpoena (“Subpoena”) on the ISP  
20 AT&T Internet Services to obtain information to identify Defendant John Doe, specifically his or  
21 her name and address. The ISP is **not** to release the subscriber’s telephone number or email  
22 address. A copy of this Order shall be attached to the Subpoena;

23 3. AT&T Internet Services shall have 30 days from the date of service of the  
24 Subpoena upon it to serve Defendant John Doe with a copy of the Subpoena and a copy of this  
25 Order. AT&T Internet Services may serve Defendant using any reasonable means, including  
26

27 \_\_\_\_\_  
<sup>4</sup> See *Malibu Media, LLC*, 2015 WL 4092417.

28 <sup>5</sup> See *Malibu Media, LLC*, 2012 WL 5382304.

1 written notice sent to his or her last known address, transmitted either by first-class mail or via  
2 overnight service;

3 4. Defendant shall have 60 days from the date of service of the Subpoena and this  
4 Order upon him or her to file any motions with this Court contesting the Subpoena (including a  
5 motion to quash or modify the Subpoena), as well as any request to litigate the Subpoena  
6 anonymously. AT&T Internet Services may **not** turn over the Defendant's identifying information  
7 to Plaintiff before the expiration of this 60-day period. Additionally, if the Defendant or ISP files  
8 a motion to quash the Subpoena, the ISP may not turn over any information to Plaintiff until the  
9 issues have been addressed and the Court issues an Order instructing the ISP to resume turning  
10 over the requested discovery. A Doe Defendant who moves to quash or modify the Subpoena, or  
11 to proceed anonymously, shall at the same time as her or his filing notify the ISP so that the ISP is  
12 on notice not to release any of the Defendant's contact information to Plaintiff until the Court  
13 rules on any such motions;

14 5. If the 60-day periods elapse without the Defendant or ISP contesting the Subpoena,  
15 the ISP shall have 10 days to produce the information responsive to the Subpoena to Plaintiff;

16 6. Upon service with the Subpoena, AT&T Internet Services shall preserve any  
17 subpoenaed information pending the resolution of any timely-filed motion to quash; and

18 7. Any information ultimately disclosed to Plaintiff in response to a Subpoena may be  
19 used by Plaintiff for the **sole** purpose of protecting Plaintiff's rights as set forth in the complaint.

20  
21 IT IS SO ORDERED.

22 Dated: October 25, 2016

*/s/ Sheila K. Oberto*  
UNITED STATES MAGISTRATE JUDGE