1 2 3 4 5 IN THE UNITED STATES DISTRICT COURT 6 7 FOR THE NORTHERN DISTRICT OF CALIFORNIA 8 9 10 No. C 15-04112 WHA In re Malibu Media Copyright No. C 15-04159 WHA Infringement Litigation 11 No. C 15-04170 WHA No. C 15-04287 WHA 12 No. C 15-04289 WHA No. C 15-04291 WHA 13 No. C 15-04441 WHA No. C 15-05383 WHA 14 No. C 15-05384 WHA No. C 15-05385 WHA 15 No. C 15-05386 WHA No. C 15-05387 WHA No. C 15-05388 WHA 16 No. C 15-05389 WHA 17 No. C 15-05391 WHA No. C 15-05395 WHA 18 No. C 15-05396 WHA No. C 15-05397 WHA 19 No. C 15-05398 WHA No. C 15-05399 WHA 20 No. C 15-05400 WHA No. C 15-05401 WHA 21 No. C 15-05402 WHA No. C 15-05403 WHA 22 No. C 15-05404 WHA No. C 15-05406 WHA 23 No. C 15-05408 WHA No. C 15-05409 WHA 24 No. C 15-05410 WHA No. C 15-05411 WHA 25 No. C 15-05412 WHA No. C 15-05413 WHA 26 No. C 15-06060 WHA No. C 15-06062 WHA 27 No. C 15-06063 WHA No. C 15-06064 WHA 28 No. C 15-06065 WHA No. C 15-06066 WHA No. C 15-06067 WHA

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No.	C 15-	06073	WHA
No.	C 15-	06074	WHA
No.	C 15-	06075	WHA

ORDER RE PLAINTIFF'S PROPOSED PROCEDURE FOR EFFECTUATING SERVICE

Plaintiff Malibu Media, LLC, has filed 116 copyright infringement actions in this district. All of Malibu Media's actions have been reassigned to the undersigned judge. Malibu Media has encountered difficulty effectuating service by the deadline set by Rule 4(m), which has resulted in repeated requests for extensions and, in four cases, dismissal for failure to timely serve the defendants (after two extensions had already been granted). Accordingly, Malibu Media filed a request in Case No. 15-4287 proposing that the undersigned judge issue a standing order extending the deadline to effectuate service to fifty-five days from the date on which it receives the defendant's identifying information from his or her Internet provider for all pending cases. Counsel for Malibu Media appeared for a hearing to discuss this proposal on February 23.

As a matter of course, the deadline to effectuate service has been extended to at least twenty-eight days from the date on which Malibu Media received the defendant's identifying information. Two extensions of two weeks each have been granted upon request and a showing of good cause. In one case, the deadline was extended a third time where the defendant appeared to be dodging service.

Malibu Media explains that the initial twenty-eight days does not offer sufficient time to effectuate service, inasmuch as it takes twenty days from the date on which it receives a given defendant's identifying information before it can deliver the necessary documents and

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instructions to a process server. Specifically, Malibu Media outlines the following procedure that it follows upon receipt of a defendant's identifying information:

- Malibu Media conducts an investigation, typically lasting THREE **DAYS**, to determine whether it will pursue its claims against the subscriber identified or a third party using that subscriber's Internet connection.
- Once Malibu Media decides to pursue claims against a defendant, it takes THREE DAYS to prepare and file a proposed summons, amended complaint, return of service, and a motion to file those documents under seal.
- Malibu Media's sealing motion is granted within **ONE DAY**.
- The summons issues between TWO AND SIX DAYS after the sealing motion is granted.
- Malibu Media receives the unredacted summons by mail FOUR TO TEN DAYS after it issues.
- Malibu Media spends **ONE DAY** reviewing the relevant documents before delivering them to its process server.

In light of this time-consuming procedure, Malibu Media seeks to alleviate the administrative burden of repeatedly requesting extensions; however, Malibu Media exaggerates the timeline of its procedure.

First, Malibu Media offers no explanation for why it needs three days to prepare and file its proposed summons, amended complaint, return of service, and sealing motion. The preparation of those documents involves little more than adding the defendant's identifying information to documents that Malibu Media had already created before receiving that information. Even if Malibu Media actually needed three days to prepare those documents (plus three to conduct its investigation), it generally files its sealing motions more than ten days after receiving defendants' identifying information.

Second, in no case has the summons issued more than one day after Malibu Media's sealing motion is granted.

Third, as noted in the orders dismissing four of Malibu Media's cases (Case Nos. 15-4246, 15-4248, 15-4280, and 15-4430), and as discussed at the hearing on this request, Malibu Media's lead counsel (who are based in Los Angeles) or local associated counsel, may retrieve

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any unredacted summonses in person at the Clerk's office on the 16th floor of 450 Golden Gate Ave., San Francisco. Thus, any delay caused by the mailing of unredacted summonses is easily avoided.

Accordingly, Malibu Media only needs eight to ten days from the date it receives a defendant's identifying information before it can deliver the relevant documents and instructions to its process server. Nevertheless, notwithstanding the deadline set by Rule 4(m), Malibu Media shall have thirty-five days from the date on which it receives the defendant's identifying information from the his or her Internet service effectuate service.

Requests for extensions beyond thirty-five days (or beyond the deadline set by Rule 4(m) if longer than thirty-five days) will be decided on a case-by-case basis and must be supported by good cause. Any such request should be made immediately as circumstances justifying the extension arise, rather than at the last minute. Malibu Media must support any assertion that a defendant is dodging service with an affidavit of non-service (to be filed under seal, with the defendant's identifying information redacted on the public docket).

In order to better track deadlines, Malibu Media shall please file a notice informing the Court of the date on which it received the defendant's identifying information no later than FIVE CALENDAR DAYS after receiving that information.

This order shall be filed in every pending Malibu Media case in this district in which the defendant has not yet been served. As discussed at the hearing, Malibu Media shall please file the transcript of the February 23 hearing in each of the above-captioned matters.

IT IS SO ORDERED.

Dated: February 23, 2016.

TED STATES DISTRICT JUDGE