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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

PATRICK COLLINS, INC.,

Plaintiff,

vs.

JOHN DOES 34-51, et al.,

Defendants.

CASE NO. 11cv2143-BEN (MDD)

**ORDER GRANTING MOTION
FOR RECONSIDERATION OF
ORDER COMPELLING
PRODUCTION BY SBC
INTERNET SERVICES, INC.
d/b/a AT&T INTERNET
SERVICES AND VACATING
ORDER COMPELLING
PRODUCTION**

[ref. DOC. NOS. 24,28]

Before the Court is a motion by third-party SBC Internet Services, Inc. d/b/a AT&T Internet Services (“AT&T”), filed on March 5, 2012, requesting that the Court reconsider its Order compelling AT&T to comply with a subpoena generated to AT&T by Plaintiff. (Doc. No. 28). Plaintiff responded on March 14, 2012. (Doc. No. 33). The Court held a hearing on the motion on March 22, 2012. As provided below, AT&T’s motion is **GRANTED**. The Court’s Order compelling discovery from SBC Internet Services, dated February 22, 2012, is **VACATED**. (Doc. No. 24).

As detailed below, the Court **ORDERS** that the parties return to the *status quo* prior to the issuance of the subject subpoena. In summary, Plaintiff may not make any use of the information received from AT&T pursuant to the subject subpoena. Plaintiff

1 must destroy any copies of such information that it may have. To the extent that
2 Plaintiff has issued demand letters to persons identified by AT&T in response to the
3 subject subpoena, those letters must be withdrawn. Plaintiff further is **ORDERED** to
4 file a notice of compliance with this Order with the Court no later than April 6, 2012.
5

6 Background

7 On September 15, 2011, Plaintiff filed a complaint alleging direct and contributory
8 copyright infringement against John Doe defendants. (Doc. No. 1). The complaint
9 alleges that the John Doe defendants participated in a peer-to-peer Internet network
10 using Bit Torrent technology in order to download illegally and share a copyrighted
11 work.

12 On October 12, 2011, the Court granted a motion by Plaintiff to authorize
13 expedited discovery. The Order provided that Plaintiff could subpoena identified
14 Internet Service Providers and obtain identifying information of subscribers certain
15 Internet Protocol addresses alleged to have been involved in illegally sharing a
16 particular copyrighted work and who appeared, through public searches, to be located
17 within this District. The Order required a subpoenaed service provider to notify its
18 subscriber and provided a time limit within which challenges were to be made and
19 brought before the Court. (Doc. No. 4).

20 On January 13, 2012, Plaintiff moved the Court to compel AT&T to comply with
21 a subpoena for subscriber information which was issued pursuant to this Court's Order.
22 (Doc. No. 7). In the motion, Plaintiff asserted that it served AT&T with a subpoena with
23 a compliance date of November 28, 2011, and that as of the date of the motion, AT&T
24 failed to respond or object. Based upon these representations, the Court granted the
25 motion on February 22, 2012. (Doc. No. 24). The Order required Plaintiff to serve the
26 subpoena, the Court's Order of October 12, 2011, and the Order compelling compliance
27 upon AT&T.
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1 presumably because AT&T is amenable to service in that District. Having done so,
2 Plaintiff was required to accept production within that District. See Fed.R.Civ.P.
3 45(b)(2)(A),(B).

4 AT&T objected to the subpoena in writing as required by Rule 45(c)(2)(B)(i).
5 Consequently, Plaintiff was required to provide notice to AT&T prior to bringing a
6 motion to compel. *Id.* And, Plaintiff was required to bring the motion to compel in the
7 court from which the subpoena was issued. *Id.*

8 The Court finds that Plaintiff violated virtually every applicable provision of Rule
9 45 in connection with the subpoena issued to AT&T. The Court finds that the subpoena
10 was unenforceable and that the motion to compel compliance with the subpoena was
11 filed without notice and in the wrong court.

12 Plaintiff claims, however, that the matter is moot because AT&T complied with
13 the subpoena. AT&T did not advise the Court, in its motion to reconsider, that it had
14 complied with the subpoena. Such advice would have been helpful. But, as troubling
15 as it is, the Court finds that the matter is not moot. Discovery was obtained in violation
16 of law with the Court's unknowing assistance. The Court has the authority to provide
17 a remedy. See *Sony v. Does*, 326 F.Supp.2d 556, 561 (S.D.N.Y. 2004). This is
18 particularly true in this case because personal identification information of subscribers
19 was obtained improperly. Their interests also are at issue.

20 The Court finds that the appropriate remedy is to put Plaintiff, AT&T and any
21 affected AT&T subscribers back into the position they were in prior to the improper
22 subpoena being issued.

23 Conclusion

24 In order to place Plaintiff, AT&T and any affected AT&T subscribers back into the
25 position they were in prior to the invalid subpoena being issued, the Court **ORDERS:**

- 26 **1. AT&T's Motion for Reconsideration is GRANTED;**
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2. This Court's Order granting Plaintiff's Motion to Compel Discovery from AT&T is VACATED (Doc. No. 24);
3. Plaintiff and all of its counsel are not to make any use whatsoever of the subscriber information provided by AT&T pursuant to the instant subpoena;
4. Plaintiff and all of its counsel are to locate and destroy all physical and electronic copies of the subscriber information provided by AT&T pursuant to the instant subpoena;
5. To the extent that Plaintiff and its counsel have used the subscriber information obtained from AT&T pursuant to the instant subpoena, for example, to send demand letters to identified subscribers, those letters are to be withdrawn;
6. To the extent that Plaintiff and its counsel have used the subscriber information obtained from AT&T pursuant to the instant subpoena to serve individuals with the complaint in this case, Plaintiff must seek leave from the District Court voluntarily to dismiss the complaint as to those individuals;
7. To the extent that Plaintiff has taken actions with regard to persons identified by AT&T's production to the instant subpoena which actions cannot reasonably be undone, Plaintiff is required to identify those actions in a notice of compliance to be filed with the Court as provided below; and,
8. Plaintiff is required to file with the Court a notice of compliance with the terms of this Order no later than April 6, 2012.


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Nothing herein prevents Plaintiff from attempting to re-acquire the subscriber information it desires provided that it does so in accordance with law.

IT IS SO ORDERED:

DATED: March 23, 2012


Hon. Mitchell D. Dembin
U.S. Magistrate Judge