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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

808 HOLDINGS, LLC, a California )	Civil No. 12cv00186 MMA(RBB)
limited liability company, )	
Plaintiff, )	<b>ORDER GRANTING IN PART AND</b>
v. )	<b>DENYING IN PART PLAINTIFF'S</b>
COLLECTIVE OF DECEMBER 29, 2011 )	<b>MOTION FOR LEAVE TO TAKE EARLY</b>
SHARING HASH )	<b>DISCOVERY [ECF NO. 3]</b>
E37917C8EEB4585E6421358FF32F29C )	
D63C23C91; DOES 1-83, )	
inclusive, )	
Defendants. )	

On January 24, 2012, Plaintiff filed a Motion for Leave to Take Early Discovery, along with a Memorandum of Points and Authorities and an exhibit [ECF No. 3]. Because no Defendant has been named or served, no opposition or reply briefs have been filed. On March 1, 2012, the Court issued a minute order indicating that the Plaintiff failed to comply with the local rules and obtain a hearing date before filing its Motion for Leave to Take Early Discovery [ECF No. 4]. The Court sua sponte set a motion hearing for April 23, 2012, at 10:00 a.m. (Mins. 1, Mar. 1, 2012, ECF No. 4.)

1 The Court finds the Plaintiff's Motion for Leave to Take Early  
2 Discovery suitable for resolution on the papers. See S.D. Cal.  
3 Civ. R. 7.1(d)(1). For the reasons discussed below, the Motion is  
4 **GRANTED** in part and **DENIED** in part.

5 I.

6 **PROCEDURAL HISTORY**

7 On January 23, 2012, Plaintiff 808 Holdings, LLC ("808  
8 Holdings") filed a Complaint against Collective of December 29,  
9 2011 Sharing Hash E37917C8EEB4585E6421358FF32F29CD63C23C91, and  
10 DOES one through eighty-three ("Defendants") [ECF No. 1].  
11 Plaintiff does business under the names "Cody Media" and  
12 "SeanCody.com," and it purports to be the registered owner of, and  
13 hold the exclusive rights to, the copyright of the motion picture,  
14 "Brandon & Pierce Unwrapped." (Compl. 1, 3, ECF No. 1.) First,  
15 808 Holdings alleges a claim for copyright infringement, stating  
16 that Defendants reproduced and distributed Plaintiff's copyrighted  
17 material through the Internet without authorization of the  
18 Plaintiff. (Id. at 36-37.) Second, 808 Holdings pleads  
19 contributory copyright infringement, alleging that Defendants  
20 illegally obtained the copyrighted motion picture and assisted  
21 others in doing the same. (Id. at 37-39.) Third, Plaintiff argues  
22 that the Defendants were negligent in failing to adequately secure  
23 their Internet access to prevent its unlawful use by others. (Id.  
24 at 39-40.)

25 One day after filing the Complaint, on January 24, 2012, 808  
26 Holdings filed this Motion for Leave to Take Early Discovery to  
27 learn the identities of the Doe Defendants from their respective  
28 Internet Service Providers ("ISPs"). (Mot. Leave Take Early Disc.

1 1, ECF No. 3.)<sup>1</sup> Specifically, 808 Holdings seeks an order  
2 directing the ISPs to release the subscriber's identifying  
3 information. (Id.) The Plaintiff also seeks leave to serve  
4 interrogatories on, and take the depositions of, the individuals  
5 identified by the ISPs to determine whether the actual Internet  
6 subscriber is the proper defendant. (Id.) Plaintiff attached to  
7 its Motion a list of the Internet Protocol ("IP") addresses  
8 associated with subscribers it hopes to identify as defendants.  
9 (Id. Attach. #2 Ex. A, at 2-4.)

10 **II.**

11 **FACTUAL ALLEGATIONS**

12 In the Complaint, Plaintiff 808 Holdings alleges that the  
13 eighty-three Doe Defendants collectively infringed its copyrighted  
14 work using a BitTorrent file transfer protocol. (Compl. 2, ECF No.  
15 1.) In general, the Plaintiff asserts that each time a Defendant  
16 distributes the motion picture to others, those individuals can  
17 distribute that infringing copy to other people in "an  
18 interconnected collective," which builds on prior infringements.  
19 (Id.) The Defendants are purportedly a collection of "BitTorrent  
20 users" or "peers" whose computers are connected for the purpose of  
21 sharing a file, otherwise known as a "swarm." (Id. at 3.)  
22 Plaintiff alleges that each BitTorrent swarm is associated with a  
23 particular "hash," which has a specific identifier for the file.  
24 (Id.) The sharing hash associated with the motion picture is

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26  
27 <sup>1</sup> Because the pages attached to the Motion are not paginated,  
28 the Court will cite to the Motion for Leave to Take Early Discovery  
using the page numbers assigned by the electronic case filing  
system.

1 E37917C8EEB4585E6421358FF32F29CD63C23C91 ("E379 Hash"). (Id. at  
2 4.)

3 **A. BitTorrent Protocol**

4 According to 808 Holdings, the BitTorrent protocol is  
5 distinguishable from previously used peer-to-peer file sharing  
6 technology, utilized by Napster or Limewire, because it "allows for  
7 higher transfer speeds by locating pieces (or 'bits') of the file  
8 already present on other users' computers and downloading them  
9 simultaneously." (Id. at 32.) "This is done by joining into the  
10 'swarm,' or collective, of peers to download and upload from each  
11 other simultaneously." (Id.) This process results in faster  
12 downloads than peer-to-peer file sharing technology. (Id.)

13 Plaintiff describes the process of downloading and uploading  
14 files through a BitTorrent protocol as "quick and efficient." (Id.  
15 at 33.) When a user downloads a media file, he or she opens the  
16 file on a BitTorrent client application; the user then extracts a  
17 list with tracker locations that connect to IP addresses that are  
18 currently running the BitTorrent software and offering to  
19 distribute the file. (Id.) The downloader's BitTorrent program  
20 then begins to download the media file automatically. (Id.)

21 **B. Forming a Swarm**

22 In the Complaint, 808 Holdings maintains that a swarm begins  
23 with an initial user called the "seeder" who begins to share a file  
24 with a torrent swarm. (Id.) New members of the swarm connect to  
25 the seeder to download the media file, which creates a digital copy  
26 of the file; the process repeats as new members join the swarm,  
27 increasing the number of users in the swarm. (Id.) Each member  
28 both acquires and redistributes the media file by simultaneously

1 uploading and downloading portions of the same digital copy with  
2 the other members. (Id. at 33-34.) Therefore, Plaintiff contends  
3 that even if the original seeder leaves the swarm, the media file  
4 can continue to be downloaded by old and new members. (Id. at 33.)

5 **C. The December 29, 2011 Sharing Hash**

6 Plaintiff claims that on December 29, 2011, each of the  
7 Defendants "republished, duplicated, and replicated the exact same  
8 copy and exact same hash file." (Id. at 4.) Because all the  
9 Defendants are associated with the E379 hash, 808 Holdings alleges  
10 that each was a member of the same collective swarm. (Id. at 35.)  
11 Accordingly, Plaintiff asserts that they "acted collectively, and  
12 in concert, in effectuating the illegal and unauthorized sharing of  
13 Plaintiff's copyrighted work." (Id.) 808 Holdings contends that  
14 the Doe Defendants acted in unison:

15 Defendants engaged in their copyright infringement  
16 scheme together. They all used the same torrent-sharing  
17 technology to coordinate their collective copyright  
18 theft; they were all members of the same exact swarm on  
19 the same exact date; they all used the same exact tracker  
20 file; they all shared and republished the same exact  
21 motion picture; and they all shared the same exact hash  
22 file of the Motion Picture with each other and other  
23 individuals on the same exact date, December 29, 2011.

24 (Id. at 4.)

25 **III.**

26 **LEGAL STANDARDS**

27 Generally, discovery is not permitted without a court order  
28 before the parties have conferred pursuant to Federal Rule of Civil  
Procedure 26(f). Fed. R. Civ. P. 26(d)(1). Yet, "in rare cases,  
courts have made exceptions, permitting limited discovery to ensue  
after filing of the complaint to permit the plaintiff to learn the  
identifying facts necessary to permit service on the defendant."

1 Columbia Ins. Co. v. Seescandy.com, 185 F.R.D. 573, 577 (N.D. Cal.  
2 1999) (citing Gillespie v. Civiletti, 629 F.2d 637, 642 (9th Cir.  
3 1980)). Courts grant these requests when the moving party shows  
4 good cause for the early discovery. Semitoool, Inc. v. Tokyo Elec.  
5 Am., Inc., 208 F.R.D. 273, 275-76 (N.D. Cal. 2002).

6       The Ninth Circuit has held that when the defendants'  
7 identities are unknown at the time the complaint is filed, courts  
8 may grant plaintiffs leave to take early discovery to determine the  
9 defendants' identities "unless it is clear that discovery would not  
10 uncover the identities, or that the complaint would be dismissed on  
11 other grounds." Gellespie, 629 F.2d at 642. "A district court's  
12 decision to grant discovery to determine jurisdictional facts is a  
13 matter of discretion." Columbia Ins. Co., 185 F.R.D. at 578.

14       District courts apply a three-factor test when considering  
15 motions for early discovery to identify certain defendants. Id. at  
16 578-80. First, the plaintiff should "identify the missing party  
17 with sufficient specificity such that the Court can determine that  
18 defendant is a real person or entity who could be sued in federal  
19 court." Id. at 578. Second, the movant must describe "all  
20 previous steps taken to locate the elusive defendant" to ensure  
21 that the plaintiff has made a good faith effort to identify and  
22 serve process on the defendant. Id. at 579. Third, plaintiff  
23 should establish that its suit against the defendant could  
24 withstand a motion to dismiss. Id. "[T]o prevent abuse of this  
25 extraordinary application of the discovery process and to ensure  
26 that the plaintiff has standing," plaintiff must show that some act  
27 giving rise to liability actually occurred and that the discovery

28

1 is aimed at identifying the person who allegedly committed the act.  
2 Id. at 579-80.

3 **IV.**

4 **DISCUSSION**

5 Plaintiff seeks an order permitting it to subpoena twenty-  
6 three ISPs for documents and information sufficient to identify the  
7 subscribers of the assigned IP addresses listed in Exhibit A to its  
8 Motion: (1) AT&T d/b/a SBC Internet Services, (2) BellSouth.net,  
9 (3) CABLE ONE, Inc., (4) CenturyTel Internet Holdings, (5) Charter  
10 Communications, (6) Comcast Cable, (7) Cox Communications, (8)  
11 Cyber Wurx, LLC., (9) Earthlink, (10) Embarq Corporation, (11) Fuse  
12 Internet Access, (12) HickoryTech Corporation, (13) Insight  
13 Communications Company, (14) The Iserv Company LLC, (15) Level 3  
14 Communications, (16) Optimum Online, (17) Qwest Communications,  
15 (18) RCN Corporation, (19) SureWest Broadband, (20) Time Warner  
16 d/b/a Road Runner, (21) Verizon Internet Services, (22)  
17 WideOpenWest, and (23) Windstream Communications. (Mot. Leave Take  
18 Early Disc. Attach. #1 Mem. P. & A. 2, ECF No. 3.) Out of the  
19 eighty-three corresponding IP addresses that Plaintiff lists in  
20 Exhibit A, only twenty-six are located in California; five of those  
21 Defendants are located within San Diego or Imperial Counties, and  
22 twenty-one are located outside the district. (Id. Attach. #2 Ex.  
23 A, at 2-4.) Fifty-four are located outside of California, and  
24 three do not specify a particular location. (Id.)

25 **A. Identification of Missing Parties with Sufficient Specificity**

26 First, 808 Holdings must identify the Doe Defendants with  
27 enough specificity to enable the Court to determine that the  
28 defendant is a real person or entity who would be subject to the

1 jurisdiction of this Court. Columbia Ins. Co., 185 F.R.D. at 578.  
2 In its Motion for Leave to Take Early Discovery, 808 Holdings  
3 asserts it has "sufficiently identified individuals who are real  
4 persons" that Plaintiff can sue in this federal district court.  
5 (Mot. Leave Take Early Disc. Attach. #1 Mem. P. & A. 3, ECF No. 3.)  
6 It has "observed and documented the infringement of its registered  
7 work by the individuals identified as DOES . . . ." (Id.) Also,  
8 808 Holdings contends that the discovery sought is necessary to  
9 ascertain the identities of the Defendants. (Id.)

10 Some district courts in the Ninth Circuit have determined that  
11 a plaintiff identifies Doe defendants with sufficient specificity  
12 by providing the unique IP addresses assigned to an individual  
13 defendant on the day of the allegedly infringing conduct, and by  
14 using "geolocation technology" to trace the IP addresses to a  
15 physical point of origin. See Openmind Solutions, Inc. v. Does  
16 1-39, No. C-11-3311 MEJ, 2011 U.S. Dist. LEXIS 116552, at \*5-6  
17 (N.D. Cal. Oct. 7, 2011); Pink Lotus Entm't v. Does 1-46, No. C-11-  
18 02263 HRL, 2011 U.S. Dist. LEXIS 65614, at \*6-7 (N.D. Cal. June 21,  
19 2011). Others have found that merely identifying the IP addresses  
20 assigned to the defendants on the day of the purported infringement  
21 is sufficient to satisfy the first factor. See MCGIP, LLC v. Does  
22 1-149, No. C-11-02331 LB, 2011 U.S. Dist. LEXIS 85363, at \*4-5  
23 (N.D. Cal. Aug. 15, 2011) (opinion by Judge Beeler); First Time  
24 Videos LLC v. Does 1-37, No. C-11-01675 LB, 2011 U.S. Dist. LEXIS  
25 42376, at \*5 (N.D. Cal. April 14, 2011) (opinion by Judge Beeler).

26 This Court finds the former standard persuasive. In any  
27 event, here, 808 Holdings has submitted a chart listing the unique  
28 IP address corresponding to each Defendant on December 29, 2011, as



1 well as the city and state in which each IP address is located.  
2 (See Mot. Leave Take Early Disc. Attach. #2 Ex. A, at 2-4, ECF No.  
3 3.) Consequently, Plaintiff has identified the Doe Defendants with  
4 sufficient specificity. See Openmind Solutions, 2011 U.S. Dist.  
5 LEXIS 116552, at \*6 (concluding that plaintiff satisfied the first  
6 factor by identifying the defendants' IP addresses and by tracing  
7 the IP addresses to a point of origin within the State of  
8 California); Pink Lotus Entm't, 2011 U.S. Dist. LEXIS 65614, at \*6  
9 (same).

10 **B. Previous Attempts to Locate Defendants**

11 Next, 808 Holdings must describe all prior steps it has taken  
12 to identify the Doe Defendants in a good faith effort to locate and  
13 serve them. See Columbia Ins. Co., 185 F.R.D. at 579. Plaintiff  
14 generally maintains that there are no other practical measures  
15 available to determine the identities of the Doe Defendants. (Mot.  
16 Leave Take Early Disc. Attach #1 Mem. P. & A. 4, ECF No. 3.) "Due  
17 to the nature of on-line transactions, Plaintiff has no way of  
18 investigating the identities of the potential Defendants except via  
19 third-party subpoena to the ISP." (Id.)

20 In its Motion, 808 Holdings does not describe the efforts it  
21 made to learn the IP addresses. Plaintiff identified the IP  
22 addresses from which each Doe Defendant connected to the Internet  
23 and recorded the date and time each Defendant accessed Plaintiff's  
24 motion picture. (See id. at 5.) Plaintiff apparently conducted "a  
25 simple search on a publically available database" to determine  
26 which ISP controls the particular IP addresses. (See id.) This  
27 description is vague and is not supported by any declaration. See  
28 Openmind Solutions, 2011 U.S. Dist. LEXIS 116552, at \*7-10.

1 Nonetheless, 808 Holdings appears to have obtained and investigated  
2 the data pertaining to the December 29, 2011 alleged infringements,  
3 in a good faith effort to locate each Doe Defendant. See Digital  
4 Sin, Inc. v. Does 1-5698, No. C 11-04397 LB, 2011 U.S. Dist. LEXIS  
5 128033, at \*5 (N.D. Cal. Nov. 4, 2011); Openmind Solutions, 2011  
6 U.S. Dist. LEXIS 85363, at \*5; MCGIP, 2011 U.S. Dist. LEXIS 85363,  
7 at \*5; Pink Lotus Entm't, 2011 U.S. Dist. LEXIS 65614, at \*7.

8 **C. Ability to Withstand a Motion to Dismiss**

9 Finally, to be entitled to early discovery, 808 Holdings must  
10 demonstrate that its Complaint can withstand a motion to dismiss.

11 See Columbia Ins. Co., 185 F.R.D. at 579.

12 In its Motion for Leave to Take Early Discovery, the Plaintiff  
13 declares that it has stated a prima facie claim for copyright  
14 infringement that can withstand a motion to dismiss. (Mot. Leave  
15 Take Early Disc. Attach. #1 Mem. P. & A. 4, ECF No. 3.) According  
16 to 808 Holdings, it has adequately alleged that Defendants engaged  
17 in the unauthorized reproduction and distribution of its motion  
18 picture, and that Plaintiff owns the registered copyrights for the  
19 motion picture. (Id. (citing 17 U.S.C. §§ 106(1)(3)).) Also,  
20 without a citation to supporting authority showing any "duty" to  
21 copyright owners, 808 Holdings contends it has sufficiently pleaded  
22 a negligence cause of action based on the Defendants' failure to  
23 secure their Internet access, which enabled the copyright  
24 infringements. (Id.)

25 **1. Lack of personal jurisdiction**

26 Exhibit A to Plaintiff's Motion indicates that most of the  
27 potential Defendants are located outside of the state. Of the  
28 eighty-three Doe Defendants listed, only twenty-six of the host IP

1 addresses are in California. (See id. Attach. #2 Ex. A, at 2-4,  
2 ECF No. 3.) Fifty-four of the IP addresses are outside of  
3 California. (Id.) The location of three of the IP addresses is  
4 unknown or unspecified. (Id. at 2, 4.) At a minimum, there is a  
5 serious question as to whether the claims against the fifty-four  
6 out-of-state Doe Defendants, as well as the three Defendants whose  
7 locations are unknown, can survive a motion to dismiss for lack of  
8 personal jurisdiction. See Celestial, Inc. v. Swarm Sharing Hash  
9 8AB508AB0F9EF8B4CDB14C6248F3 C96C65BEB882 on December 4, 2011, No.  
10 CV 12-00204 DDP(SSx), 2012 U.S. Dist. LEXIS 41078, at \*5 (C.D. Cal.  
11 Mar. 23, 2012).

12 The Plaintiff bears the burden of establishing jurisdictional  
13 facts. See Columbia Ins. Co., 185 F.R.D. at 578 (citing Wells  
14 Fargo & Co. v. Wells Fargo Express Co., 556 F.2d 406, 430 n.24 (9th  
15 Cir. 1977)). Yet, remarkably, in its Motion, 808 Holdings does not  
16 discuss whether this Court has personal jurisdiction over the Doe  
17 Defendants. In its Complaint, however, Plaintiff asserts that the  
18 Defendants are subject to personal jurisdiction in this district  
19 because they took the "affirmative action of both downloading and  
20 uploading" Plaintiff's motion picture, which "contained Plaintiff's  
21 business address in this jurisdiction, . . . ." (Compl. 2, ECF No.  
22 1.) Thus, Plaintiff maintains that "Defendants knew or should have  
23 known . . . that the copyright belonged to an entity residing in  
24 this jurisdiction and thus [they] expressly targeted their  
25 infringing actions and caused damages" in California. (Id.)

26 Personal jurisdiction over a nonresident defendant is  
27 determined by a two-part test. First, the exercise of jurisdiction  
28 must comply with the state's long-arm statute. Liberty Media

1 Holdings v. Does 1-62, No. 11-CV-575-MMA (NLS), 2012 U.S. Dist.  
2 LEXIS 24232, at \*6 (S.D. Cal. Feb. 24, 2012). Second, the exercise  
3 of jurisdiction must satisfy the requirements of federal due  
4 process. Id. at \*6-7 (citation omitted). California's long-arm  
5 statute extends jurisdiction to the limits of due process. Cal.  
6 Code. Civ. P. § 410.10 (West 2004); Dow Chem. Co. v. Calderon, 422  
7 F.3d 827, 831 (9th Cir. 2005). "For a court to exercise personal  
8 jurisdiction over a nonresident defendant, that defendant must have  
9 at least 'minimum contacts' with the relevant forum such that the  
10 exercise of jurisdiction 'does not offend traditional notions of  
11 fair play and substantial justice.'" Swarzenegger v. Fred Martin  
12 Motor Co., 374 F.3d 797, 801 (9th Cir. 2004) (quoting Int'l Shoe  
13 Co. v. Washington, 326 U.S. 310, 316 (1945)).

14 While some courts deciding requests for early discovery have  
15 considered whether the IP addresses are located in California, at  
16 least one other court has determined that merely identifying the  
17 host IP addresses – regardless of location – is sufficient.  
18 Compare Pink Lotus Entm't, 2011 U.S. Dist. LEXIS 65614, at \*6-7  
19 (noting that the IP addresses were traced to locations in  
20 California), with First Time Videos LLC, 2011 U.S. Dist. LEXIS  
21 42376, at \*5 (opinion by Judge Beeler) (failing to discuss location  
22 of IP addresses). Judge Beeler did not consider the location fo IP  
23 addresses in three subsequent cases. See Digital Sin, 2011 U.S.  
24 Dist. LEXIS 128033, at \*4-5 (failing to address the locations of  
25 the IP addresses); MCGIP, 2011 U.S. Dist. LEXIS 85363, at \*4-5; VPR  
26 Internationale v. Does 1-17, No. C-11-01494 LB, 2011 U.S. Dist.  
27 LEXIS 45118, at \*5 (N.D. Cal. Apr. 15, 2011). Other courts have  
28 found that without identifying the Doe Defendants, it would be

1 premature to decide whether the court lacks personal jurisdiction  
2 when the defendants and their connections to California are  
3 unknown. See Liberty Media Holdings, 2012 U.S. Dist. LEXIS 24232,  
4 at \*7-8 (citing IO Group, Inc. v. Does 1-10, No. C 10-03851 SI,  
5 2010 U.S. Dist. LEXIS 133717 (N.D. Cal. Dec. 7, 2010); Call of the  
6 Wild Movie, LLC v. Does 1-1,062, 770 F. Supp. 2d 332, 347 (D.D.C.  
7 2011)).

8 This Court must balance the need for discovery against the  
9 interests of justice, which includes consideration of the prejudice  
10 to the ISP and to the Doe Defendants. See Semitool, 208 F.R.D. at  
11 276. The judicial process should not be manipulated to obtain  
12 confidential information about Defendants not subject to the  
13 Court's jurisdiction. The Plaintiff asserts that jurisdiction over  
14 the Doe Defendants is proper because the motion picture displayed  
15 Plaintiff's California business address. (Compl. 2-3, ECF No. 1.)  
16 This is insufficient to support a determination that "'Defendants  
17 expressly aimed their tortious acts against' a California company,  
18 as required for specific jurisdiction." Celestial, 2012 U.S. Dist.  
19 LEXIS 41078, at \*6 (citation omitted). It is unlikely that an  
20 individual in a distant jurisdiction would envision that the acts  
21 alleged would subject him to the jurisdiction of this Court.  
22 Similarly, any allegation that personal jurisdiction exists because  
23 of the swarming activity is inadequate. Id. at \*6-7 & n.2.

24 At a minimum, Plaintiff has not alleged sufficient facts to  
25 show that it can withstand a motion to dismiss for lack of personal  
26 jurisdiction as to the fifty-four Doe Defendants with IP addresses  
27 outside of California and the three Doe Defendants whose locations  
28 are not identified. See Celestial, 2012 U.S. Dist. LEXIS 41078, at

1 \*5-6 (denying request for early discovery because the complaint  
2 could not withstand a motion to dismiss for lack of personal  
3 jurisdiction even though all of the IP addresses were located in  
4 California).

5 **2. Improper venue**

6 In the same vein, 808 Holdings has not shown that its  
7 Complaint can survive a motion to dismiss for improper venue as to  
8 the Doe Defendants with IP addresses outside the State of  
9 California and outside this judicial district. As discussed,  
10 fifty-four of the IP addresses are located out-of-state, and the  
11 locations for three of the addresses are unknown. (See Mot. Leave  
12 Take Early Disc. Attach. #2 Ex. A, at 2-4, ECF No. 3.) Only five  
13 of the twenty-six California IP addresses are within the Southern  
14 District of California – one IP address is in Fallbrook,  
15 California; one is in Coronado, California; and three are in San  
16 Diego, California. (Id.)

17 Plaintiff alleges that venue in this district is proper as to  
18 all Defendants under 28 U.S.C. §§ 1391(b)(2), 1400(a). (See Compl.  
19 3, ECF No. 1.) “The venue of suits for infringement of copyright  
20 is not determined by the general provision governing suits in the  
21 federal district courts, rather by the venue provision of the  
22 Copyright Act.” Goldberg v. Cameron, 482 F. Supp. 2d 1136, 1143  
23 (N.D. Cal. 2007). Civil actions for copyright infringement “may be  
24 instituted in the district in which the defendant or his agent  
25 resides or may be found.” 28 U.S.C.A. § 1400(a) (West 2006). An  
26 individual “resides” for venue purposes in the district of his  
27 domicile. 17 James Wm. Moore, et al., Moore’s Federal Practice, §  
28 110.39[2], at 110-76 (3d ed. 2011). A defendant is “found” for

1 venue purposes where he is subject to personal jurisdiction. Id.  
2 (footnote omitted); see Brayton Purcell LLP v. Recordon & Recordon,  
3 606 F.3d 1124, 1126 (9th Cir. 2010) ("This circuit interprets [28  
4 U.S.C. § 1400(a)] to allow venue in any judicial district where, if  
5 treated as a separate state, the defendant would be subject to  
6 personal jurisdiction.").

7 Plaintiff fails to address venue in its Motion. In the  
8 Complaint, however, 808 Holdings asserts venue is proper because  
9 although the true identities of the Defendants are unknown, "on  
10 information and belief, each Defendant may be found in this  
11 District and/or a substantial part of the infringing acts  
12 complained of occurred in this District." (Compl. 3, ECF No. 1.)  
13 This allegation may run afoul of Rule 11 of the Federal Rules of  
14 Civil Procedure, given that only five of the eighty-three  
15 Defendants have IP addresses in the Southern District of  
16 California.

17 Plaintiff has not demonstrated that its Complaint can  
18 withstand a motion to dismiss for lack of personal jurisdiction as  
19 to the fifty-four Doe Defendants located outside of California and  
20 the three Defendants in unknown locales. It also appears that  
21 venue in this judicial district would be improper for these  
22 Defendants. Similarly, the Plaintiff has not shown that the  
23 twenty-one California Defendants located outside of this district  
24 are subject to suit in the Southern District of California. Thus,  
25 it is unclear whether 808 Holdings's Complaint can survive a motion  
26 to dismiss by these twenty-one Doe Defendants. Consequently,  
27 Plaintiff has not shown that it can withstand a motion to dismiss  
28 for improper venue pursuant to 28 U.S.C. § 1406(a) for these

1 seventy-five Doe Defendants, especially when there is no alternate  
2 district to which a transfer would be appropriate. See 28 U.S.C.A.  
3 § 1406 (West 2006).

### 4 **3. Misjoinder**

5 In addition to personal jurisdiction and venue, 808 Holdings  
6 has failed to show that its claims can withstand a motion to  
7 dismiss for improper joinder. Fed. R. Civ. P. 20(a); see  
8 Celestial, 2012 U.S. Dist. LEXIS 41078, at \*7 n.3. Although the  
9 Ninth Circuit has not ruled on whether permissive joinder is proper  
10 in cases where Doe defendants collectively download and upload the  
11 same file using BitTorrent technology, several recent district  
12 court cases in the circuit have found joinder improper. See  
13 Celestial, 2012 U.S. Dist. LEXIS 41078, at \*7 n.3 (citing recent  
14 cases finding misjoinder); see also Liberty Media Holdings v. Does  
15 1-62, 2012 U.S. Dist. LEXIS 24232, at \*16-17. In its conclusory  
16 pleading and motion, 808 Holdings has not established that the  
17 Complaint can withstand a motion to dismiss for the misjoinder of  
18 out-of-state and out-of-district Doe Defendants.

19 **v.**

### 20 **CONCLUSION**

21 Plaintiff's Motion for Leave to Take Early Discovery [ECF No.  
22 3] is **GRANTED** in part and **DENIED** in part.

23 The Plaintiff has made a sufficient showing to satisfy the  
24 three-factor test for only five of the eighty-three Doe Defendants.  
25 For these five Defendants, Plaintiff's Motion is **GRANTED**.

26 808 Holdings may serve subpoenas on the ISPs for the five  
27 Defendants with addresses in this judicial district, seeking  
28 identifying information relating to the following "Host IP



1 addresses": (1) 76.176.17.137 (Fallbrook, California), (2)  
2 66.75.47.109 (Coronado, California), (3) 68.107.100.235 (San Diego,  
3 California), (4) 76.192.216.196 (San Diego, California), and (5)  
4 75.25.175.128 (San Diego, California). (Mot. Leave Take Early  
5 Disc. Attach. #2 Ex. A, at 2-3, ECF No. 3.) Each subpoena must  
6 provide a minimum of forty-five days' notice before any production  
7 and shall be limited to one category of documents identifying the  
8 particular subscriber or subscribers on the "Hit Date(UTC)" listed  
9 on Exhibit A to Plaintiff's Motion for Leave to Take Early  
10 Discovery. (Id.) The requested information should be limited to  
11 the name and addresses of each subscriber. Any subpoenaed third  
12 party may seek a protective order if it determines there is a  
13 legitimate basis for doing so.

14 The ISPs shall have fourteen calendar days after service of  
15 the subpoenas to notify the subscribers that their identity has  
16 been subpoenaed by Plaintiff. Each subscriber whose identity has  
17 been subpoenaed shall then have thirty calendar days from the date  
18 of the notice to seek a protective order or file any other  
19 responsive pleading. If appropriate, 808 Holdings may then serve  
20 each individual identified by the ISPs with no more than three  
21 interrogatories to determine whether the Internet subscriber is the  
22 proper defendant. No depositions are authorized at this time.

23 With respect to the remaining seventy-eight Doe Defendants,  
24 Plaintiff's Motion is **DENIED**.

25 **IT IS SO ORDERED.**

26 Dated: May 4, 2012

  
RUBEN B. BROOKS  
United States Magistrate Judge

28 cc: Judge Anello  
All Parties of Record