UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN

MALIBU MEDIA, LLC,)
Plaintiff,) Civil Action Case No. 13-12228
v.))
JOHN DOE subscriber assigned IP address, 71.227.121.19,))
Defendant.)))

ORDER ON MOTION FOR LEAVE TO SERVE THIRD PARTY SUBPOENA PRIOR TO A RULE 26(f) CONFERENCE

THIS CAUSE came before the Court upon Plaintiff's Motion for Leave to Serve A Third Party Subpoena Prior to a Rule 26(f) Conference (the "Motion"), and the Court being duly advised in the premises does hereby:

FIND, ORDER AND ADJUDGE:

- 1. Plaintiff established that "good cause" exists for it to serve a third party subpoena on the Internet Service Provider listed on Exhibit A to the Motion (the "ISP"). See <u>UMG Recording, Inc. v. Doe</u>, 2008 WL 4104214, *4 (N.D. Cal. 2008); and <u>Arista Records LLC v. Does</u> 1-19, 551 F. Supp. 2d 1, 6-7 (D.D.C. 2008).
- 2. Plaintiff may serve the ISP with a Rule 45 subpoena commanding the ISP to provide Plaintiff with the true name, address, telephone number, and e-mail address of the Defendant to whom the ISP assigned an IP address as set forth on Exhibit A to the Motion. Plaintiff shall attach to any such subpoena a copy of this Order.

3. Plaintiff may also serve a Rule 45 subpoena in the same manner as above on any

service provider that is identified in response to a subpoena as a provider of Internet services to

one of the Defendants.

4. If the ISP that qualifies as a "cable operator," as defined by 47 U.S.C. § 522(5),

which states:

the term "cable operator" means any person or group of persons

(A) who provides cable service over a cable system and directly or through one

or more affiliates owns a significant interest in such cable system, or

(B) who otherwise controls or is responsible for, through any arrangement, the

management and operation of such a cable system.

shall comply with 47 U.S.C. § 551(c)(2)(B), which states:

A cable operator may disclose such [personal identifying] information if the disclosure is . . . made pursuant to a court order authorizing such disclosure, if the

subscriber is notified of such order by the person to whom the order is directed.

by sending a copy of this Order to the Defendant.

5. The subpoenaed ISP shall not require Plaintiff to pay a fee in advance of

providing the subpoenaed information; nor shall the subpoenaed ISP require Plaintiff to pay a fee

for an IP address that is not controlled by the ISP. If necessary, the Court shall resolve any

disputes between the ISP and Plaintiff regarding the reasonableness of the amount proposed to be

charged by the ISP after the subpoenaed information is provided to Plaintiff.

6. Plaintiff may only use the information disclosed in response to a Rule 45

subpoena served on the ISP for the purpose of protecting and enforcing Plaintiff's rights as set

forth in its Complaint.

DONE AND ORDERED this 31st day of May, 2013.

By: __s/Robert H. Cleland

UNITED STATES DISTRICT JUDGE

2