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5 Attorney for: Multiple Putative John Does¹

6 **UNITED STATES DISTRICT COURT**
7 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

8 MALIBU MEDIA, LLC, a California limited
9 liability company,

10 Plaintiff,

11 v.

12 JOHN DOES 1 through 8,

13 Defendants.
14

Case Number(s): [Multiple; see below]

CORRECTED
JOHN DOES' NOTICE OF MOTION
AND MOTION FOR SEVERANCE OF
ALL DOES OTHER THAN DOE NO. 1

3:12-cv-1054-LAB-WMC

Assigned to: Judge Larry Alan Burns
Referred to: Magistrate Judge William
McCurine, Jr.

Hearing Date: November 19, 2012
Hearing Time: 11:30 a.m.
Hearing Court: Courtroom 9, 2nd Floor
Before Judge Burns

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28 ¹ An identical copy of this pleading has been filed in each case indicated on this caption. A corrected list of clients appears on the signature block, below.

1 MALIBU MEDIA, LLC, a California limited
 2 liability company,
 3 Plaintiff,
 4 v.
 5 JOHN DOES 1 through 35,
 6 Defendants.

3:12-cv-1135-LAB-DHB
 Assigned to: Judge Larry Alan Burns
 Referred to: Magistrate Judge David H. Bartick
 Hearing Date: November 19, 2012
 Hearing Time: 11:30 a.m.
 Hearing Court: Courtroom 9, 2nd Floor
 Before Judge Burns

7 MALIBU MEDIA, LLC, a California limited
 8 liability company,
 9 Plaintiff,
 10 v.
 11 JOHN DOES 1 through 5,
 12 Defendants.

3:12-cv-1354-LAB-WVG
 Assigned to: Judge Larry Alan Burns
 Referred to: Magistrate Judge William V. Gallo
 Hearing Date: November 19, 2012
 Hearing Time: 11:30 a.m.
 Hearing Court: Courtroom 9, 2nd Floor
 Before Judge Burns

14 MALIBU MEDIA, LLC, a California limited
 15 liability company,
 16 Plaintiff,
 17 v.
 18 JOHN DOES 1 through 27,
 19 Defendants.

3:12-cv-1356-LAB-DHB
 Assigned to: Judge Larry Alan Burns
 Referred to: Magistrate Judge David H. Bartick
 Hearing Date: TBD
 Hearing Date: November 19, 2012
 Hearing Time: 11:30 a.m.
 Hearing Court: Courtroom 9, 2nd Floor
 Before Judge Burns

22 MALIBU MEDIA, LLC, a California limited
 23 liability company,
 24 Plaintiff,
 25 v.
 26 JOHN DOE *et al.*,
 27 Defendants.

3:2012-cv-1370-AJB-JMA
 Assigned to: Judge Anthony J. Battaglia
 Referred to: Magistrate Judge Jan M. Adler
 Hearing Date: TBD
 [Possible transfer pending to Judge Burns]

NOTICE OF MOTION

TO THE HONORABLE COURT, ALL PARTIES, AND THEIR COUNSEL

PLEASE TAKE NOTICE that the putative John Does represented by the undersigned, all of whom have previously received letters indicating that Malibu Media has sought to subpoena their identities from their ISPs (“**Moving Parties**”), by and through counsel, hereby move that the Court:

(1) ***Sever all of the John Does, other than John Does No. 1*** from the instant action, and from all related actions pending in this District, pursuant to Fed. R. Civ. Proc. 21. The Court should decide the permissive joinder issue now, sever all of the Does other than Doe No. 1, and dismiss the claims against the other Does without prejudice, on the following grounds:

(A) Defendants merely “committed the same type of violations in the same way” which is not enough to satisfy the transactional relatedness test. *E.g., Digital Sins, Inc. v. John Does 1-245*, S.D.N.Y. Case No. 11-cv-8170, Dkt. No. 18, 5/15/12, p. 3.

(B) Plaintiff’s complaints allege that John Does accessed files on BitTorrent *months apart from one another*, and that plaintiffs who were supposed to be in the “same swarm” actually downloaded *different movies*. Thus, plaintiffs are not really part of the “same swarm,” and therefore the downloads are not part of the same “transaction or occurrence.” *E.g., Malibu Media v. John Does 1-10*, C.D. Cal. Case No. 12-cv-3623-ODW-PJW, docket no. 7, 6/27/12, p. 5.

(C) There are different “questions of law or fact” between the different Does in the same cases, because Does in the same action are alleged to have downloaded different copyrighted works, and each Doe has different factual scenarios and legal defenses, *see* Fed. R. Civ. Proc. 20(a)(2)(B).

(D) Even if joinder were permissible, the Court should still exercise its discretion and sever the Does in light of plaintiff’s “abusive litigation tactics” and the burden on the Courts, the ISPs and the Does. *See Acevedo v. Allsup's Convenience Stores, Inc.*, 600 F.3d 516, 521-522 (5th Cir. 2010).

1 Further, the Moving Parties request that the Court quash all outstanding subpoenas
2 for all Does that it severs, per Fed. R. Civ. Proc. 45(c)(3). *In re: BitTorrent Adult Film*
3 *Copyright Infringement Cases*, 2012 U.S. Dist. LEXIS 61447 (E.D.N.Y. May 1, 2012)
4 Case No. CV-11-3995-DRH-GRB, Dkt. No. 39, pp. 23-25; *Digital Sins, Inc. v. John Does*
5 *I-245*, S.D.N.Y. Case No. 11-cv-8170, Dkt. No. 18, 5/15/12, p. 7 (“Because I have severed
6 and dismissed all of the claims against the defendants, I hereby, *sua sponte*, quash any
7 subpoena that may be outstanding to any Internet service provider seeking information
8 about the identity of any John Doe other than John Doe 1. Plaintiff is directed to send a
9 copy of this order within 24 hours of its issuance to any and every internet service provider
10 who has been served with a subpoena for any information concerning any other John Doe
11 defendant.”).

12 Moving Parties rely on this Notice of Motion, the concurrently filed Memorandum
13 of Points and Authorities; the Declaration of Morgan E. Pietz and supporting Exhibits,
14 Appendices 1 and 2, which are copies of PACER docket report for various Malibu Media
15 cases; the pleadings and records on file herein; and on such further evidence as the Court
16 may admit at any hearing on this matter, if any.

1
2 Respectfully submitted,

3 DATED: September 18, 2012

4
5 /s/ Morgan E. Pietz

6 Morgan E. Pietz (Cal. Bar No. 260629)

7 THE PIETZ LAW FIRM

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13 Attorney for:

14 Putative John Doe No. B in Case No. 3:12-cv-1054

15 Putative John Doe No. C in Case No. 3:12-cv-1054

16 Putative John Doe No. D in Case No. 3:12-cv-1135

17 Putative John Doe No. E in Case No. 3:12-cv-1135

18 Putative John Doe No. F in Case No. 3:12-cv-1354

19 Putative John Doe No. G in Case No. 3:12-cv-1356

20 Putative John Doe No. I in Case No. 3:12-cv-1370

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CERTIFICATE OF SERVICE

I hereby certify that on September 18, 2012, the above document was submitted to the CM/ECF system, which sent notification of such filing(s) to the plaintiff Malibu Media, LLC, which is registered for electronic service.

Check if Applicable:

Copies of these documents were also served via U.S. Mail, on this date, to the following parties, who are not registered for electronic service:

N/A

DATED: September 18, 2012

THE PIETZ LAW FIRM

/s/ Morgan E. Pietz

Morgan E. Pietz

THE PIETZ LAW FIRM

Attorney for Putative John Doe(s)

E-mail: mpietz@pietzlawfirm.com