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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MALIBU MEDIA, LLC.,)	No. 12-CV-1354-LAB (WVG)
)	
Plaintiff,)	ORDER GRANTING PLAINTIFF’S <i>EX</i>
)	<i>PARTE</i> APPLICATION FOR LEAVE
v.)	TO SERVE THIRD PARTY
)	SUBPOENAS PRIOR TO A RULE 26(f)
JOHN DOES 1 THROUGH 5,)	CONFERENCE
)	
Defendants.)	
)	[DOC. NO. 4]
_____)	

Pending before the Court is Plaintiff Malibu Media, LLC’s (“Plaintiff”) *Ex Parte* Application for Leave to Serve Third Party Subpoenas Prior to a Rule 26(f) Conference. (Doc. No. 4.) For the reasons stated below, Plaintiff’s *Ex Parte* Application is GRANTED.

I. BACKGROUND

On June 5, 2012, Plaintiff filed a Complaint against Does 1 through 5 (“Defendants”), alleging direct and contributory copyright infringement. (Doc. No. 1.) Plaintiff purports to be the registered owner of thirty movies that were converted into a single torrent file,^{1/} and were allegedly copied and distributed by Defendants through use of the BitTorrent protocol.^{2/} (Doc. No. 1 at 4.)

^{1/} Exhibit B of Plaintiff’s Complaint lists the thirty movies at issue and their corresponding registration numbers from the United States Copyright Office. (Doc. No. 1 at 4; Exh. B.)

^{2/} According to Plaintiff, BitTorrent is one of the most common peer-to-peer file sharing protocols for distributing large amounts of data. (Doc. No. 1 at 4.) The BitTorrent protocol has the ability to distribute a large file without creating a heavy load on the source computer and network. *Id.* BitTorrent users join a “swarm” of host computers to download and upload from each other simultaneously. *Id.*

1 On June 6, 2012, Plaintiff submitted an *Ex Parte* Application to this Court, requesting leave
 2 to serve Rule 45 subpoenas on the Internet Service Providers (“ISPs”) in order to obtain the true
 3 identities and contact information of the Doe Defendants. (Doc. No. 4 at 2; Kushner Decl. ¶ 2; Exh.
 4 B.) Plaintiff seeks to obtain the true name, address, telephone number, e-mail address, and Media
 5 Access Control (“MAC”)^{3/} address that corresponds to each IP address. (Doc. No. 4 at 2.)

6 Plaintiff claims that expedited discovery is necessary because, without the names and
 7 contact information associated with each IP address allegedly involved in the BitTorrent swarm,
 8 Plaintiff cannot serve the Defendants, nor pursue this lawsuit to protect its valuable copyrights. (Doc.
 9 No. 4 at 2.) Attached as Exhibit B to Plaintiff’s *Ex Parte* Application is a list of five Internet Protocol
 10 (“IP”) addresses corresponding to the dates and times of the copyright infringement alleged in
 11 Plaintiff’s Complaint. (Doc. No. 1; Doc. No. 4; Exh. B.) All five of the IP addresses listed in Exhibit
 12 B are allegedly located within the Southern District of California. (Doc. No. 4; Exh. B.)

13 **II. LEGAL STANDARD**

14 Generally, a party may not initiate discovery before the parties have satisfied the meet and
 15 confer requirement of Federal Rule of Civil Procedure 26(f). However, a court may authorize earlier
 16 discovery “for the convenience of parties and witnesses and in the interests of justice.” Fed. R. Civ.
 17 P. 26(d). A court may grant a request to take discovery prior to the parties’ meeting under Rule 26(f)
 18 where the requesting party demonstrates good cause. See Semitool, Inc. v. Tokyo Electron Am., Inc.,
 19 208 F.R.D. 273, 276 (N.D. Cal. 2002); U.S. v. Distribuidora Batiz CGH, S.A. DE C.V., 2009 WL
 20 2487971, at 10 (S.D. Cal. 2009). A balancing test is used to determine the presence of good cause.
 21 See Semitool, 208 F.R.D. at 267-268. “Good cause may be found where the need for expedited
 22 discovery, in consideration of the administration of justice, outweighs the prejudice to the responding
 23 party.” Id. at 276.

24 Good cause is often found by courts in Internet infringement cases where the party seeking
 25 expedited discovery of a Doe defendant’s identity establishes the following:

- 26 1. A prima facie case of infringement;

28 ^{3/} A MAC address is a number that identifies the specific computer used for the infringing activity. (Doc. No.
 4 at 2.)

1 (See Doc. No. 1.) Plaintiff has also alleged that it is unable to identify the Doe Defendants without
2 obtaining early discovery from the ISPs. (Doc. No. 4 at 2.) Finally, Plaintiff has alleged that ISPs
3 maintain internal logs which record the date, time, and customer identity for each IP address
4 assignment, and that these logs may be maintained for only a short period of time. Id. Plaintiff has
5 provided the alleged physical point of origin assigned to each IP address, and each address is located
6 within this Court's jurisdiction. (Doc. No. 4; Exh. B.)

7 **IT IS HEREBY ORDERED** that:

8 1. Pursuant to Federal Rule of Civil Procedure 45, Plaintiff may obtain and serve
9 subpoenas to Cox Communications, EarthLink, and Road Runner for the sole purpose of obtaining
10 the names and addresses of the subscribers using the five IP addresses identified in Exhibit B, at the
11 precise dates and times identified. (Doc. No. 4; Exh. B.) The identified ISPs shall have fourteen (14)
12 calendar days after service of the subpoena to notify its subscriber that Plaintiff has subpoenaed his
13 or her identity. The subscriber whose identity has been subpoenaed shall have thirty (30) calendar
14 days from the date of such notice to challenge the disclosure to Plaintiff by filing an appropriate
15 pleading with this Court contesting the subpoena. The ISP, if it intends to move to quash the
16 subpoena, must do so prior to the return date of the subpoena. The return date of the subpoena must
17 allow for at least forty-five (45) days from service to production. If a motion to quash or other
18 customer challenge is brought, the ISP must preserve the information sought by Plaintiff pending
19 resolution of the motion or challenge.

20 2. Plaintiff may only use the information disclosed pursuant to these subpoenas
21 exclusively in pursuing this litigation.

22 3. Plaintiff shall serve a copy of this Order to the named ISPs with any subpoena
23 obtained and served pursuant to this Order. The ISPs, in turn, must provide a copy of this Order,
24 along with the required notice, to any subscriber whose identity is sought pursuant to this Order.

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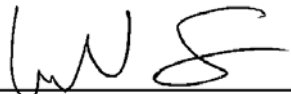
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IV. CONCLUSION

The Court finds that Plaintiff has demonstrated good cause to warrant the expedited discovery requested. Therefore, Plaintiff's *Ex Parte* Application for Leave to Serve Third Party Subpoenas Prior to a Rule 26(f) Conference is GRANTED.

IT IS SO ORDERED.

DATED: July 9, 2012



Hon. William V. Gallo
U.S. Magistrate Judge