	Case 3:12-cv-01357-LAB-DHB Document	12 Filed 11/27/12 Page 1 of 2
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5	UNITED STATES DISTRICT COURT	
6	SOUTHERN DISTRICT OF CALIFORNIA	
7	,	
8	MALIBU MEDIA, LLC,	CASE NO. 12-CV-1054-LAB-DHB
9	Plaintiff,	ORDER GRANTING MOTION TO
10	VS.	SEVER
11	JOHN DOES 1-8,	
12	Defendants.	
13		
14	The question here is whether members of a BitTorrent "swarm" who share and	
15	download copyrighted pornography can be joined as defendants and sued for copyright	
16	infringement together. It's an interesting question, and as the parties well know district	
17	courts across the country are divided on it—though not evenly. With all due respect to the	
18	parties' efforts in briefing the question, the undersigned Judge isn't inclined to venture a	
19	decision here that rises above all of the others that are out there. The question has been	
20	certified for interlocutory appeal to the D.C. Circuit, and until it or another Court of Appeals	
21	rules it seems restraint at the district court level is the best course. The caselaw is full at this	
22	point; the parties just need the undersigned Judge to take sides in this case so it can go	
23	forward in one form or another.	
24	With that in mind, the undersigned Judge concurs with Judge Huff's thoughtful	
25	decision in Patrick Collins v. John Does 1 through 9, Case No. 12-CV-1436, Doc. No. 23	
26	(S.D. Cal Nov. 8, 2012). Judge Huff recognized that Malibu Media's theory of joinder "has	
27	met with mixed results in the courts," but that "the majority view among district courts within	
28	the Ninth Circuit is that allegations of swarm	joinder are alone insufficient for joinder." <i>Id.</i> at

- 1 -

Case 3:12-cv-01357-LAB-DHB Document 12 Filed 11/27/12 Page 2 of 2

4. She concluded that "the interests of avoiding undue prejudice and jury confusion, as well
as judicial efficiency and fundamental fairness, are better served by severing [the John Doe
defendants] and requiring [the plaintiff] to file separate cases against each defendant
individually." *Id.* at 7. The motion to sever is therefore **GRANTED**. In the above-captioned
case and all other *Malibu Media* cases assigned to the undersigned Judge, the claims
against all Does other than Doe No. 1 are dismissed without prejudice. Malibu Media may
sue the severed Does separately and individually.

8 Defendants also ask the Court to quash all outstanding subpoenas for the severed 9 Does' identities from their respective internet service providers. An amicus brief filed by 10 Verizon appears to go further, and suggest that all ISP subpoenas should be guashed. The 11 Court's Magistrate Judges have discussed these BitTorrent cases and agreed to restrict 12 early discovery from ISPs to those Doe defendants whose IP addresses originate in this 13 judicial district. See, e.g., 808 Holdings v. Collective of December 29, 2011 Sharing Hash, 14 Case No. 12-CV-186, Doc. No. 8 (S.D. Cal. May 8, 2012). The Court respects the 15 Magistrates' judgment, and therefore respectfully disagrees with Verizon. As for the 16 subpoenas related to the severed Does, Defendants' motion to quash is **GRANTED**. If 17 Malibu Media decides to sue the severed Does separately and individually, it may seek early 18 discovery from the Magistrate assigned to the new cases.

- The Clerk of Court is directed to file this Order in all *Malibu Media* cases assigned tothe undersigned Judge.
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- IT IS SO ORDERED.
- 23 DATED: November 16, 2012

and A. Burny

HONORABLE LARRY ALAN BURNS United States District Judge

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