

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

MALIBU MEDIA, LLC,

Plaintiff,

vs.

Case No. 2:12-cv-426-FtM-29DNF

JOHN DOES 5, 21-48,

Defendants.

OPINION AND ORDER

This matter is before the Court on consideration of the Magistrate Judge's Report and Recommendation (Doc. #30), filed November 15, 2012, recommending that John Doe #5's Motion to Dismiss (Doc. #10) be denied as premature and the included Motion for Protective Order, With Motion to Quash and Motion to Reconsider Its Order Granting Leave for Discovery (Doc. #10) be denied on the merits. The Magistrate Judge also recommended that plaintiff be required to notify the Doe defendants of an intent to release their name and execute service of process at least 14 days prior to seeking the issuance of a summons from the Clerk. John Doe #5 filed an Objection (Doc. #31) and two Notices of Supplemental Authority (Docs. ## 35, 37). Plaintiff filed a Memorandum in Opposition to Doe 5's Objection (Doc. #36).

After conducting a careful and complete review of the findings and recommendations, a district judge may accept, reject or modify the magistrate judge's report and recommendation. 28 U.S.C. §

636(b)(1); United States v. Powell, 628 F.3d 1254, 1256 (11th Cir. 2010). A district judge "shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1)(C). See also United States v. Farias-Gonzalez, 556 F.3d 1181, 1184 n.1 (11th Cir. 2009). This requires that the district judge "give fresh consideration to those issues to which specific objection has been made by a party." Jeffrey S. v. State Bd. of Educ. of Ga., 896 F.2d 507, 512 (11th Cir. 1990) (quoting H.R. 1609, 94th Cong., § 2 (1976)). The district judge reviews legal conclusions *de novo*, even in the absence of an objection. See Cooper-Houston v. Southern Ry. Co., 37 F.3d 603, 604 (11th Cir. 1994).

After a careful and complete review of the findings and recommendations, as well as the record in this case, the Court accepts and adopts the Report and Recommendation of the magistrate judge with one modification. The Court expresses no opinion on the issues of venue and joinder, which the Court agrees are premature at this point. John Doe #5 has no standing to challenge the need for early discovery as to the other defendants, and the Court agrees with the Report and Recommendation that the early discovery authorized by the magistrate judge is appropriate in this case. The Court will allow John Doe #5 to proceed anonymously, on a temporary basis, until plaintiff establishes that he was the person

who downloaded the material. If that occurs, plaintiff may seek leave to withdraw defendant's permission to proceed anonymously.

Accordingly, it is now


ORDERED:

1. The Report and Recommendation (Doc. #30) is hereby **adopted** as modified and the findings incorporated herein.

2. John Doe #5's Motion to Quash and Motion to Dismiss, and Motion to Reconsider Its Order Granting Leave for Discovery (Doc. #10) is **DENIED**.

3. John Doe #5's Motion for Protective Order (Doc. #10) is **GRANTED** to the extent that John Doe #5 may proceed anonymously, on a temporary basis, until plaintiff establishes that he was the person who downloaded the material. If that occurs, plaintiff may seek leave to withdraw defendant's permission to proceed anonymously. The motion is otherwise **DENIED**.

DONE AND ORDERED at Fort Myers, Florida, this 16th day of January, 2013.



JOHN E. STEELE
United States District Judge

Copies:
Hon. Douglas N. Frazier
United States Magistrate Judge

Counsel of Record
Unrepresented parties