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8 Attorney for Third Degree Films, Inc.

9 **UNITED STATES DISTRICT COURT**
10 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

11 Third Degree Films, Inc. , a California
12 corporation,

13 Plaintiff,

14 v.

15 DOES 1-2010,

16 Defendants.

CASE NO. CV 10-05862 HRL

~~Proposed~~ **ORDER GRANTING
PLAINTIFF LEAVE TO TAKE
EARLY DISCOVERY**

[Re: Docket No. 10]

17 The Court, having reviewed Plaintiff's Ex Parte Application for Leave to Take Limited
18 Discovery Prior to a Rule 26 Conference and the supporting documents submitted therewith, and
19 good cause appearing therefore, hereby grants Plaintiff's Ex Parte Application and orders as
20 follows:

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22 1. **IT IS HEREBY ORDERED** that Plaintiff is allowed to serve immediate
23 discovery on the internet service providers (ISPs) listed in Exhibit A to the First Amended
24 Complaint filed in this matter to obtain the identity of the Doe Defendants listed in that Exhibit
25 by serving a Rule 45 subpoena that seeks information sufficient to identify each such Defendant,
26 including the name, addresses, telephone numbers, and email addresses of such Defendant.
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1 2. **IT IS FURTHER ORDERED** that Plaintiff's counsel shall issue subpoenas in
2 substantially the same form as the example attached as Exhibit 1 to Plaintiff's Ex Parte
3 Application for Leave to Take Limited Discovery Prior to a Rule 26 Conference, with each
4 subpoena including a copy of this Order.

5 3. **IT IS FURTHER ORDERED** that subpoenas authorized by this Order and
6 issued pursuant thereto shall be deemed appropriate court orders under 47 U.S.C. §551.

7 4. **IT IS FURTHER ORDERED** that each ISP will have 30 days from the date of
8 service upon it to serve each of its subscriber(s) whose identity information is sought with a copy
9 of the subpoena and a copy of this Order. The ISPs may serve the subscribers using any
10 reasonable means, including written notice sent to the subscriber's last known address,
11 transmitted either by first-class mail or via overnight service.

12 5. **IT IS FURTHER ORDERED** that each subscriber shall have 30 days from the
13 date of service upon him, her or it to file any motions in this court contesting the subpoena
14 (including a motion to quash or modify the subpoena). If that 30-day period lapses without the
15 subscriber contesting the subpoena, the ISP shall have 10 days to produce to Plaintiff the
16 information responsive to the subpoena with respect to that subscriber.

17 6. **IT IS FURTHER ORDERED** that, because no appearance by a person at a
18 deposition is required by the subpoena, instead only production of documents, records and the
19 like is required, the witness and mileage fees required by Rule 45(b)(1) of the Federal Rules of
20 Civil Procedure do **not** apply and no such fees need be tendered.

21 7. **IT IS FURTHER ORDERED** that any ISP that receives a subpoena pursuant to
22 this Order shall not assess any charge to the Plaintiff in advance of providing the information
23 requested in the subpoena, and that any ISP that receives a subpoena and elects to charge for the
24 costs of production shall provide a billing summary and cost reports that serve as a basis for such
25 billing summary and any costs claimed by such ISP.

26 8. **IT IS FURTHER ORDERED** that any ISP that receives a subpoena shall
27 preserve all subpoenaed information pending the ISP's delivering such information to Plaintiff or
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1 the final resolution of a timely filed and granted motion to quash the subpoena with respect to
2 such information.

3 9. **IT IS FURTHER ORDERED** that any information disclosed to Plaintiff in
4 response to a subpoena may be used by Plaintiff solely for the purpose of protecting its rights
5 under the Copyright Act, 17 U.S.C. § 101 et seq.

6 **IT IS SO ORDERED.**

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8 Date: May 31, _____, 2011



Howard R. Lloyd
United States Magistrate Judge

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