

1 Morgan E. Pietz (SBN 260629)  
THE PIETZ LAW FIRM  
2 3770 Highland Ave., Ste. 206  
Manhattan Beach, CA 90266  
3 [mpietz@pietzlawfirm.com](mailto:mpietz@pietzlawfirm.com)  
4 Telephone: (310) 424-5557  
Facsimile : (310) 546-5301

5 Attorney for: Putative John Doe "X" in 3:12-cv-1475-CAB-WMC

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

9 PATRICK COLLINS, INC., a California  
10 corporation,

11 Plaintiff,

12 v.

13 JOHN DOES 1 through 12,

14 Defendants.  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

Case Number: 3:12-cv-1475-CAB-WMC

Assigned to Hon. Cathy Ann Bencivengo<sup>1</sup>  
Referred to Hon. William McCurine, Jr.

**JOHN DOE'S OMNIBUS MOTION THAT  
THE COURT: (1) SEVER AND DISMISS  
ALL JOHN DOES OTHER THAN DOE  
NO. 1; AND (2) QUASH ALL  
OUTSTANDING SUBPOENAS**

Hearing Date: November 30, 2012  
Hearing Time: 1:30 p.m.  
Hearing Room: Courtroom 2  
Before Judge Bencivengo<sup>2</sup>

25 \_\_\_\_\_  
26 <sup>1</sup> Possible transfer pending per Notice of Related Cases filed by undersigned September 21, 2012.

27 <sup>2</sup> Since severance is normally an issue for the District Judge, this motion has been noticed to the  
28 District Judge. However, since this motion also involves the interrelated issue of the propriety of  
third-party subpoenas, it can also be considered a discovery matter. Movant has no objection to the  
referral of the motion to the Magistrate Judge for a consolidated order and recommendation.

**NOTICE OF MOTION**

**TO THE HONORABLE COURT, ALL PARTIES, AND THEIR COUNSEL**

**PLEASE TAKE NOTICE** that the putative John Does whose “Doe Numbers” appear on the caption above, in the above-entitled actions (“**Moving Parties**”) by and through counsel, both individually and collectively, hereby make a motion, to be heard on the date at the place indicated on the caption that the Court:

(1) *Sever all of the John Does, other than John Doe 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,<sup>3</sup> 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) Plaintiff’s theory of “swarm joinder” is being rejected by a majority of Courts across the country. Defendants merely “committed the same type of violations in the same way” which is not enough to satisfy the transactional relatedness test. *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 (McMahon, J.) (severing Does, collecting cases and noting “[t]here is no need for this Court to write another lengthy opinion discussing why plaintiff’s theory is wrong”); *cf. AF Holdings LLC v. Does 1-1,058*, D.D.C. Case No. 12-cv-0048 Dkt. 46, 8/6/12 (Howell, J.) (denying ISP’s motion to quash but certifying swarm joinder issue for interlocutory appeal to the D.C. Circuit).

(B) Plaintiff alleges that the John Does downloaded pieces of the same file *months apart from one another*. Thus, even if the “swarm joinder” theory were viable (a dubious proposition), the Does here are not really part of the “same swarm,” and therefore the downloads are not part of the same “transaction or occurrence.” *E.g., Malibu*

---

<sup>3</sup> *Hard Drive Prod’s., Inc. v. Does 1-90*, N.D. Cal. Case No. 5:11-cv-3852-HRL (“simultaneous consideration of the application for early discovery and joinder has become the norm for courts in this district faced with similar cases. See, e.g., *Hard Drive Prods. v. Doe*, 2011 U.S. Dist. LEXIS 89858 (N.D. Cal. Aug. 12, 2011); *Boy Racer v. Does*, 2011 U.S. Dist. LEXIS 86746 (N.D. Cal. Aug. 5, 2011); *Diabolic Video Prods. v. Does 1-2099*, 2011 U.S. Dist. LEXIS 58351 (N.D. Cal. May 31, 2011)”).

1 *Media v. John Does 1-10*, C.D. Cal. Case No. 12-cv-3623-ODW-PJW, docket no. 7,  
2 6/27/12, p. 5 (“The loose proximity of the alleged infringements (March 5, 2012–April 12,  
3 2012) does not show that these Defendants participated in the same swarm”); *Hard Drive*  
4 *Productions, Inc. v. Does 1-188*, 809 F. Supp. 2d 1150 (N.D. Cal. August 23, 2011) Case  
5 No. 11-cv-01566, Dkt. No. 18 (“*Hard Drive Prods.*”) (same, 63 days); *DigiProtect USA*  
6 *Corp. v. Doe*, 2011 U.S. Dist. LEXIS 109464, 8-9 (S.D.N.Y. Sept. 26, 2011) (for  
7 defendants to be part of same “swarm,” must have downloaded movies at “overlapping”  
8 times).

9 (C) Although there are some common questions of law and fact,  
10 sufficient that plaintiff’s multiple cases should be related, if discovery proceeds, the  
11 different “questions of law or fact” between the different Does in the same cases will  
12 predominate, given that each Doe will have different factual scenarios and legal defenses  
13 (e.g., who had access to the Does’ Wifi network?). See *In re: BitTorrent Adult Film*  
14 *Copyright Infringement Cases*, 2012 U.S. Dist. LEXIS 61447 (E.D.N.Y. May 1, 2012),  
15 Case No. CV-11-3995-DRH-GRB, Dkt. No. 39 (“*In re: Adult Film Cases*”) (noting the  
16 “panoply of individual” defenses the different Doe defendants will have, and finding that  
17 “[t]he individualized determinations required far outweigh the common questions in terms  
18 of discovery, evidence, and effort required.”).

19 (D) Even if joinder were permissible, the Court should still exercise its  
20 discretion and sever the Does in light of the “abusive litigation tactics” ***of this particular***  
21 ***plaintiff*** and the burden on the Courts, the ISPs and the Does. E.g., *Hard Drive Prod’s.*,  
22 *supra*, 809 F. Supp. at 1164; *Next Phase Distrib., Inc. v. Does 1-27*, 2012 U.S. Dist. LEXIS  
23 107648, 11-12 (S.D.N.Y. July 31, 2012) (addressing split in authority on “swarm joinder,”  
24 but severing Does as a matter of the Court’s discretion for the reasons set forth in *In re:*  
25 *Adult Film Cases*); see also *Acevedo v. Allsup’s Convenience Stores, Inc.*, 600 F.3d 516,  
26 521-522 (5th Cir. 2010) (court has discretion to deny permissive joinder even when test is  
27 met).

1  
2 (2) ***Quash All Outstanding Subpoenas for All John Does Other Than John***  
3 ***Doe No. 1***, pursuant to Fed. R. Civ. Proc. 45(c)(3), on the following grounds:

4 (A) After courts sever mis-joined Doe defendants, they also quash the  
5 outstanding subpoenas seeking to identify those Doe Defendants. *In re: BitTorrent Adult*  
6 *Film Copyright Infringement Cases*, 2012 U.S. Dist. LEXIS 61447 (E.D.N.Y. May 1,  
7 2012) Case No. CV-11-3995-DRH-GRB, Dkt. No. 39, pp. 23-25; *Digital Sins, Inc. v. John*  
8 *Does 1-245*, S.D.N.Y. Case No. 11-cv-8170, Dkt. No. 18, 5/15/12, p. 7 (“Because I have  
9 severed and dismissed all of the claims against the defendants, I hereby, *sua sponte*, quash  
10 any subpoena that may be outstanding to any Internet service provider seeking information  
11 about the identity of any John Doe other than John Doe 1. Plaintiff is directed to send a  
12 copy of this order within 24 hours of its issuance to any and every internet service provider  
13 who has been served with a subpoena for any information concerning any other John Doe  
14 defendant.”). To do otherwise would only encourage plaintiffs to try and avoid paying  
15 statutorily required filing fees by mis-joining as many Does as possible, and then forcing  
16 the Does to file, and the Court to hear, motions for severance.

17 (B) The Court should have denied plaintiff’s ***unopposed*** request for  
18 early discovery in the first place, and should now vacate the order authorizing plaintiff to  
19 issue subpoenas, and quash all outstanding subpoenas, for the following reasons:

20 i. Multiple courts have held that early discovery should be  
21 denied in cases like these because the requested discovery is not “very likely” to reveal the  
22 identities of the actual defendants, as required under *Gillespie v. Civiletti. Hard Drive*  
23 *Productions, Inc. v. Does 1-188*, 809 F. Supp. 2d 1150 (N.D. Cal. August 23, 2011) (“*Hard*  
24 *Drive Prods.*”) (denying early discovery because “It is abundantly clear that plaintiff’s  
25 requested discovery is not ‘***very likely***’ to reveal the identities of the Doe defendants.”);  
26 *citing Gillespie v. Civiletti*, 629 F.2d 637, 642–43 (9th Cir. 1980); *see also, e.g., AF*  
27 *Holdings LLC v. Does 1-96*, N.D. Cal. No. 11-cv-3335-JSC, Dkt. No. 14, 9/27/11, p. 6  
28 (“*AF Holdings*”) (denying requested early discovery because it was not “***very likely*** to

1 enable Plaintiff to identify the doe defendants.”); *AF Holdings, LLC v. John Doe*, D. Min.  
2 Case No. 12-cv-1445, Dkt. No. 7, 7/5/12 (denying early discovery because “the requested  
3 discovery was ‘*not very likely*’ to reveal the identity of the alleged infringer”). Plaintiff  
4 presents no plan for how it intends to go from indentifying ISP subscribers to identifying  
5 actual John Doe defendants; and in reality, plaintiff does not care to do so. It simply wants  
6 to extort “settlements” from ISP subscribers, upon threat of publicly “naming” them in a  
7 lawsuit alleging they illegally downloaded pornography, regardless of whether they  
8 committed the alleged infringement or not.

9 ii. Accepting, *arguendo*, plaintiff’s assumption that the ISP  
10 subscribers it seeks to identify are the actual John Doe defendants, the subpoenas should  
11 still be quashed. Courts routinely hold that in online file sharing cases, before third party  
12 subpoenas can be issued, the Does’ limited First Amendment right to anonymity must be  
13 considered. *Sony Music Entm’t Inc. v. Does 1–40*, 326 F. Supp. 2d 556, 566 (S.D.N.Y.  
14 2004) (surveying case law and concluding “that the use of P2P file copying networks to  
15 download, distribute, or make sound recordings available qualifies as speech entitled to  
16 First Amendment protection.”); *Call of the Wild Movie, LLC v. Does 1-1,062*, D.D.C. Case  
17 No. CV-10-455, Dkt. No. 40, 3/22/2011, p. 21 (Howell, J.) (“file-sharers are engaged in  
18 expressive activity, on some level, when they share files on BitTorrent, and their First  
19 Amendment rights must be considered before the Court allows the plaintiffs to override the  
20 putative defendants anonymity by compelling production of the defendants’ identifying  
21 information.”). While many courts rightly conclude that file sharing is not really pure  
22 speech, and thus only afforded very limited First Amendment protection, *on the facts here*,  
23 the plaintiff’s need for civil discovery should not trump the Does’ limited First  
24 Amendment rights. Where plaintiffs have sought to identify anonymous John Doe  
25 defendants in online file-sharing cases through the use of third party subpoenas, courts  
26 have generally applied four factors—the so-called *Semitoool* factors (*Semitoool, Inc. v. Tokyo*  
27  
28

1 *Electron America, Inc.*, 208 F.R.D. 273, 276 (N.D. Cal. 2002)) to strike the balance.<sup>4</sup>

2 However, *the subpoenas plaintiff sought to issue fail on two of the Semitool factors*:

3 a. Here, in light of plaintiff's extensive track record  
4 of filing hundreds of lawsuits, issuing subpoenas seeking to identify thousands of people,  
5 and then dismissing almost all of the cases without prejudice at or near the deadline for  
6 service of process, there is serious reason to doubt that the discovery requested here is  
7 "reasonably likely" to help *effectuate service on a defendant*. Here, "it is evident that  
8 expedited discovery will not lead to identification of the Doe defendants or service of  
9 process. Indeed, the fact that no defendant has ever been served in one of these mass  
10 copyright cases belies any effort by plaintiff to allege that the discovery will lead to  
11 identification of and service on the Doe defendants." *Hard Drive Prods., supra*, at p. 11  
12 (emphasis added).

13 b. Further, here, in light of the mis-joinder of  
14 unrelated Does into the same case, plaintiff's complaint could not withstand a hypothetical  
15 motion to dismiss for mis-joinder. *Hard Drive Prods., supra*, pp. 3, 8–10 (plaintiff must  
16 show that its "suit against defendant could withstand a motion to dismiss."); *see also*  
17 *Patrick Collins v. John Does 1-54*, 2012 U.S. Dist. LEXIS 36232, \*8 (D. Ariz. Mar. 19,  
18 2012). As noted above, the Does here are mis-joined, so the subpoenas should not have  
19 been authorized. *Hard Drive Prod's., Inc. v. Does 1-90*, N.D. Cal. Case No. 5:11-cv-3852-  
20 HRL (severing Does at early discovery stage and noting "simultaneous consideration of the  
21 application for early discovery and joinder has become the norm for courts in this district  
22 faced with similar cases. See, e.g., *Hard Drive Prods. v. Doe*, 2011 U.S. Dist. LEXIS  
23 89858 (N.D. Cal. Aug. 12, 2011); *Boy Racer v. Does*, 2011 U.S. Dist. LEXIS 86746 (N.D.  
24 Cal. Aug. 5, 2011); *Diabolic Video Prods. v. Does 1-2099*, 2011 U.S. Dist. LEXIS 58351  
25 (N.D. Cal. May 31, 2011)").

26 Moving Parties rely on this Notice of Motion, the concurrently filed Memorandum  
27 of Points and Authorities, the Declaration of Morgan E. Pietz; the pleadings and records on

28 <sup>4</sup> The Ninth Circuit's *Semitool* factors largely track with the Second Circuit's *Sony Music* factors.

1 file herein; and on such further evidence as the Court may admit at the hearing on this  
2 matter.

3  
4 DATED: September 21, 2012

5  
6 Respectfully submitted,

7  
8 /s/ Morgan E. Pietz

9  
10 Morgan E. Pietz (Cal. Bar No. 260629)  
11 THE PIETZ LAW FIRM  
12 3770 Highland Ave., Ste. 206  
13 Manhattan Beach, CA 90266  
14 [mpietz@pietzlawfirm.com](mailto:mpietz@pietzlawfirm.com)  
15 Telephone: (310) 424-5557  
16 Facsimile: (310) 546-5301

17 Attorney for: Putative John Doe "X" in  
18 3:12-cv-1475-CAB-WMC

19  
20 **CERTIFICATE OF SERVICE**

21 I hereby certify that on September 21, 2012, the above document was submitted to  
22 the CM/ECF system, which sent notification of such filing(s) to the plaintiff Malibu Media,  
23 LLC, which is registered for electronic service.

24 Check if Applicable:

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

27 N/A

28 DATED: September 21, 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](mailto:mpietz@pietzlawfirm.com)

1 Morgan E. Pietz (SBN 260629)  
2 THE PIETZ LAW FIRM  
3 3770 Highland Ave., Ste. 206  
4 Manhattan Beach, CA 90266  
5 [mpietz@pietzlawfirm.com](mailto:mpietz@pietzlawfirm.com)  
6 Telephone: (310) 424-5557  
7 Facsimile : (310) 546-5301

8 Attorney for: Putative John Doe "X" in 3:12-cv-1475-CAB-WMC

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

11 PATRICK COLLINS, INC., a California  
12 corporation,

13 Plaintiff,

14 v.

15 JOHN DOES 1 through 12,

16 Defendants.

Case Number: 3:12-cv-1475-CAB-WMC

Assigned to Hon. Cathy Ann Bencivengo<sup>1</sup>  
Referred to Hon. William McCurine, Jr.

**MEMORANDUM IN SUPPORT OF  
JOHN DOE'S OMNIBUS MOTION THAT  
THE COURT: (1) SEVER AND DISMISS  
ALL JOHN DOES OTHER THAN DOE  
NO. 1; AND (2) QUASH ALL  
OUTSTANDING SUBPOENAS**

Hearing Date: November 30, 2012  
Hearing Time: 1:30 p.m.  
Hearing Room: Courtroom 2  
Before Judge Bencivengo<sup>2</sup>

17  
18  
19  
20  
21  
22  
23  
24  
25 <sup>1</sup> Possible transfer pending per Notice of Related Cases filed by undersigned September 21, 2012.

26 <sup>2</sup> Since severance is normally an issue for the District Judge, this motion has been noticed to the  
27 District Judge. However, since this motion also involves the interrelated issue of the propriety of  
28 third-party subpoenas, it can also be considered a discovery matter. Movant has no objection to the  
referral of the motion to the Magistrate Judge for a consolidated order and recommendation.

-i-

**MEMORANDUM IN SUPPORT OF JOHN DOE'S OMNIBUS MOTION THAT THE COURT:**  
**(1) SEVER AND DISMISS ALL JOHN DOES OTHER THAN DOE NO. 1; AND**  
**(2) QUASH ALL OUTSTANDING SUBPOENAS**



**TABLE OF CONTENTS**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

TABLE OF CONTENTS ..... ii

TABLE OF AUTHORITIES ..... iii

I. INTRODUCTION AND SUMMARY ..... 1

II. BACKGROUND ..... 5

    (a) Patrick Collins’ Litigation Strategy ..... 5

    (b) Procedural History of Patrick Collins Cases in this District..... 8

III. JOINDER IS NOT PERMISSIBLE ..... 10

    (a) Standard for Joinder..... 10

    (b) Majority of Court are Rejecting Plaintiff’s “Swarm Joinder” Theory..... 10

    (c) John Does Using BitTorrent Months Apart from One Another Are Not Part of  
the Same Swarm and Not Part of Same Transaction or Occurrence ..... 14

    (d) As Between Multiple Does, Different Factual and Legal Issues Will  
Predominate ..... 16

    (e) 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 Does and the Courts ..... 16

IV. THE SUBPOENAS SHOULD BE QUASHED ..... 19

    (a) If the Court Severs the Does, it Should Dismiss them Without Prejudice and  
Quash the Subpoenas Seeking Their Identifying Information..... 19

    (b) The Court Should Have Denied Plaintiff’s Unopposed Requests for Early  
Discovery ..... 20

        (1) Plaintiff Has Identified no Discovery Plan Making it “Very Likely” that  
the Requested Subpoenas Will Identify the True Doe Defendants as  
Required by Gillespie ..... 20

        (2) The Early Discovery Request Should Also Have Failed the Requisite  
First Amendment Balancing Test Mandated by *Semitoal* ..... 21

            (A) *Online File Sharing Protected by Limited First Amendment  
Right to Anonymity* ..... 21

            (B) *The Four Semitoal Factors* ..... 22

            (C) *In Performing the Semitoal Analysis the Court should have  
Concluded that the Complaint Could not Withstand a  
Hypothetical Motion to Dismiss Does Other than Doe No. 1 for  
Misjoinder* ..... 22

            (D) *In Performing the Semitoal Analysis, the Fact that Plaintiff  
Rarely if Ever Serves Anyone Should Have Weighed Against it* ..... 23

V. CONCLUSION ..... 24

MEMORANDUM IN SUPPORT OF JOHN DOE’S OMNIBUS MOTION THAT THE COURT:  
 (1) SEVER AND DISMISS ALL JOHN DOES OTHER THAN DOE NO. 1; AND  
 (2) QUASH ALL OUTSTANDING SUBPOENAS

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**TABLE OF AUTHORITIES**

**Cases**

*AF Holdings LLC v. Does 1-1,058*, 12-cv-0048-BAH, Dkt. 46, 8/6/12.....1, 13

*AF Holdings LLC v. Does 1-96*, N.D. Cal. No. 11-cv-3335-JSC,  
Dkt. No. 14, 9/27/11.....4, 20

*AF Holdings LLC v. Does 1-97*, 2011 U.S. Dist. LEXIS 78636,  
(N.D. Cal. July 20, 2011) .....10, 11

*AF Holdings, LLC v. John Doe*, D. Min. Case No. 12-cv-1445,  
Dkt. No. 7, 7/5/12.....4

*Acevedo v. Allsup’s Convenience Stores, Inc.*, 600 F.3d 516, 521-522  
(5<sup>th</sup> Cir. 2010) .....passim

*Bautista v. Los Angeles County*, 216 F.3d 837, 842-843 (9th Cir. 2000) .....10, 14

*Boy Racer Inc. v. Does 1-60*, 11-cv-01738-SI, 2011, 2011 U.S. Dist. LEXIS 92994, at \*4  
(N.D. Cal. Aug. 19, 2011) .....passim

*Call of the Wild Movie, LLC v. Does 1-1,062*, D.D.C. Case No. CV-10-455,  
Dkt. No. 40, 3/22/2011.....12

*Diabolic Video Prods. v. Does 1-2099*, 10 Civ. 5865, 2011 U.S. Dist. LEXIS 58351  
(N.D. Cal. May 31, 2011).....passim

*Digital Sins, Inc. v. John Does 1-245*, S.D.N.Y. Case No. 11-cv-8170,  
Dkt. No. 18, 5/15/12 (“*Digital Sins*”) .....passim

*DigiProtect USA Corp. v. Doe*, 2011 U.S. Dist. LEXIS 109464, 8-9 (S.D.N.Y. Sept. 26,  
2011) .....2

*Discount Video Center, Inc. v. Does 1-29*, D. Mass. Case No. 12-cv-10805, Dkt. No. 40,  
8/24/12, p. 3.....7

*First Time Videos, LLC v. Does 1-76*, 2011 WL 3586245, N.D. Ill. Case No. 11-cv-3831,  
8/16/11.....11

1 *Gillespie v. Civiletti*, 629 F.2d 637, 642–43 (9th Cir. 1980).....3, 20

2 *Hard Drive Productions, Inc. v. Does 1-188*, 809 F. Supp. 2d 1150

3 (N.D. Cal. August 23, 2011) Case No. 11-cv-01566, Dkt. No. 18

4 (“*Hard Drive Prods.*”) .....passim

5 *Hard Drive Prod’s., Inc. v. Does 1-90*, N.D. Cal. Case No. 5:11-cv-3852-HRL.....3, 23

6 *Hard Drive Prods. v. Doe*, 2011 U.S. Dist. LEXIS 89858

7 (N.D. Cal. Aug. 12, 2011).....3, 23

8 *Hubbard v. Hougland*, 2010 U.S. Dist. LEXIS 46184 (E.D. Cal. Apr. 5, 2010) .....10, 14

9 *In re: BitTorrent Adult Film Copyright Infringement Cases*,

10 2012 U.S. Dist. LEXIS 61447 (E.D.N.Y. May 1, 2012)

11 Case No. CV-11-3995-DRH-GRB, Dkt. No. 39

12 (“*In re: Adult Film Cases*”).....passim

13 *In re: BitTorrent Adult Film Copyright Infringement Cases*,

14 E.D.N.Y. Case No. 12-cv-1147-JS-GRB,

15 Dkt. No. 9, 7/31/12 (*In re: Adult Film Cases II*).....17, 18

16 *K-Beech, Inc. v. Does 1-85*, 2011 U.S. Dist. LEXIS 124581

17 (E.D. Va. Oct. 5, 2011) .....10

18 *Liberty Media Holdings, LLC*, 2011 WL 5190106, at \*3

19 (S.D. Fla. Nov. 1, 2011) .....15

20 *Liberty Media Holdings, LLC v. BitTorrent Swarm*, 2011 WL 5190048, at \*2–4 (S.D. Fla.

21 Nov. 1 2011) ..... 15

22 *Malibu Media v. John Does 1-10*, C.D. Cal. Case No. 12-cv-3623-ODW-PJW,

23 Dkt. No. 7, 6/27/12.....passim

24 *Malibu Media, LLC v. John Does 1-11*, 2012 U.S. Dist. LEXIS 94648

25 (D.D.C. July 10, 2012) .....6

26 *Malibu Media, LLC v. Doe*, 2012 U.S. Dist. LEXIS 94705

27 (E.D. Cal. July 6, 2012) .....4

28 *Malibu Media, LLC v. Doe*, 2012 U.S. Dist. LEXIS 96333

1 (E.D. Cal. July 10, 2012) .....4  
 2 *Malibu Media, LLC v. Doe*, 2012 U.S. Dist. LEXIS 96351  
 3 (E.D. Cal. July 10, 2012) .....4  
 4 *Malibu Media, LLC v. Does*, 2012 U.S. Dist. LEXIS 114216, 13-14 (D. Colo.  
 5 August 14, 2012).....4  
 6 *Malibu Media, LLC v. Does*, 2012 U.S. Dist. LEXIS 114236, 13-14 (D. Colo.  
 7 August 14, 2012).....4  
 8 *Next Phase Distrib., Inc. v. Does I-27*, 2012 U.S. Dist. LEXIS 107648, 11-12  
 9 (S.D.N.Y. July 31, 2012) .....2, 18  
 10 *Pacific Century Int’l., Ltd. v. John Does I-37*, – F. Supp. 2d –, 2012 WL 1072312  
 11 (N.D. Ill. Mar. 30, 2012) Case No. 12-cv-1057, Dkt. No. 23.....12  
 12 *Patrick Collins, Inc. v. Doe*, 2012 U.S. Dist. LEXIS 75986  
 13 (E.D.N.Y. May 31, 2012) .....4  
 14 *Patrick Collins, Inc. v. Doe*, 2012 U.S. Dist. LEXIS 96350  
 15 (E.D. Cal. July 10, 2012) .....4  
 16 *Patrick Collins, Inc. v. Does I-58*, U.S. Dist. LEXIS 120235,  
 17 (E.D. Va. Oct. 5, 2011) .....11  
 18 *Patrick Collins, Inc. v. Doe*, 2012 U.S. Dist. LEXIS 36232  
 19 (D. Ariz. Mar. 19, 2012).....22  
 20 *Patrick Collins, Inc. v. John Does I-21*, 2012 WL 1190840,  
 21 (E.D. Mich. Apr. 5, 2012).....13  
 22 *Raw Films, Inc. v. Does I-32*, 2011 WL 6840590, at \*2 (N.D. Ga. Dec. 29, 2011) ...11, 15  
 23 *SBO Pictures, Inc. v. Does I-20*, No. 12 Civ. 3925 (SAS), 2012 WL 2304253,  
 24 (S.D.N.Y. June 18, 2012).....18  
 25 *Semitoool, Inc. v. Tokyo Electron America, Inc.*, 208 F.R.D. 273,  
 26 (N.D. Cal. 2002).....22  
 27 *Sony Music Entm’t Inc. v. Does I-40*, 326 F. Supp. 2d 556, 566 (S.D.N.Y. 2004).....21, 22  
 28 *W. Coast Prods. v. Swarm Sharing Hash Files*, 2012 U.S. Dist. LEXIS 123170

-v-

MEMORANDUM IN SUPPORT OF JOHN DOE’S OMNIBUS MOTION THAT THE COURT:  
 (1) SEVER AND DISMISS ALL JOHN DOES OTHER THAN DOE NO. 1; AND  
 (2) QUASH ALL OUTSTANDING SUBPOENAS

1 (W.D. La. Aug. 17, 2012) .....4

2 *Zero Tolerance Entm't, Inc. v. Doe*, 2012 U.S. Dist. LEXIS 78834

3 (S.D.N.Y. June 5, 2012).....4

4

5 **Rules**

6 Federal Rule of Civil Procedure 20(a)(2) .....8, 11

7 Federal Rule of Civil Procedure 21 ..... 11

8

9 **Secondary Source**

10 4-20 Moore's Federal Practice - Civil § 20.02.....9

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

MEMORANDUM IN SUPPORT OF JOHN DOE'S OMNIBUS MOTION THAT THE COURT:  
(1) SEVER AND DISMISS ALL JOHN DOES OTHER THAN DOE NO. 1; AND  
(2) QUASH ALL OUTSTANDING SUBPOENAS

1 **I. INTRODUCTION AND SUMMARY**

2 Patrick Collins’ cases in this District are part of the “nationwide blizzard of civil  
3 actions brought by purveyors of pornographic films alleging copyright infringement by  
4 individuals utilizing a computer protocol known as BitTorrent.” *In re: BitTorrent Adult*  
5 *Film Copyright Infringement Cases*, 2012 U.S. Dist. LEXIS 61447 (E.D.N.Y. May 1,  
6 2012) Case No. CV-11-3995-DRH-GRB, Dkt. No. 39 (“*In re: Adult Film Cases*”)  
7 (comprehensive order and report of Magistrate Judge Gary Brown ordering severance of  
8 Does in cases filed by Patrick Collins and Malibu Media, among others). Courts across the  
9 country are growing increasingly skeptical of these cases; Judge Wright of the Central  
10 District of California, while presiding over a Malibu Media case filed by plaintiff’s counsel  
11 here, recently described this kind of litigation as “*essentially an extortion scheme.*” *Malibu*  
12 *Media v. John Does 1-10*, C.D. Cal. Case No. 12-cv-3623-ODW-PJW, docket no. 7,  
13 6/27/12, p. 6 (emphasis added). Exactly how this “extortion scheme” works is detailed in  
14 the next section.

15 The foundation for this “extortion scheme” though is a perversion of the permissive  
16 joinder rule. Simply put, Rule 20 was never intended to be a weapon that allows copyright  
17 owners to file what amount to reverse class actions against multiple defendants accused of  
18 file sharing. Plaintiff’s theory of “swarm joinder” is being rejected by a majority of Courts  
19 across the country. *E.g.*, *Digital Sins, Inc. v. John Does 1-245*, S.D.N.Y. Case No. 11-cv-  
20 8170, Dkt. No. 18, 5/15/12, p. 3 (McMahon, J.) (severing Does, collecting cases and noting  
21 “[t]here is no need for this Court to write another lengthy opinion discussing why  
22 plaintiff’s theory is wrong”); *cf. AF Holdings LLC v. Does 1-1,058*, D.D.C. Case No. 12-  
23 cv-0048 Dkt. 46, 8/6/12 (Howell, J.) (denying ISP’s motion to quash and refusing  
24 severance, but certifying swarm joinder issue for interlocutory appeal to the D.C. Circuit).

25 Further, as many courts have held—and increasingly so—alleging that Does  
26 downloaded pieces of the same movies *months apart from one another* does not mean the  
27 Does are part of the same “transaction or occurrence” for the purposes of Rule 20. *E.g.*,  
28 *Malibu Media v. John Does 1-10*, C.D. Cal. Case No. 12-cv-3623-ODW-PJW, docket no.

1 7, 6/27/12, p. 5 (“The loose proximity of the alleged infringements (March 5, 2012–April  
2 12, 2012) does not show that these Defendants participated in the same swarm”); *Hard*  
3 *Drive Productions, Inc. v. Does 1-188*, 809 F. Supp. 2d 1150 (N.D. Cal. August 23, 2011)  
4 Case No. 11-cv-01566, Dkt. No. 18 (“*Hard Drive Prods.*”) (same, 63 days); *DigiProtect*  
5 *USA Corp. v. Doe*, 2011 U.S. Dist. LEXIS 109464, 8-9 (S.D.N.Y. Sept. 26, 2011) (for  
6 defendants to be part of same “swarm,” must have downloaded movies at “overlapping”  
7 times).

8 Although there are some common questions of law and fact, sufficient that  
9 plaintiff’s multiple cases should be related to one another, if discovery proceeds, the  
10 different “questions of law or fact” between the different Does in the same cases will  
11 predominate, given that each Doe will have different factual scenarios and legal defenses  
12 (e.g., who had access to the Does’ Wifi network?). See *In re: BitTorrent Adult Film*  
13 *Copyright Infringement Cases*, 2012 U.S. Dist. LEXIS 61447 (E.D.N.Y. May 1, 2012),  
14 Case No. CV-11-3995-DRH-GRB, Dkt. No. 39 (“*In re: Adult Film Cases*”) (Brown, M.J.)  
15 (noting the “panoply of individual” defenses the different Doe defendants will have, and  
16 finding that “[t]he individualized determinations required far outweigh the common  
17 questions in terms of discovery, evidence, and effort required.”).

18 Even if joinder were permissible, the Court should still exercise its discretion and  
19 sever the Does in light of plaintiff’s “abusive litigation tactics” (See Dec’l. of Morgan E.  
20 Pietz, ¶¶ 6-27) and the burden on the Courts, the ISPs and the Does. E.g., *Hard Drive*  
21 *Prod’s.*, *supra*, 809 F. Supp. at 1164; *Next Phase Distrib., Inc. v. Does 1-27*, 2012 U.S.  
22 Dist. LEXIS 107648, 11-12 (S.D.N.Y. July 31, 2012) (addressing split in authority on  
23 “swarm joinder,” but severing Does as a matter of the Court’s discretion for the reasons set  
24 forth in *In re: Adult Film Cases*); see also *Acevedo v. Allsup’s Convenience Stores, Inc.*,  
25 600 F.3d 516, 521-522 (5th Cir. 2010) (court has discretion to deny permissive joinder  
26 even when test is met).

27 After severing the mis-joined putative Doe defendants, the Court should also quash  
28 the outstanding subpoenas seeking to identify those Doe defendants. *In re: BitTorrent*

1 *Adult Film Copyright Infringement Cases*, 2012 U.S. Dist. LEXIS 61447 (E.D.N.Y. May 1,  
2 2012) Case No. CV-11-3995-DRH-GRB, Dkt. No. 39, pp. 23-25; *Digital Sins, Inc. v. John*  
3 *Does 1-245*, S.D.N.Y. Case No. 11-cv-8170, Dkt. No. 18, 5/15/12, p. 7 (“Because I have  
4 severed and dismissed all of the claims against the defendants, I hereby, *sua sponte*, quash  
5 any subpoena that may be outstanding to any Internet service provider seeking information  
6 about the identity of any John Doe other than John Doe 1. Plaintiff is directed to send a  
7 copy of this order within 24 hours of its issuance to any and every internet service provider  
8 who has been served with a subpoena for any information concerning any other John Doe  
9 defendant.”). To do otherwise would only encourage plaintiffs to try and avoid paying  
10 statutorily required filing fees by mis-joining as many Does as possible, and then forcing  
11 the Does to file, and the Court to hear, motions for severance.

12 Given the defect in joinder issue noted above, and the potential for abuse posed by  
13 these kinds of cases, the Court should have denied plaintiff’s *unopposed* request for early  
14 discovery in the first place, and should now vacate the order authorizing plaintiff to issue  
15 subpoenas, and quash all outstanding subpoenas. *Hard Drive Prod’s., Inc. v. Does 1-90*,  
16 N.D. Cal. Case No. 5:11-cv-3852-HRL (“simultaneous consideration of the application for  
17 early discovery and joinder has become the norm for courts in this district faced with  
18 similar cases. See, e.g., *Hard Drive Prods. v. Doe*, 2011 U.S. Dist. LEXIS 89858 (N.D.  
19 Cal. Aug. 12, 2011); *Boy Racer v. Does*, 2011 U.S. Dist. LEXIS 86746 (N.D. Cal. Aug. 5,  
20 2011); *Diabolic Video Prods. v. Does 1-2099*, 2011 U.S. Dist. LEXIS 58351 (N.D. Cal.  
21 May 31, 2011”).

22 Multiple courts have held that early discovery should be denied in cases like these  
23 because the requested discovery is not “very likely” to reveal the identities of the actual  
24 defendants, as required under *Gillespie v. Civiletti. Hard Drive Productions, Inc. v. Does*  
25 *1-188*, 809 F. Supp. 2d 1150 (N.D. Cal. August 23, 2011) (“*Hard Drive Prods.*”) (denying  
26 early discovery because “It is abundantly clear that plaintiff’s requested discovery is not  
27 ‘*very likely*’ to reveal the identities of the Doe defendants.”); *citing Gillespie v. Civiletti*,  
28 629 F.2d 637, 642–43 (9th Cir. 1980); *see also, e.g., AF Holdings LLC v. Does 1-96*, N.D.



1 Cal. No. 11-cv-3335-JSC, Dkt. No. 14, 9/27/11, p. 6 (“*AF Holdings*”) (denying requested  
2 early discovery because it was not “*very likely* to enable Plaintiff to identify the doe  
3 defendants.”); *AF Holdings, LLC v. John Doe*, D. Min. Case No. 12-cv-1445, Dkt. No. 7,  
4 7/5/12 (denying early discovery because “the requested discovery was ‘*not very likely*’ to  
5 reveal the identity of the alleged infringer”).

6 Plaintiff presents no plan for how it intends to go from indentifying ISP subscribers  
7 to identifying actual John Doe defendants; and in reality, plaintiff does not care to do so. It  
8 simply wants to use the Court’s subpoena power to extort “settlements” from ISP  
9 subscribers, upon threat of publicly “naming” them in a lawsuit alleging they illegally  
10 downloaded pornography, regardless of whether they committed the alleged infringement  
11 or not. The prior sentence is, in essence, the heart of plaintiff’s business model.

12 The Court should put a stop to this “extortion scheme,” follow the lead of many  
13 other courts since,<sup>3</sup> and adopt the “sensible protocol” developed by Magistrate Judge  
14 Brown in direct response to cases filed by Patrick Collins and Malibu Media. *In re: Adult*  
15 *Film Cases, supra*, 2012 U.S. Dist. LEXIS 61447 (E.D.N.Y. May 1, 2012). This motion  
16 asks the Court to do precisely that, and it should therefore be granted.

17  
18  
19 <sup>3</sup> *Digital Sins, Inc., supra*, at p. 8 (reviewing prior cases, explicitly adopting “most especially the  
20 comprehensive Report and Recommendation of the Hon. Gary R. Brown,” and ordering that, in the  
21 future, “*any effort to take discovery prior to service must follow the sensible protocol adopted by*  
22 *Magistrate Judge Brown in In re: [Adult Film] Cases.*”); *see also, e.g., Patrick Collins, Inc. v.*  
23 *Doe*, 2012 U.S. Dist. LEXIS 75986, 2-3 (E.D.N.Y. May 31, 2012) (citing *In re: Adult Film Cases*  
24 and finding “that *for the reasons set forth in the well-reasoned decision of Magistrate Judge*  
25 *Gary R. Brown* dated May 1, 2012, plaintiff has not satisfied the requirement of establishing that  
26 defendants participated in the same “transaction” or “occurrence” within the meaning of Fed. R.  
27 Civ. P. 20.”); *Zero Tolerance Entm’t, Inc. v. Doe*, 2012 U.S. Dist. LEXIS 78834 (S.D.N.Y. June 5,  
28 2012) (severing all Does other than Doe No. 1 and *explicitly “adopt[ing] the procedures of Judge*  
*McMahon and Magistrate Judge Brown*”); *Malibu Media, LLC v. Doe*, 2012 U.S. Dist. LEXIS  
96351 (E.D. Cal. July 10, 2012) (citing *In re: Adult Film Cases* and denying early discovery for all  
Does other than Doe No. 1); *Patrick Collins, Inc. v. Doe*, 2012 U.S. Dist. LEXIS 96350 (E.D. Cal.  
July 10, 2012) (same); *Malibu Media, LLC v. Doe*, 2012 U.S. Dist. LEXIS 96333 (E.D. Cal. July  
10, 2012) (same); *Malibu Media, LLC v. Doe*, 2012 U.S. Dist. LEXIS 94705 (E.D. Cal. July 6,  
2012) (same).

**II. BACKGROUND**

**(a) Patrick Collins’ Litigation Strategy**

Patrick Collins, Inc., is a pornographer that has recently gotten into a new line of business: coercing copyright infringement “settlements.” In these lawsuits, Patrick Collins alleges that unknown individuals used certain I.P. addresses to access the Internet, and then used an application called BitTorrent to illegally download Patrick Collins’ pornographic movies.<sup>4</sup> After filing a complaint, Patrick Collins generally seeks leave of court to conduct early discovery and issue subpoenas to Internet Service Providers, which demand that the ISPs disclose the account details of the I.P. addresses used to download plaintiff’s movies. In order to obtain Court authorization to issue subpoenas—the single key legal issue driving Patrick Collins’s business model—Patrick Collins generally makes several material misrepresentations to the Court. Notably, here Patrick Collins claimed, incorrectly, in its original early discovery requests that courts are “unanimous” in granting early discovery in cases like this and represents that “the discovery sought will facilitate identification of the defendants and service of process.” Since Patrick Collins’s early discovery requests are usually *unopposed*, many Courts, including Courts of this District, have allowed Patrick Collins to issue subpoenas to the ISPs.

However, really, this is all a sham. Patrick Collins pretends that it is interested in “identifying” and “serving” actual defendants. But that is simply not true. As has been shown district by district, in dozens if not hundreds of cases, what plaintiff is really interested in is using this Court’s subpoena power, and the stigma associated with

---

<sup>4</sup> The very first step in Patrick Collins’ business model is that it hires a “technical expert” which “logs” the I.P. addresses that are used to download plaintiff’s content on BitTorrent. In computer terminology, plaintiff appears to be operating what is called a “honeypot,” which is essentially a baited trap. Plaintiff’s pornographic movies are the bait, and the trap is these lawsuits. Rather than try and remove its content from BitTorrent by filing DMCA takedown notices, plaintiff prefers instead to actively participate in—and possibly facilitate—the infringing downloads of which it now complains. In other words, plaintiff appears to prefer to collect a list of potential people to sue rather than take other simple, affirmative steps to remove its content from BitTorrent.

1 pornography, to leverage improper “settlements” from Internet subscribers who may *or*  
2 *may not* have actually downloaded plaintiff’s movies.

3 One key problem with this scheme—which was not addressed in plaintiff’s moving  
4 papers seeking authorization to issue subpoenas—is that many of the subscribers whose  
5 information will be turned over by the ISPs are not actually the people who downloaded  
6 plaintiff’s pornographic movies. The unfortunate people sucked into this morass are, by  
7 definition, always the people who happen to pay the Internet/cable bill. In an age when  
8 most homes have routers and wireless networks and multiple computers share a single I.P.  
9 address, the actual infringer could be a teenage son with a laptop, an invitee, a hacker, or  
10 any neighbor using an unencrypted wireless signal. Thus, “there is a reasonable likelihood  
11 that the [the Does] may have had no involvement in the alleged illegal downloading that  
12 has been linked to his or her IP address.” *Malibu Media, LLC v. John Does 1-11*, 2012  
13 U.S. Dist. LEXIS 94648 (D.D.C. July 10, 2012). Indeed, as one judge observed in another  
14 of these cases, “*Plaintiff’s counsel estimated that 30% of the names turned over to the*  
15 *ISP’s are not those of the individuals who actually downloaded or shared copyrighted*  
16 *material.*” *Digital Sins, Inc. v. Does 1-176*, -- F.R.D. --, 2012 WL 263491, at \*3 (S.D.N.Y.  
17 Jan. 30, 2012).

18 This inconvenient fact, however, generally does not stop the plaintiff from  
19 demanding that a subscriber (i.e., whomever happens to pay the bill) should fork over  
20 several thousand dollars to settle the case, upon threat of being publicly accused of illegally  
21 downloading explicit pornography. That threat is essentially the heart of this business: pay  
22 up, or else plaintiff will publicly shame you as someone who watches pornography. Many  
23 subscribers, even if they are innocent, simply pay the ransom rather than face the expense,  
24 uncertainty and potential embarrassment of defending themselves.

25 Plaintiff files hundreds of these cases nationwide, against thousands of Does,  
26 knowing full well that none of the Does will ever be served, or even named, except perhaps  
27 for a token few, to make a show of it. When seeking leave to issue subpoenas prior to the  
28 26(f) conference, plaintiff’s counsel typically represents, and she reiterated it again here,

1 “that the discovery sought will facilitate identification of the defendants and service of  
2 process.” Kushner Dec’l. i/s/o Early Discovery Request at ¶ 4. While the subpoenas  
3 requested by plaintiff in these cases might *theoretically* “facilitate” identification of and  
4 service upon actual defendants, in *actuality*, based on plaintiff’s past track record, the  
5 subpoenas *seldom, if ever* do. Dec’l. of Morgan E. Pietz, ¶ 27.<sup>5</sup>

6 However, the issuance of subpoenas *almost always* results in the consummation of  
7 “settlements,” many of which are paid by people who did not actually download plaintiff’s  
8 movies, but do not wish to incur the expense, uncertainty and potential embarrassment of  
9 defending themselves. As Judge Wright, who was previously assigned one of Malibu  
10 Media cases in Central District noted, “The federal courts are not cogs in a plaintiff’s  
11 copyright-enforcement business model. ***The Court will not idly watch what is essentially***  
12 ***an extortion scheme, for a case that plaintiff has no intention of bringing to trial.***”  
13 *Malibu Media v. John Does 1-10*, C.D. Cal. Case No. 12-cv-3623-ODW-PJW, docket no.  
14 7, 6/27/12, p. 6. (Emphasis added).

15 Some plaintiff’s lawyers in these cases have taken a step in the right direction by  
16 admitting that actually naming and serving someone with a complaint in these cases, based  
17 on nothing more than the fact that they were identified by the ISP as the person who pays  
18 the bill, would likely violate Rule 11. *E.g., Discount Video Center, Inc. v. Does 1-29*, D.  
19 Mass. Case No. 12-cv-10805, Dkt. No. 40, 8/24/12, p. 3 (Doe Mtn. to dismiss). However,  
20 plaintiff’s counsel here does not seem prepared to make such a concession. Instead, per  
21 plaintiff’s renewed motion papers filed recently in the Central District of California, in  
22 Malibu Media case, plaintiff’s counsel seems ready to treat ISP subscribers as actual  
23 defendants. Ms. Kushner stated that “Plaintiff attached as Exhibit A to each Complaint a  
24

25 <sup>5</sup> In reply papers filed in the Central District of California in September, Malibu Media points to  
26 the fact that it has apparently *named* individual defendants in 18 cases nationwide, out of a total of  
27 nearly 300 cases filed against nearly 5,000 Does, as conclusive proof that it is serious about  
28 “litigating” these cases. A closer look at the docket in each of these 18 cases, however, reveals  
that Malibu Media has actually *served* precisely 4 defendants, in 2 cases, for a national service  
average of approximately 0.04%. See Dec’l. of Morgan E. Pietz, ¶¶ 25–27.

1 list of IP address, the date and time of the infringing act, and corresponding ISPs. Plaintiff  
2 has thereby demonstrated that Defendants can be corresponded to their allegedly infringing  
3 acts.” P’s Renewed Motion, p. 4. There is a step missing here; plaintiff simply assumes,  
4 incorrectly, that whomever pays the bill for the Internet connection “can be corresponded”  
5 to the Defendant that committed the allegedly infringing acts. Maybe yes, maybe no; but  
6 plaintiff has no plan to get from A to C. Further, as far as the undersigned is aware, when  
7 plaintiff’s professional “settlement negotiators” have called up ISP subscribers or their  
8 counsel, threatened to “name” them, and pressured them to settle over the phone, there has  
9 never been any mention of Rule 11 safeguards.

10 Finally, if plaintiff’s past history in this District and in the Central District of  
11 California is any guide, after requesting as many extensions as it can get of the Rule 4(m)  
12 service deadline—to allow its “settlement negotiators” to work the phones for as long as  
13 possible—Patrick Collins will simply dismiss the cases, or most if not all Does, without  
14 prejudice. Dec’l. of Morgan E. Pietz, ¶¶ 24, 27

15 **(b) Procedural History of Patrick Collins Cases in this District**

16 One of Patrick Collins’s tactics in its nationwide settlement business—or, at least,  
17 one of the tactics employed by plaintiff’s counsel here, Ms. Leemore Kushner—is to make  
18 a policy of not filing Notices of Related Cases. In the Central District of California, so far  
19 this year, Ms. Kushner has filed over 30 lawsuits on behalf of Malibu Media and zero  
20 Notices of Related Cases. Similarly, Ms. Kushner did not initially file any Notices of  
21 Related Cases in the Eastern District of California. So, too, with respect to cases Ms.  
22 Kushner has filed on behalf of Patrick Collins, Inc., another plaintiff she represents in  
23 nearly identical lawsuits. Ms. Kushner’s history in this District is similar: she or her  
24 predecessor has filed 18 cases in this District so far this year for Malibu Media, and never  
25 did bother to file a Notice of Related Cases. As a result of this tactic, here, as in the  
26 Eastern District of California, and Central District of California, multiple Judges were  
27  
28

1 initially assigned to cases that involve what is essentially the same form complaint, same  
2 “technical expert,” same claims, and, often times, the exact same copyrighted movies.<sup>6</sup>

3 By making it a policy never to file Notices of Related Cases, plaintiff’s counsel  
4 generally tries to fly under the radar, and hedge her bets, by parceling cases out to different  
5 Judges. Given the split in authority, lack of controlling Circuit precedent, and the differing  
6 levels of familiarity among Judges with both BitTorrent and these pornographic mass  
7 infringement cases, which are a relatively new phenomenon, the advantages to spreading  
8 the cases around are obvious. Plaintiff’s counsel hopes that Judges in this District will  
9 authorize early discovery without first considering joinder.<sup>7</sup> If plaintiff files a Notice of  
10 Related Cases properly at the outset, plaintiff risks having a single Judge appreciate the full  
11 scope of Patrick Collins’s abusive activities in the District, and having a single Judge  
12 curtail these activities.

13 All of Ms. Kushner’s Malibu Media cases in the Central District appear to be in the  
14 process of being transferred to Judge Burns. The undersigned would respectfully suggest  
15 that there would be a substantial savings of Judicial economy if all of the Patrick Collins  
16 cases were also transferred to Judge Burns, or another Judge, who could preside over both  
17 the Malibu Media and Patrick Collins cases, at least for pre-service litigation.

18  
19  
20 \_\_\_\_\_  
21 <sup>6</sup> After forcing the issue with Ms. Kushner in three other districts with mixed success in prompting  
22 her to act, the undersigned simply stepped in and filed a Notice of Related Cases in the cases  
23 pending here, in the Malibu Media cases, on 8/16/12, as allowed under this Districts Local Rule on  
24 Notices of Related Cases. After being retained by a client being sued by Patrick Collins in the  
25 Southern District, the undersigned filed a Notice of Related Cases for the Southern District Patrick  
26 Collins cases on September 21, 2012.

25 <sup>7</sup> See *Hard Drive Prod’s., Inc. v. Does 1-90*, N.D. Cal. Case No. 5:11-cv-3852-HRL  
26 (“simultaneous consideration of the application for early discovery and joinder has become the norm  
27 for courts in this district faced with similar cases. See, e.g., *Hard Drive Prods. v. Doe*, 2011 U.S. Dist.  
28 LEXIS 89858 (N.D. Cal. Aug. 12, 2011); *Boy Racer v. Does*, 2011 U.S. Dist. LEXIS 86746 (N.D. Cal.  
Aug. 5, 2011); *Diabolic Video Prods. v. Does 1-2099*, 2011 U.S. Dist. LEXIS 58351 (N.D. Cal. May  
31, 2011”).

**III. JOINDER IS NOT PERMISSIBLE**

**(a) Standard for Joinder**

Federal Rule 20(a)(2) provides that defendants “may be joined” if: “(A) any right to relief is asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and (B) any question of law or fact common to all defendants will arise in the action.” Fed. R. Civ. Proc. 20(a)(2)(emphasis added). In discussing Ninth Circuit law, one court has explained that “The ‘same transaction’ requirement of Rule 20 refers to ‘similarity in the factual background of a claim; claims that arise out of a systematic pattern of events’ *and* have a ‘*very definite* logical relationship.’” *Hubbard v. Hougland*, 2010 U.S. Dist. LEXIS 46184 (E.D. Cal. Apr. 5, 2010) (emphasis added); *citing Bautista v. Los Angeles County*, 216 F.3d 837, 842-843 (9th Cir. 2000).

However, “*even if the test is satisfied, district courts have the discretion to refuse joinder* in the interest of avoiding prejudice and delay, ensuring judicial economy, or safeguarding principles of fundamental fairness.” *Acevedo v. Allsup’s Convenience Stores, Inc.*, 600 F.3d 516, 521-522 (5th Cir. 2010) (internal citations omitted); *accord* 4-20 Moore’s Federal Practice - Civil § 20.02.

**(b) Majority of Court are Rejecting Plaintiff’s “Swarm Joinder” Theory**

Judge McMahon of the Southern District of New York recently addressed plaintiff’s swarm joinder theory in similar case, as follows,

“There is no need for this Court to write another lengthy opinion discussing why plaintiff’s theory is wrong. Rather, I adopt and expressly incorporate into this memorandum order the reasoning of Judge Gibney in *K-Beech [Inc. v. John Does 1-85, No. 3:11-cv468, 2011 U.S. Dist. LEXIS 124581, at \*2-3 (E.D. [Va.] Oct. 5, 2011)]*<sup>8</sup>; Magistrate Judge Spero of the Northern District of California in *Hard Drive Productions, Inc. v. Does 1-*

<sup>8</sup> (finding “the mere allegation that defendants used [BitTorrent] to copy and reproduce the Work ... on different days and times, *over a three month period*” insufficient to support joinder);

1 188, No. C-11-01566, 860 F. Supp. 2d 1150 (N.D. Cal. August 23, 2011)<sup>9</sup>;  
2 several other courts in the Northern District of California, including *Diabolic*  
3 *Video Productions, Inc. v. Does 1-2099*, 10 Civ. 5865, 2011 U.S. Dist.  
4 LEXIS 58351, at \* 10-11 (N.D. Cal. May 31, 2011); and most especially the  
5 comprehensive Report and Recommendation of the Hon. Gary R. Brown,  
6 U.S.M.J., that was filed in our sister court, the Eastern District of New York,  
7 in *In re: BitTorrent Adult Film Copyright Infringement Cases*, No. 11-cv-  
8 3995, 2012 U.S. Dist. LEXIS 61447 (E.D.N.Y. May 1, 2012).<sup>10</sup>

9 All of the courts on which this Court relies, and whose reasoning I  
10 find persuasive, have concluded that where, as here, the plaintiff does no  
11 more than assert defendants ‘merely commit[ed] the same type of violation in  
12 the same way,’ it does not satisfy the test for permissive joinder pursuant to  
13 Rule 20. . . . what we have here is 245 separate and discrete transactions in  
14 which 245 individuals used the same method to access a file via the  
15 Internet—no concerted action whatever, and no series of related  
16 occurrences—at least, not related in any way except the method that was  
17 allegedly used to violate the law.” *Digital Sins, Inc., supra*, at p. 2–3.

18 In arguing that all Does other than Doe No. 1 should not be dismissed for mis-  
19 joinder, plaintiff’s counsel normally cites to *First Time Videos, LLC v. Does 1-76*, 2011  
20 WL 3586245, N.D. Ill. Case No. 11-cv-3831, 8/16/11, for the proposition that “the

21  
22 <sup>9</sup> (collecting cases)

23 <sup>10</sup> See also *Boy Racer Inc. v. Does 1-60*, 11-cv-01738-SI, 2011, 2011 U.S. Dist. LEXIS 92994, at  
24 \*4 (N.D. Cal. Aug. 19, 2011) (finding misjoinder because “Plaintiff [did] not plead facts showing  
25 that any particular defendant illegally shared plaintiff’s work with any other particular defendant”);  
26 *AF Holdings LLC v. Does 1-97*, 2011 U.S. Dist. LEXIS 78636, \*4 (N.D. Cal. July 20, 2011)  
(holding that even though BitTorrent protocols differ from previous peer-to-peer platforms, joinder  
27 is improper); *Raw Films, Ltd. v. Does 1-32*, 2011 U.S. Dist. LEXIS 114996, \*2-7 (E.D. Va. Oct. 5,  
28 2011); *Patrick Collins, Inc. v. Does 1-58*, U.S. Dist. LEXIS 120235, \*2-7 (E.D. Va. Oct. 5, 2011);  
*Hard Drive Productions, Inc. v. Does 1-30*, 2011 U.S. Dist. LEXIS 119333, \*6-10 (E.D. Va.  
Oct. 17, 2011).



1 overwhelming majority of courts have denied as premature motions to sever prior to  
2 discovery.” *This observation may have been accurate in August of 2011, but it is no*  
3 *longer true today.* Notably, another court in the Northern District of Illinois observed on  
4 March 30, 2012 that,

5 “the Doe defendants contend that joinder of the defendants is  
6 improper under Federal Rule of Civil Procedure 20(a)(2). Some  
7 courts have rejected those arguments [footnote cites 3 cases,  
8 one of which is *First Time Videos, LLC v. Does 1-76*], but  
9 *others have increasingly accepted them and severed the*  
10 *defendants or quashed the subpoenas* [footnote cites 5 cases].

11 *In the face of this stiffening judicial headwind,* the  
12 plaintiffs here have adopted a new tactic. . . .” *Pacific Century*  
13 *Int’l., Ltd. v. John Does 1-37*, – F. Supp. 2d –, 2012 WL  
14 1072312 (N.D. Ill. Mar. 30, 2012) Case No. 12-cv-1057, Dkt.  
15 No. 23, p. 7 (emphasis added)

16 In short, across the country, there is a “stiffening judicial headwind” that is severing John  
17 Does from mass infringement pornography lawsuits such as this one like leaves on fall day.  
18 *See Pacific Century Int’l., Ltd. v. John Does 1-37*, – F. Supp. 2d –, 2012 WL 1072312  
19 (N.D. Ill. Mar. 30, 2012) Case No. 12-cv-1057, Dkt. No. 23 at p. 7.

20 The leading judicial defender of the increasingly beleaguered minority view<sup>11</sup> that  
21 “swarm joinder” is appropriate, at least at the pleading stage, is Judge Beryl Howell of the  
22 D.C. District, author of the seminal opinion in *Call of the Wild Movie, LLC v. Does 1-*

23 \_\_\_\_\_  
24 <sup>11</sup> Although by no means a definitive measure, comparing the Lexis Shepards reports for *Call of*  
25 *the Wild, supra*, (Howell, J.) (decided 3/22/2011) and *Hard Drive Prods., supra*, (decided  
26 8/23/2011) (a leading case on swarm joinder, going the other way, and applying Ninth Circuit law  
27 in denying early discovery as to and severing all Does other than Doe No. 1) shows how the tide is  
28 turning. According to Lexis, *Call of the Wild* was “followed” 4 times in 2011 and 4 times in 2012.  
By contrast, *Hard Drive Prods*, which found for the Does, was “followed” 11 times in 2011 and 16  
times so far in 2012. Similarly, *Call of the Wild* was “criticized” or “distinguished” 4 times in  
2011 and 14 times in 2012, while *Hard Drive Prods.* was “criticized” or “distinguished” only 1  
time in 2011, and 8 times in 2012.

1 *I,062*, 770 F. Supp. 332, D.D.C. Case No. 10-cv-455, Dkt. No. 40, 3/22/2011. Prior to  
2 being elevated to the federal bench in 2010, Judge Howell was a lobbyist for the RIAA.  
3 The RIAA pioneered this kind of lawsuit between 2003-2008, when it conducted its file  
4 sharing litigation campaign against individuals.<sup>12</sup> Most of plaintiff's usual citations on  
5 swarm joinder trace back to *Call of the Wild*. The nations large ISPs recently asked Judge  
6 Howell to change her views on these cases, which she declined to do, but she did certify  
7 her denial of the ISPs motion to quash for interlocutory appeal to the D.C. Circuit, in light  
8 of the fact that other Judges in her own district, and many in other districts, disagree with  
9 her. *AF Holdings LLC v. Does 1-1,058*, 12-cv-0048-BAH, Dkt. 46, 8/6/12. The D.C.  
10 Circuit will thus likely be the first Circuit Court of Appeals to address the issue.

11 At the heart of the "swarm joinder" issue is whether participation in the same  
12 BitTorrent swarm satisfies the "same transaction and occurrence" test under Rule 20.  
13 Persuaded by *Call of the Wild*, Judge Randon of the Eastern District of Michigan reasoned  
14 that, because of the way BitTorrent works, with people sharing the same file with one  
15 another, participation in a BitTorrent peer group necessarily satisfied the "logical  
16 relationship" test. *Patrick Collins, Inc. v. John Does 1-21*, 2012 WL 1190840, at \*4-5  
17 (E.D. Mich. Apr. 5, 2012). Judge Randon reasoned, "in the universe of possible  
18 transactions, at some point, each Defendant downloaded a piece of the Movie, which had  
19 been transferred through a series of uploads and downloads from the Initial Seeder, through  
20 other users or directly, to each Defendant, and finally to IPP."<sup>13</sup> *Id.*

21 With due respect to Judge Randon, the joinder standard he suggests, and upon  
22 which plaintiff seeks to rely, amounts to the Rule 20 equivalent of the game of "Six  
23

24 \_\_\_\_\_  
25 <sup>12</sup> <http://www.wired.com/threatlevel/2010/05/riaa-bump/>;  
26 <https://www.eff.org/wp/riaa-v-people-five-years-later>;  
27 <http://www.techdirt.com/articles/20110329/04174413675/judge-who-said-lumping-together-unrelated-copyright-cases-is-fine-is-former-riaa-lobbyist.shtml>

28 <sup>13</sup> IPP is the name of the company that currently provides the services of Malibu Media's and Patrick Collins's technical expert, Tobias Fieser.

1 Degrees of Kevin Bacon”.<sup>14</sup> The idea is that somehow, some way, through an  
 2 *indeterminate* number of intermediary connections<sup>15</sup> to other peers, each of whom may or  
 3 not be another Doe Defendant, each Doe Defendant can be linked back to the Initial Seeder  
 4 (*i.e.*, Kevin Bacon). And as a result of the fact that every Doe Defendant in the swarm may  
 5 be linked to the Initial Seeder, it therefore follows that every Doe Defendant can somehow  
 6 be linked to every other Doe Defendant. This may be true as a matter of pure logic. But as  
 7 a practical standard by which to judge whether different individuals, with different factual  
 8 circumstances, may properly be joined into the same lawsuit, it leaves much to be desired.

9 More importantly, while the swarm joinder theory, as espoused by Judges Howell  
 10 and Randon, which involves an *indefinite* number of theoretical connections to join Does  
 11 together, may meet the “logical relationship” test used by some Circuits, this kind of  
 12 reasoning would not seem to qualify as the kind of “*very definite* logical relationship,”  
 13 that is necessary to support joinder on this Circuit. *Hubbard v. Hougland*, 2010 U.S. Dist.  
 14 LEXIS 46184 (E.D. Cal. Apr. 5, 2010); *citing Bautista v. Los Angeles County*, 216 F.3d  
 15 837, 842-843 (9th Cir. 2000) (emphasis added).

16 **(c) John Does Using BitTorrent Months Apart from One Another Are Not Part of**  
 17 **the Same Swarm and Not Part of Same Transaction or Occurrence**

18 Even if the “swarm joinder” theory were good law, plaintiff’s case here would still  
 19 fail, because the Doe defendants were not part really part of the “same swarm.” In all of  
 20 the cases Patrick Collins (as well as Malibu Media) have filed in this District, there is a  
 21 substantial temporal gap, generally of 2–3 months, between the time of the alleged  
 22 infringing downloads. A review of Exhibit “A” or “C” to any of plaintiff’s complaints  
 23 bears this out. For example, in *Patrick Collins*, 12-cv-1475, John Doe 3 is alleged to have

24 \_\_\_\_\_  
 25 <sup>14</sup> [http://en.wikipedia.org/wiki/Six\\_Degrees\\_of\\_Kevin\\_Bacon](http://en.wikipedia.org/wiki/Six_Degrees_of_Kevin_Bacon)

26 <sup>15</sup> The number of connections could be any number greater than 0: a Defendant might have  
 27 downloaded directly from the Initial Seeder (*i.e.*, 1 connection), there might be a few people in  
 28 between, none of whom are other Defendants, there might be an unbroken daisy-chain of Doe  
 defendants leading to the Initial Seeder, or it might require hundreds, or even thousands, etc., of  
 people to make the connection, each of whom may or not be another Doe defendant.

1 participated in a swarm transaction by downloading a movie on April 1, 2012. Then, more  
 2 than two months later, John Doe No. 1 was supposedly participating in the same  
 3 transaction when he downloaded a part of that movie on June 2, 2012. Similarly, in  
 4 *Malibu Media*, S.D. Cal. Case No. 12-cv-1135, John Doe No. 35 is alleged to have  
 5 participated in a swarm transaction and downloaded 11 infringing works on 2/4/2012 at  
 6 precisely 17:15:53. Over two months later, on 4/11/2012 at 07:52:59, John Doe No. 8 was  
 7 supposedly participating in that same swarm transaction, when s/he downloaded 16  
 8 copyrighted works. S.D. Cal. Case No. 12-cv-1135, Dkt. No. 1-3.

9 Simply put, Does who may have shared excerpts of the same file months apart from  
 10 one another are not part of the “same series of transactions.” The time gap is simply too  
 11 long. As Judge Wright found in a detailed order addressing the technical characteristics of  
 12 BitTorrent in one of Malibu Media’s cases in the Central District of California,

13 “The loose proximity of alleged infringements (March 5,  
 14 2012-April 12, 2012) does not show that these Defendants  
 15 participated in the same swarm. As discussed above, a  
 16 downloader may log off at any time, including before receiving  
 17 all the pieces of the copyrighted work. Without evidence that  
 18 these Does acted in concert, joinder is improper—the Doe  
 19 Defendants should be severed and dismissed under Federal  
 20 Rule of Civil Procedure 21.” *Malibu Media v. John Does 1-10*,  
 21 C.D. Cal. Case No. 12-cv-3623-ODW-PJW, docket no. 7,  
 22 6/27/12, pp. 5–6; *see, e.g., fn 17, supra*.

23 At least one Court has gone so far as to hold that the “transactional relatedness” test  
 24 is only satisfied in online download cases when parties are downloading a file *at the same*  
 25 *time*. *DigiProtect USA Corp. v. Doe*, 2011 U.S. Dist. LEXIS 109464, 8-9 (S.D.N.Y. Sept.  
 26 26, 2011) (*for defendants to be part of same “swarm,” a user must have “downloaded the*  
 27 *movie from the same website during overlapping times” with another member of the*  
 28 *swarm*); *see also Raw Films, Inc. v. Does 1-32*, 2011 WL 6840590, at \*2 (N.D. Ga. Dec.

1 29, 2011) (“Downloading a work as part of a swarm does not constitute ‘acting in concert’  
2 with one another, particularly when the transactions happen over a long period of time;”  
3 time span of 4 months); *Liberty Media Holdings, LLC*, 2011 WL 5190106, at \*3 (S.D. Fla.  
4 Nov. 1, 2011) (same; ***time span of two months***); *Liberty Media Holdings, LLC v.*  
5 *BitTorrent Swarm*, 2011 WL 5190048, at \*2–4 (S.D. Fla. Nov. 1 2011) (same; ***time span***  
6 ***of two months***). Here, plaintiff has not alleged that plaintiff’s were downloading files *at*  
7 *the same time* so there really is no “swarm,” and therefore no basis for “swarm joinder.”

8 Thus, here, plaintiff’s complaint completely undermines its argument that the Does  
9 are part of the “same swarm” because the complaint shows that the Does did not download  
10 files at the same time, but rather downloaded files months apart from one another. Even if  
11 “swarm joinder” were good law, this, surely, would take the concept too far afield.

12 **(d) As Between Multiple Does, Different Factual and Legal Issues Will**

13 **Predominate**

14 Each of the individual Doe defendants in this cases is likely to present completely  
15 different factual circumstances, which result in a variety of different legal defenses. *E.g. In*  
16 *re: Adult Film Cases*, at p. 20 (noting the “panoply” of different legal defenses raised by a  
17 “half-dozen moving defendants, even at this preliminary stage). Most notably, each Doe is  
18 going to have completely different circumstances and potential defenses on whether or not  
19 his or her home wireless network was unsecured, and depending on who may have had  
20 access to that network. Thus, even though there will admittedly be at least one common  
21 question of law or fact, on a macro level, the differences between the facts and legal claims  
22 applicable to a given Doe outweigh any potential similarities insofar as joinder is  
23 concerned. *Id.*

24 **(e) Even if Joinder Were Permissible, the Court Should Still Exercise its**  
25 **Discretion and Sever the Does in Light of Plaintiff’s “Abusive Litigation**  
26 **Tactics” and the Burden on the Does and the Courts**

27 Patrick Collins has a long track record of abusive litigation tactics, both in other  
28 cases it has filed nationally, as well as in the specific actions taken by its counsel here, in

1 the cases now pending before this Court. Specifically, the plaintiff: (i) is using the same  
2 “settlement negotiators” as other notorious copyright trolls; (ii) using subpoena information  
3 to collect on claims that go beyond the complaint;<sup>16</sup> (iii) willfully violating courts’ notice  
4 of related case rules to try and fly under the radar; (iv) seeking John Doe phone numbers  
5 and email addresses despite a court order telling Patrick Collins not to do so anymore; (v)  
6 misrepresenting the range of potential damages. Dec’l. of Morgan E. Pietz, ¶¶ 6–27.

7 Judge Brown’s May 1, 2012, order and recommendation in *In re: Adult Film*  
8 *Cases*—which was specifically addressed to Patrick Collins and Malibu Media, among  
9 others—was fairly devastating to Patrick Collins’s business model, so Patrick Collins  
10 essentially ignored it and carried on with business as usual. As Judge Brown noted on July  
11 31, 2012, “Less than three months after addressing concerns about potentially abusive  
12 litigation tactics by plaintiffs in these actions, this Court is *again* confronted with indicia of  
13 improper conduct by plaintiffs’ counsel, to wit: plaintiffs’ counsel apparently ignored, or  
14 tried to circumvent, the very safeguards the undersigned put in place to help prevent unfair  
15 litigation tactics while permitting plaintiffs to pursue their claims.” *In re: BitTorrent Adult*  
16 *Film Copyright Infringement Cases*, E.D.N.Y. Case No. 12-cv-1147-JS-GRB, Dkt. No. 9,  
17 7/31/12 (*In re: Adult Film Cases II*) (emphasis in original). Specifically, in *In re: Adult*  
18 *Film Cases I*, after severing all Does other than Doe No. 1, Judge Brown ordered that any  
19 ISP subscriber information *for Doe No. 1* be produced directly to the Court, not to  
20 plaintiff’s counsel. *Counsel for Patrick Collins and Malibu Media*, Aaron Kotzker, then  
21 went ahead and issued a subpoena for Doe No. 1, directing the information to be produced  
22 to the offices of plaintiff’s counsel; essentially ignoring this aspect of the Court’s order.  
23 Thus, in *In re: Adult Film Cases II*, Judge Brown explained

24 “This Court’s Order cataloged abuses tactics by plaintiffs in  
25 related actions against John Doe defendants, and expressed, in  
26

27 <sup>16</sup> This tactic, which Ms. Leemore Kushner, who represents Malibu Media, as well as Patrick  
28 Collins, Inc., in several districts in California, has repeated on several occasions, is particularly  
troubling, *see* Dec’l. of Morgan E. Pietz ¶¶ 14–19 and Exhibit B.

1 no uncertain terms, this Court's concerns about the conduct of  
2 this litigation going forward, particularly in light of the serious  
3 questions about plaintiffs ability to properly identify defendants  
4 based solely upon their IP addresses. *As such, it is astonishing*  
5 *that counsel failed to observe the precautions established in*  
6 *the Order. On this record, it is difficult to ascertain whether*  
7 *this apparent failure was deliberate, or simply the result of*  
8 *gross inattention."* *In re: Adult Film Cases II*, at p. 5.

9 For all of the reasons noted above, including Patrick Collins's "abusive litigation  
10 tactics," as detailed in the Declaration of Morgan E. Pietz, the Court should exercise its  
11 discretion and sever the Does, even if it finds joinder permissible. *See Acevedo v. Allsup's*  
12 *Convenience Stores, Inc.*, 600 F.3d 516, 521-522 (5th Cir. 2010) (internal citations  
13 omitted) (court has discretion to deny permissive joinder even when test is met); *Next*  
14 *Phase Distrib., Inc. v. Does 1-27*, 2012 U.S. Dist. LEXIS 107648, 11-12 (S.D.N.Y. July  
15 31, 2012) (addressing split in authority on swarm joinder, but severing Does as a matter of  
16 the Court's discretion for the reasons set forth in *In re: Adult Film Cases*); *Next Phase*  
17 *Distribution*, 2012 WL 3117182, at \*4-5; *SBO Pictures, Inc. v. Does 1-20*, No. 12 Civ.  
18 3925 (SAS), 2012 WL 2304253, (S.D.N.Y. June 18, 2012) at \*2; *see also Hard Drive*  
19 *Prods., Inc. v. Does 1-188*, 809 F. Supp. 2d 1150, 1164 (N.D. Cal. 2011).

20 There is also one more excellent reason for the Court to exercise its discretion and  
21 sever the Does: **filing fees**. The *In re: Adult Film Cases* court recently noted that it  
22 appeared that just in that district alone, three plaintiffs had avoided paying over \$100,000  
23 in filing fees. "If the reported estimates that hundreds of thousands of [John Doe]  
24 defendants [in mass infringement cases] have been sued nationwide, plaintiffs in similar  
25 actions may be evading millions of dollars in filing fees annually. Nationwide, these  
26 plaintiffs have availed themselves of the resources of the court system on a scale rarely  
27 seen. It seems improper that they should profit without paying statutorily required fees."  
28 *In re: Adult Film Cases, supra*, p. 23.

1 Here, the same is also true. Based on the undersigned's calculations, so far in 2012,  
 2 as of August 14, 2012, in the State of California alone, Malibu Media had sued 867 Does in  
 3 61 cases. Thus, assuming a \$350 filing fee per case, instead of paying \$303,450 in filing  
 4 fees to the Courts to sue each of those people individually, Malibu Media has paid only  
 5 \$21,350, resulting in a net loss to the Judicial Branch *in California alone* of \$282,100.  
 6 Nationwide, by repeatedly mis-joining approximately 4,646 Does in only 287 actions (as of  
 7 August 14, 2012) it would appear that *Malibu Media has cheated the Federal Judiciary*  
 8 *out of a staggering \$1,372,700.00 in filing fees.* See Dec'l. of Morgan E. Pietz, ¶ 26,  
 9 Exhibit A. The same is also true for Patrick Collins; thousands of Does; only 250 cases.

#### 10 IV. THE SUBPOENAS SHOULD BE QUASHED

##### 11 (a) **If the Court Severs the Does, it Should Dismiss them Without Prejudice and** 12 **Quash the Subpoenas Seeking Their Identifying Information**

13 After courts sever and “drop”/dismiss without prejudice<sup>17</sup> the mis-joined Doe  
 14 defendants, courts also quash the outstanding subpoenas seeking to identify those Doe  
 15 Defendants. *E.g., In re: BitTorrent Adult Film Copyright Infringement Cases*, 2012 U.S.  
 16 Dist. LEXIS 61447 (E.D.N.Y. May 1, 2012) Case No. CV-11-3995-DRH-GRB, Dkt. No.  
 17 39, pp. 23-25; *Digital Sins, Inc. v. John Does 1-245*, S.D.N.Y. Case No. 11-cv-8170, Dkt.  
 18 No. 18, 5/15/12, p. 7 (“Because I have severed and dismissed all of the claims against the  
 19 defendants, I hereby, *sua sponte*, quash any subpoena that may be outstanding to any  
 20 Internet service provider seeking information about the identity of any John Doe other than  
 21 John Doe 1. Plaintiff is directed to send a copy of this order within 24 hours of its issuance  
 22 to any and every internet service provider who has been served with a subpoena for any  
 23 information concerning any other John Doe defendant.”). To do otherwise would only  
 24 encourage plaintiffs to try and avoid paying statutorily required filing fees by mis-joining  
 25

26  
 27 <sup>17</sup> Undoubtedly, Fed. R. Civ. Proc. 21 prohibits dismissal of an *action* as the remedy for  
 28 misjoinder. But, in practical effect, “dropping” given Does from an action, while still keeping Doe  
 No. 1 in the case, results in a dismissal without prejudice as to the severed Does. Many cases have  
 adopted this approach. *E.g., In re: Adult Film Cases, supra.*



1 as many Does as possible, and then forcing the Does to file, and the Court to hear, motions  
2 for severance.

3 **(b) The Court Should Have Denied Plaintiff's Unopposed Requests for Early**  
4 **Discovery**

5 (1) Plaintiff Has Identified no Discovery Plan Making it "Very Likely" that the  
6 Requested Subpoenas Will Identify the True Doe Defendants as Required by  
7 Gillespie

8 Just as courts are increasingly handling these kinds of cases by considering the  
9 propriety of mass joinder at the early discovery stage,<sup>18</sup> so too are many other courts  
10 pausing to consider that the subpoenas plaintiffs seek to issue are not, *by themselves*, "very  
11 likely" to reveal the identities of the actual defendants, as required under *Gillespie v.*  
12 *Civiletti*. *E.g., Hard Drive Productions, Inc. v. Does 1-188*, 809 F. Supp. 2d 1150 (N.D.  
13 Cal. August 23, 2011) ("*Hard Drive Prods.*") (denying early discovery because "It is  
14 abundantly clear that plaintiff's requested discovery is not '*very likely*' to reveal the  
15 identities of the Doe defendants."); *citing Gillespie v. Civiletti*, 629 F.2d 637, 642-43 (9th  
16 Cir. 1980); *see also, e.g., AF Holdings LLC v. Does 1-96*, N.D. Cal. No. 11-cv-3335-JSC,  
17 Dkt. No. 14, 9/27/11, p. 6 ("*AF Holdings*") (denying requested early discovery because it  
18 was not "*very likely* to enable Plaintiff to identify the doe defendants."); *AF Holdings, LLC*  
19 *v. John Doe*, D. Min. Case No. 12-cv-1445, Dkt. No. 7, 7/5/12 (denying early discovery  
20 because "the requested discovery was '*not very likely*' to reveal the identity of the alleged  
21 infringer"). To put it another way, plaintiff presents no plan for how it intends to go from  
22 indentifying ISP subscribers to identifying actual John Doe defendants; and in reality,  
23 plaintiff does not care to do so. It simply wants to extort "settlements" from ISP  
24

25 <sup>18</sup> *Hard Drive Prod's., Inc. v. Does 1-90*, N.D. Cal. Case No. 5:11-cv-3852-HRL (severing Does at  
26 early discovery stage and noting "simultaneous consideration of the application for early discovery  
27 and joinder has become the norm for courts in this district faced with similar cases. *See, e.g., Hard*  
28 *Drive Prods. v. Doe*, 2011 U.S. Dist. LEXIS 89858 (N.D. Cal. Aug. 12, 2011); *Boy Racer v. Does*,  
2011 U.S. Dist. LEXIS 86746 (N.D. Cal. Aug. 5, 2011); *Diabolic Video Prods. v. Does 1-2099*,  
2011 U.S. Dist. LEXIS 58351 (N.D. Cal. May 31, 2011)").

1 subscribers, upon threat of publicly “naming” them in a lawsuit alleging they illegally  
2 downloaded pornography, regardless of whether they committed the alleged infringement  
3 or not.

4 (2) The Early Discovery Request Should Also Have Failed the Requisite First  
5 Amendment Balancing Test Mandated by *Semitoool*

6 Accepting, *arguendo*, plaintiff’s assumption that the ISP subscribers it seeks to  
7 identify are the actual John Doe defendants, the subpoenas should still be quashed.

8 (A) *Online File Sharing Protected by Limited First Amendment Right to*  
9 *Anonymity*

10 One issue the plaintiff generally tries to skirt in its unopposed papers seeking leave  
11 to issue subpoenas to the ISPs is the not immediately obvious point that the subpoenas  
12 plaintiff seeks leave to issue to the ISPs, which would identify file sharers, implicate First  
13 Amendment rights. Courts routinely hold that in online file sharing cases, before third  
14 party subpoenas can be issued, the Does’ limited First Amendment right to anonymity must  
15 be considered. *Sony Music Entm’t Inc. v. Does 1–40*, 326 F. Supp. 2d 556, 566 (S.D.N.Y.  
16 2004) (surveying case law and concluding “that the use of P2P file copying networks to  
17 download, distribute, or make sound recordings available qualifies as speech entitled to  
18 First Amendment protection.”); *Call of the Wild Movie, LLC v. Does 1-1,062*, D.D.C. Case  
19 No. CV-10-455, Dkt. No. 40, 3/22/2011, p. 21 (Howell, J.) (“file-sharers are engaged in  
20 expressive activity, on some level, when they share files on BitTorrent, and their First  
21 Amendment rights must be considered before the Court allows the plaintiffs to override the  
22 putative defendants anonymity by compelling production of the defendants’ identifying  
23 information.”). While many courts rightly conclude that file sharing is not really pure  
24 speech, and thus afforded only *very limited* First Amendment protection, *on the facts here*,  
25 the plaintiff’s need for civil discovery should not trump the Does’ limited First  
26 Amendment rights.

1 (B) *The Four Semitool Factors*

2 Where plaintiffs have sought to identify anonymous John Doe defendants in online  
3 file-sharing cases through the use of third party subpoenas, courts have generally applied  
4 four factors—the so-called *Semitool* factors to strike the requisite balance.

5 In considering whether a mass infringement plaintiff's purported need for civil  
6 discovery should override the Does' Constitutional rights to anonymity, Courts generally  
7 apply four factors, which are referred to in cases as the *Semitool* factors or the *Sony Music*  
8 factors.<sup>19</sup> Courts consider whether: (1) the plaintiff can identify the missing party with  
9 sufficient specificity such that the Court can determine that defendant is a real person or  
10 entity who could be sued in federal court; (2) the plaintiff has identified all previous steps  
11 taken to locate the elusive defendant; (3) the plaintiff's suit against defendant could  
12 withstand a motion to dismiss; and (4) the plaintiff has demonstrated that there is a  
13 reasonable likelihood of being able to identify the defendant through discovery such that  
14 service of process would be possible. *Patrick Collins, Inc. v. Doe*, 2012 U.S. Dist. LEXIS  
15 36232 (D. Ariz. Mar. 19, 2012); *Columbia Ins. Co. v. seescandy.com*, 185 F.R.D. 573,  
16 578-80 (N.D. Cal. 1999); *Sony Music Entm't Inc. v. Does 1-40*, 326 F. Supp. 2d 556, 566  
17 (S.D.N.Y. 2004).

18 (C) *In Performing the Semitool Analysis the Court should have Concluded*  
19 *that the Complaint Could not Withstand a Hypothetical Motion to*  
20 *Dismiss Does Other than Doe No. 1 for Misjoinder*

21 Since a First Amendment right, albeit a very limited one, is at stake, and particularly  
22 since motions seeking leave to identify Does will almost always be unopposed, *Semitool*  
23 requires that Courts pause to consider whether the lawsuit for which discovery is sought  
24 has any merit. While plaintiff may be able to state a claim for copyright infringement  
25 based on the allegations in the complaint (, many courts have held that it is appropriate, **at**  
26 ***the early discovery stage***, to consider, as a part of this analysis, whether the complaint  
27 could withstand a motion to dismiss Does other than Doe No. 1 for misjoinder. *E.g., Hard*

28 <sup>19</sup> The Ninth Circuit's *Semitool* factors largely track with the Second Circuit's *Sony Music* factors.

1 *Drive Prod's., Inc. v. Does 1-90*, N.D. Cal. Case No. 5:11-cv-3852-HRL (severing Does at  
2 early discovery stage and noting “simultaneous consideration of the application for early  
3 discovery and joinder has become the norm for courts in this district faced with similar  
4 cases. See, e.g., *Hard Drive Prods. v. Doe*, 2011 U.S. Dist. LEXIS 89858 (N.D. Cal. Aug.  
5 12, 2011); *Boy Racer v. Does*, 2011 U.S. Dist. LEXIS 86746 (N.D. Cal. Aug. 5, 2011);  
6 *Diabolic Video Prods. v. Does 1-2099*, 2011 U.S. Dist. LEXIS 58351 (N.D. Cal. May 31,  
7 2011)”).

8 For all of the reasons above, which will not be repeated, the complaint suffers from  
9 a defect in joinder, so it should not have withstood a hypothetical motion to dismiss *Does*  
10 *other than Doe No. 1 for misjoinder* at the early discovery stage.

11 The reason the undersigned sought leave to file a motion for reconsideration of the  
12 decision authorizing early discovery in several of the Malibu Media cases is that until  
13 courts routinely begin to analyze joinder at the early discovery stage, as the Northern  
14 District of California does, these lawsuits will proliferate.

15 (D) *In Performing the Semitool Analysis, the Fact that Plaintiff Rarely if*  
16 *Ever Serves Anyone Should Have Weighed Against it*

17 With certain vexatious plaintiffs such as the ones at issue here, after Courts start  
18 seeing them appear over and over again asking for the same kinds of early discovery, only  
19 to then dismiss the case at or near the service deadline, Courts start to wonder, is the  
20 discovery requested really “reasonably likely” to effectuate service of a complaint? Some  
21 courts have taken notice of plaintiff’s disinclination to actually do any litigating of the  
22 hundreds of complaints they file.

23 As one court noted, “it is evident that expedited discovery will not lead to  
24 identification of the Doe defendants or service of process. Indeed, the fact that no  
25 defendant has ever been served in one of these mass copyright cases belies any effort by  
26 plaintiff to allege that the discovery will lead to identification of and service on the Doe  
27 defendants.” *Hard Drive Prods., supra*, at p. 11 (emphasis added).

1 Although the undersigned has not yet run the numbers for Patrick Collins in the  
2 same way as has been done for Malibu Media (333 cases filed, almost half of which are  
3 over 120-days old, against approximately 5,400 Does, and a grand total of four people  
4 served, nationwide, in two cases, as of September 19, 2012) there is little reason to doubt  
5 the numbers are much different. The undersigned challenges Patrick Collins to state under  
6 penalty of perjury in its opposition how many John Does it has named, how many of those  
7 it has served, how many of those were unrepresented, and how many cases it has pursued  
8 beyond default judgment stage? A refusal to answer these questions should speak  
9 volumes.

10 **V. CONCLUSION**

11 Judge McMahon of New York's Southern District aptly concluded her order  
12 severing Does and quashing subpoenas with, "I am second to none in my dismay at the  
13 theft of copyrighted material that occurs every day on the Internet. However, there is a  
14 right way to litigate and a wrong way to litigate, and so far this way strikes me as the  
15 wrong way." *Digital Sins, Inc., supra*, at p. 8. The same can be said here.

16 For all of the foregoing reasons, the Moving Parties respectfully request that the  
17 Court sever all Does other than Doe No. 1 in this action, and in each related action filed by  
18 Malibu Media currently pending before this Court. The Moving Parties also request that  
19 all outstanding subpoenas be quashed for the severed Does, and that Malibu Media be  
20 ordered to comply with Judge Brown's "sensible protocol" in the future.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

DATED: September 21, 2012

Respectfully submitted,

/s/ Morgan E. Pietz

Morgan E. Pietz (Cal. Bar No. 260629)  
THE PIETZ LAW FIRM  
3770 Highland Ave., Ste. 206  
Manhattan Beach, CA 90266  
[mpietz@pietzlawfirm.com](mailto:mpietz@pietzlawfirm.com)  
Telephone: (310) 424-5557  
Facsimile: (310) 546-5301

Attorney for: Putative John Doe "X" in  
3:12-cv-1475-CAB-WMC

**CERTIFICATE OF SERVICE**

I hereby certify that on September 21, 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 21, 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](mailto:mpietz@pietzlawfirm.com)

1 Morgan E. Pietz (SBN 260629)  
THE PIETZ LAW FIRM  
2 3770 Highland Ave., Ste. 206  
Manhattan Beach, CA 90266  
3 [mpietz@pietzlawfirm.com](mailto:mpietz@pietzlawfirm.com)  
Telephone: (310) 424-5557  
4 Facsimile : (310) 546-5301

5 Attorney for: Putative John Doe "X" in 3:12-cv-1475-CAB-WMC

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

9 PATRICK COLLINS, INC., a California  
corporation,

10 Plaintiff,

11 v.

12 JOHN DOES 1 through 12,

13 Defendants.

Case Number: 3:12-cv-1475-CAB-WMC

Assigned to Hon. Cathy Ann Bencivengo<sup>1</sup>  
Referred to Hon. William McCurine, Jr.

14 **DECLARATION OF MORGAN E. PIETZ**

Hearing Date: November 30, 2012  
Hearing Time: 1:30 p.m.  
Hearing Room: Courtroom 2  
Before Judge Bencivengo<sup>2</sup>

15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25 \_\_\_\_\_  
<sup>1</sup> Possible transfer pending per Notice of Related Cases filed by undersigned September 21, 2012.

26  
27 <sup>2</sup> Since severance is normally an issue for the District Judge, this motion has been noticed to the  
28 District Judge. However, since this motion also involves the interrelated issue of the propriety of  
third-party subpoenas, it can also be considered a discovery matter. Movant has no objection to the  
referral of the motion to the Magistrate Judge for a consolidated order and recommendation.





1 sued by a similar company, represented by the same attorneys, called Malibu Media, LLC.  
2 Both Patrick Collins and Malibu Media are a serial copyright infringement plaintiffs.  
3 According to a PACER search I performed on September 20, 2012, since 2011, Patrick  
4 Collins has filed 245 mass copyright infringement actions, nationwide. Please find attached  
5 hereto as Exhibit A a true and correct copy of my search results from this PACER search,  
6 which shows all of Patrick Collins's pending cases in the federal courts as of September 20,  
7 2012. My office staff filled in some additional information for the cases currently pending in  
8 this District. The search term for the party was "Patrick Collins."

9 **(d) Abusive Litigation Tactic Number One: Failure to File Notices of Related**  
10 **Cases**

11 6. Notwithstanding the many similarities between the cases filed by Malibu  
12 Media, as well as the cases filed by plaintiff's counsel on behalf of Patrick Collins, Inc.,  
13 plaintiff's counsel, Ms. Leemore Kushner, generally ignores most courts' Notice of Related  
14 Cases rules. Malibu Media did not file any notices of related cases in this District.  
15 Similarly, it did not file any notices of related cases in the Central District of California, and  
16 it initially refused to file any Notices of Related Cases in the Eastern District of California.  
17 This has resulted in multiple Judges across the State of California being assigned to highly  
18 similar Malibu Media cases. Further, plaintiff's counsel also did not initially file Notices of  
19 Related Cases in the many cases she filed in the Central District of California on behalf of  
20 Patrick Collins, Inc. Ms. Kushner's general policy appears to be to ignore Notice of Related  
21 Cases rules for as long as she and her clients can get away with it.

22 **(e) Abusive Litigation Tactic Number Two: Use of Same Group of Notorious**  
23 **Professional "Negotiators" to Extract Settlements for Alleged Infringement**

24 7. On June 13, 2012, I attempted to contact counsel for Malibu Media, Ms.  
25 Leemore Kushner, via email to ask what its settlement demand for a client Malibu Media  
26 was suing in the Central District of California.

27 8. On June 14, 2012, Ms. Kushner told me via email that the next day, either she  
28 or her client, with whom she authorized me to speak, would be getting back to me with a

1 settlement demand. When nobody called on Friday, I followed up with Ms. Kushner first  
2 thing Monday morning June 18, 2012.

3 9. Later on June 18, 2012, I received a voice message from a woman named  
4 Elizabeth Jones, who called me from a 786 (Miami) area code. In her voice message, Ms.  
5 Jones identified my client's case number and Doe number, and explained that she was given  
6 my information by Ms. Kushner who authorized me to speak with her and that "we handle  
7 the settlement communications."

8 10. I called Elizabeth Jones back later that day, June 18, 2012, and she answered. I  
9 asked her what company she was with and she said "we work with Malibu Media." I asked  
10 her if she was an employee of Malibu Media, and she responded that "we work in relation  
11 with them." I asked her if she worked for an independent company that handled Malibu  
12 Media's settlement communications, and if so, what was the name of her company. She  
13 repeated that "we work with Malibu Media." I asked her to please explain what she meant  
14 by "we" when she said "we work with Malibu Media" because this sentence seemed to  
15 imply that she did not actually work for Malibu Media and was therefore not the "client"  
16 with whom I had been authorized to speak. She responded that it seemed like I was not  
17 really calling because I was serious about a settlement, but that she "handled" Malibu  
18 Media's settlement communications. Later in this conversation, Ms. Jones admitted to me  
19 that she fielded settlement calls from "20 to 30 counsel per day," and when I asked how long  
20 she had been doing this line of work she answered for "a couple years." Based on her  
21 answers during our phone call, as well as my experience in similar copyright infringement  
22 cases, I concluded that Ms. Jones is likely a third party "negotiator" to whom Malibu Media  
23 outsources its collection efforts.

24 11. On Monday June 25, 2012, at 12:05 p.m., Elizabeth Jones called me again to  
25 follow up on our prior discussion. She explained that she understood I had more than one  
26 case pending with Malibu Media and asked me to identify what John Does I was  
27 representing. Before answering, I pressed her again to please clarify what her exact capacity  
28 was in connection with this case. I asked her if she was an attorney, and she said no. After

1 explaining that I did have more than one of these cases, I asked her if I could contact her  
2 about all of them, and did she work for a third party company that handled negotiations for  
3 Malibu Media. This time, she explained that yes she did work for such a company, and that  
4 “we” have a “Joint Sharing Agreement” with “Zero Tolerance, Third Degree, Patrick  
5 Collins, K-Beech, Malibu Media, Raw Films, and Nu-Corp.” I asked her to repeat that so I  
6 could write it down, and she did. She also offered that I could contact her directly to  
7 negotiate for any of those plaintiffs.

8 12. At no time during either of my conversations with Elizabeth Jones, the non-  
9 attorney, third party “negotiator,” did she ever indicate that she considered our conversation  
10 to be confidential or that I should treat it as such. Similarly, I also did not invoke  
11 confidentiality. Neither Ms. Jones nor I ever used the word confidential, or any word like it,  
12 at any point in our two conversations.

13 **(f) Abusive Litigation Tactic Number Three: Material Misrepresentation by**  
14 **the Settlement Negotiator as to the Range of Statutory Damages**

15 13. During my conversation with Elizabeth Jones, Malibu Media’s settlement  
16 negotiator, on June 18, 2012, she told me that Malibu Media’s settlement demand for my  
17 client was \$19,500. She explained that Malibu Media sought “the minimum statutory  
18 damages for each work of \$750 per work,” and that in the case of my client, John Doe No. 5,  
19 there were “a total of 26 registered hits.” At first, I did not realize that what Malibu Media’s  
20 settlement “negotiator” told me is actually incorrect. The actual statutory damage *minimum*,  
21 for innocent infringement, is \$200 per work. 17 U.S.C. § 504(c)(2). Eventually, it dawned  
22 on me that this statement was incorrect; however, I doubt that a non-lawyer speaking to  
23 “Elizabeth Jones,” or even a lawyer unfamiliar with copyright law, would catch this small  
24 but important misrepresentation.

25 **(g) Abusive Litigation Tactic Number Four: Use of the Court’s Subpoena**  
26 **Power to Try and Collect on Claims That Are Not Alleged in the**  
27 **Complaint and Go Beyond the Scope of this Litigation**  
28

1           14. After Ms. Jones explained Malibu Media's settlement demand to me during  
2 our phone conversation on June 18, 2012, wherein she said my client was liable for "a total  
3 of 26 registered hits," I told her that this did not sound right to me. I explained that I thought  
4 my client was alleged to have infringed less works of authorship than 26. So I pulled the  
5 complaint while we were on the phone together, confirmed, and then explained to Ms. Jones  
6 that, per Exhibit C of the complaint, my client was alleged to have infringed on only 15  
7 copyrighted works. I further explained that by my math, applying the \$750 "minimum"  
8 figure, worked out to \$11,250, not \$19,500. At this point, I asked Ms. Jones to please double  
9 check that to make sure that she had the right case and Doe number, because I could not  
10 understand why the demand was \$19,500, and I thought perhaps she had my client mistaken  
11 with someone else.

12           15. Ms. Jones confirmed that she was sure we were talking about the correct case  
13 and Doe, and confirmed the \$19,500 figure was not a mistake. She explained to me that  
14 although the complaint alleged a siterip for 15 registered works, on April 1, 2012, *according*  
15 *to her records*, there had been "a second siterip 2 days later" for 11 more works. ***I explained***  
16 ***that I was trying to settle the claims that were actually alleged in the Complaint***, and that  
17 according to Exhibit C of the Complaint, my client had allegedly infringed 15 works of  
18 authorship, not 26. She again reiterated that according to her records, there was a "second  
19 siterip" on April 3, 2012, and that because of this, the settlement demand was going to be  
20 \$19,500 to settle Malibu Media's claims, and that she "could send me a declaration" about  
21 the second siterip. I then asked her if any settlement had to be all-or-nothing, meaning was it  
22 possible for my client to pay \$11,250 to settle only those claims actually alleged in the  
23 complaint? She responded that "it is all or nothing" and that if my client wanted to settle  
24 he/she would have to pay the full \$19,500. At this point, I said that since I didn't know  
25 anything about the "second siterip" not alleged in the complaint, it was hard for me to know  
26 what to make of this demand, and I asked her to please send me the declaration she had  
27 mentioned. She said she would do so.

28

1           16. During my conversation with Elizabeth Jones, Malibu Media's negotiator, on  
2 June 18, 2012, I also asked her what the next steps would be if my client did not pay the  
3 \$19,500 demanded for settlement. She said that the next step would be "service," and that  
4 "as the case goes on, the settlement number will go up." She further explained that if "our  
5 side has to do more work on the case," the value will go up. I asked her to explain what she  
6 meant by the next step being service, and she explained that after information is disclosed  
7 they would be sending letters asking whether we would accept service. I replied that it was  
8 my understanding that Malibu Media had filed over 200 lawsuits, against thousands of John  
9 Doe defendants, and that it had served essentially none of them, so I asked her if she had any  
10 experience settling claims with defendants who had actually been served. She responded  
11 that she *had* accepted settlement for defendants who had been served. I asked her how  
12 many, to which she responded "I am not the one on trial here." Then I asked her whether she  
13 was new to the company and if she really knew what she was doing, which is when she  
14 explained to me that she fields calls from "20 to 30 counsel per day" and, when prompted,  
15 explained that she had been doing this for "a couple years." I asked her if she could tell me,  
16 based on her extensive experience, out of how many cases she had handled, had she accepted  
17 a settlement from someone who had already been served with a complaint. She responded  
18 "every case is different."

19           17. Before hanging up with Elizabeth Jones, I reiterated that I would like her to  
20 send me the declaration she had mentioned about the "second siterip." I asked her how long  
21 it would take her to send me this declaration, and she said that it would be sent to me, by Ms.  
22 Kushner, within 24-48 hours. I asked her for her email address so I could follow up, and she  
23 insisted that any email contact should go through Leemore Kushner. Then I thanked her for  
24 her time and hung up.

25           18. After waiting the requisite 24-48 hours and not receiving the Declaration  
26 Elizabeth Jones had promised me, I emailed Plaintiff's counsel Leemore Kushner to follow  
27 up. Attached hereto as Exhibit B is a true and correct copy of the "Declaration" that was  
28 sent to me by Ms. Kushner, along with cover email. This Declaration, which was executed

1 by Malibu Media’s technical expert, purports to provide details about the “second siterip,”  
2 which is not alleged in the complaint but which supposedly occurred on April 3, 2012. For  
3 reference, the complaint in this case, 12-cv-3614, was filed on April 26, 2012.

4 19. Ms. Kushner has repeated this tactic with respect to other Does sued by Malibu  
5 Media, and with respect to other Does sued by Patrick Collins. On August 10, 2012, I  
6 contacted Ms. Kushner regarding my client, putative John Doe No. 7 in C.D. Cal. Case No.  
7 12-cv-5268, who, according to the complaint, downloaded a single copyrighted work owned  
8 by Patrick Collins, called *Anal Students*, on 4/11/12. When we discussed settlement, Ms.  
9 Kushner insisted that any settlement would have to also compensate Patrick Collins for the  
10 additional infringements, of additional works, which were “logged” on subsequent dates. In  
11 that case, C.D. Cal. Case No. 12-cv-5268, the *complaint* alleges that my client, putative Doe  
12 No. 7, downloaded a single work—*Anal Students*—on 4/11/12. However, in order to settle  
13 the case, Ms. Kushner insisted that “The settlement demand for this Doe is [REDACTED]  
14 for his/her infringement of three of Patrick Collins' works:

15 04/11/2012 10:00:09 | Anal Students

16 06/18/2012 07:56:29 | Performers of the Year 2012

17 04/30/2012 06:28:30 | Asa Akira Is Insatiable #2.”

18 It is significant that the infringement of the second two titles, which are the subject of other  
19 lawsuits filed by Ms. Kushner, is *not alleged in the complaint* in 12-5268. Notably, when  
20 the Court granted early discovery in that action, as many other Courts have done, it ordered  
21 that “Patrick Collins, Inc. may only use the information disclosed for the sole purpose of  
22 protecting its rights in pursuing this litigation.” 12-5268, Dkt. No. 7, p. 5. Taking settlement  
23 demands beyond the scope of what is actually alleged in the complaint—which appears to be  
24 a routine practice for Ms. Kushner’s office—would appear to, at the very least, come  
25 perilously close to violating this condition of the Court’s order.<sup>3</sup>

26 \_\_\_\_\_  
27 <sup>3</sup> Another example of this same pattern occurred on July 18, 2012. I emailed Ms. Kushner regarding  
28 a settlement for a client sued by Malibu Media in C.D. Cal. Case No. 12-650. The complaint alleged  
a person using my client’s I.P. address downloaded one movie. However, Ms. Kushner insisted that  
any settlement would have to be for seven movies. As in other cases, the order authorizing early

1 **(h) Abusive Litigation Tactic Number Five: Overbroad Subpoena Seeking**  
2 **Phone Numbers and Emails**

3 20. On May 1, 2012, Magistrate Brown, of the Eastern District of New York,  
4 issued a report and recommendation that was specifically addressed to Malibu Media. In the  
5 discovery order part of the report, Judge Brown directed that “Under no circumstances are  
6 plaintiffs permitted to seek or obtain the telephone numbers or email addresses of these  
7 individuals.” The plaintiffs to whom Judge Brown was referring specifically include Malibu  
8 Media.

9 21. Three days later, on May 4, 2012, Malibu Media filed its request for early  
10 discovery in C.D. Cal. Case NO. 12-cv-3614, seeking to obtain by subpoena the telephone  
11 numbers and email addresses of John Does who allegedly reside in the Central District of  
12 California. Similarly, in the Southern District, Ms. Kushner also spent much of mid-May  
13 filing requests for early discovery which sought information Malibu Media had been  
14 specifically ordered not to request anymore. *E.g.*, S.D. Cal. Case No. 12-cv-1135, Dkt. No.  
15 4, Motion for Discovery for Leave to Serve Third Party Subpoenas Prior to a Rule 26(f)  
16 Conference, filed May 15, 2012. Similarly, Ms. Kushner has sought the same information  
17 from the Courts of this District, subsequent to Judge Brown’s order. Some Judges, notably  
18 Judge Bartick in a Malibu Media case, have, however, refused to allow the subpoenas to seek  
19 telephone and email address information.

20 **(i) Abusive Litigation Tactic Number Six: Malibu Media and Patrick Collins’**  
21 **History of Never Serving Any John Does**

22 22. As of mid-July, 2012, I had filed at least four motions challenging Malibu  
23 Media to disclose, under penalty of perjury, how many John Does it has served nationwide.

24  
25  
26 discovery in that case—which was subsequently vacated—required that “Plaintiff, Malibu Media,  
27 LLC, may only use the information disclosed for the sole purpose of protecting its rights in pursuing  
28 this litigation;”. C.D. Cal. Case No. 8:12-cv-650, Dkt. No. 7, p. 6:26-27. It seems clear that Ms.  
Kushner is using the subpoenas to try and collect on claims that go well beyond the four corners of  
the complaints.

1 However, until early September, 2012, Malibu Media refused to answer this question, in any  
2 forum.

3 23. Accordingly, on July 17, 2012, I endeavored to try and answer this question on  
4 my own. To begin this process, I ran an updated search of all cases Malibu Media has filed  
5 nationwide on PACER and exported the results as a spreadsheet. As of July 17, 2012, this  
6 number had risen to 237 cases. After sorting the data by date filed, I highlighted on the  
7 spreadsheet the 35 cases that were over 120-days old as of July 17, 2012. I then directed my  
8 staff to pull the docket reports for each of these 35 cases, and I reviewed each one of dockets  
9 myself, filling in the final two columns on the spreadsheet with my results..

10 24. As of July, 16, 2012, Malibu Media had not formally served a single John Doe  
11 defendant in any of the 35 cases it has filed that were at least 120 days old on that date. In  
12 most cases, Malibu Media: (i) voluntarily dismissed remaining John Does (meaning those  
13 who had not already settled) *without* prejudice at or near the service deadline; (ii) sought  
14 leave of Court for an extension of time for service, or simply ignored the service deadline  
15 altogether; or (iii) in two cases, Malibu Media simply dismissed the case without prejudice  
16 prior to even requesting early discovery.

17 25. In a reply brief Ms. Kushner filed in the Central District of California on  
18 September 10, 2012, for the first time that I am aware of, Malibu Media has addressed, albeit  
19 in misleading fashion and not under penalty of perjury, the question of how many people has  
20 it actually served nationwide. C.D. Cal. Case No. 2:12-cv-03614-RGK-SS, Dkt. No. 33,  
21 Filed 09/10/12. In my opposition to Malibu Media's Renewed Motion for Leave to Issue  
22 Third Party Subpoenas to ISPs Prior to a Rule 26(f) conference, I had argued that Malibu  
23 Media's subpoenas are not "very likely" or even "reasonably likely" to lead to identification  
24 and service of a complaint on a proper defendant, given that Malibu Media basically never  
25 serves anyone. Malibu Media responded that it "has sued numerous individual defendants  
26 for copyright infringement in courts throughout the country, and has every intention of  
27 *litigating* these cases as well." *Id.* (emphasis added). Notably, Ms. Kushner does not say  
28 that Malibu Media has every intention of actually "serving" anybody. In support of this



1 statement, Ms. Kushner dropped a footnote, “e.g.” citing to 18 cases from across the country.

2 The cases Ms. Kushner cited are:

- 3 1. Malibu Media LLC v. Southgate, 3:12-cv-00369-DMS-WMC (S.D.Cal.);
- 4 2. Malibu Media, LLC v. Abrahamzadez, 1:12-cv-01200-ESH (D.D.C.);
- 5 3. Malibu Media LLC v. Bochnak, 1:12-cv-07030 (N.D.Ill.);
- 6 4. Malibu Media LLC v. Siembida, 1:12-cv-07031 (N.D.Ill.);
- 7 5. Malibu Media LLC v. Vancamp, 2:12-cv-13887-PDB-DRG (E.D.Mich.);
- 8 6. Malibu Media LLC v. Fantalis, 1:12-cv-00886-MEH (D.Colo.);
- 9 7. Malibu Media LLC v. Xu, 1:12-cv-1866-MSK-MEH (D.Colo.);
- 10 8. Malibu Media LLC v. Allison, 1:12-cv-1867-MSK-MEH (D.Colo.);
- 11 9. Malibu Media LLC v. Ramsey, 1:12-cv-1868-MSK-MEH (D.Colo.);
- 12 10. Malibu Media LLC v. Tipton, 1:12-cv-1869-MSK-MEH (D.Colo.);
- 13 11. Malibu Media LLC v. Kahrs, 1:12-cv-1870-MSK-MEH (D.Colo.);
- 14 12. Malibu Media LLC v. Domindo, 1:12-cv-1871-MSK-MEH (D.Colo.);
- 15 13. Malibu Media LLC v. Peng, 1:12-cv-1872-MSK-MEH (D.Colo.);
- 16 14. Malibu Media LLC v. Maness, 1:12-cv-1873-MSK-MEH (D.Colo.);
- 17 15. Malibu Media LLC v. Nelson, 1:12-cv-1875-MSK-MEH (D.Colo.);
- 18 16. Malibu Media LLC v. Geary, 1:12-cv-1876 MSK-MEH (D.Colo.);
- 19 17. Malibu Media LLC v. Detweiler, 2:12-cv-4253-ER (E.D.Pa.);
- 20 18. Malibu Media LLC v. Johnston, 2:12-cv-4200-JHS (E.D.Pa.).

21 26. Curious, I had my office staff pull the docket for all 18 of these cases from  
22 PACER, and we compiled them. I then reviewed each docket. Based on my review of these  
23 dockets, and assuming these are the only cases where Malibu Media has served anyone, it  
24 appears that, *to date, nationwide, out of the nearly 300 cases it has filed against nearly*  
25 *5,000 John Does, Malibu Media can point to having served a grand total four people, in*  
26 *two cases.* Specifically, out of the 18 cases Malibu Media cites as evidence that it is serious  
27 about “litigating,” and as shown in Appendix 2, it appears Malibu Media served three people  
28 (Jeff Fantails, Bruce Dunn, and Stephen Deus) in Case No. 12-cv-0886 currently pending in  
the District of Colorado, and one person (Gan Southgate) in Case No. 12-cv-369 currently  
pending in the Southern District of California. All the rest of the cases are instances where  
“Malibu Media” has followed through on its threat to “name” someone and trash their  
reputation, but has not yet actually served anyone and subjected themselves to a counter-  
claim for abuse of process. Based on the most recent nationwide case tally I ran from  
PACER on August 14, 2012 (Malibu Media has undoubtedly filed more cases since then) I

1 calculated that Malibu Media had sued approximately 4,646 people, in 286 mass  
2 infringement cases. Thus, it would appear that Malibu Media's nationwide service of  
3 process average is an infinitesimal 0.04%. When I looked at the spreadsheet another way, it  
4 showed that of those 287+ cases nationwide, 139 cases, or not quite half, were already over  
5 120 days old as of September 13, 2012. And as of that date, Malibu Media appears to have  
6 served 4 people.

7 27. My office has yet to calculate similar national numbers for Patrick Collins.  
8 However, I have performed a cursory review the dockets in each of the terminated cases filed  
9 by Patrick Collins in both the Southern District of California and the Central District of  
10 California. It appears the same pattern holds. Generally, after seeking early discovery, and  
11 sometimes after requesting extensions of the service deadline, at or near the service deadline,  
12 the plaintiff simply dismisses most, and eventually all Does (other than those who have  
13 already "settled") without prejudice. There are a total of 11 prior cases filed by Patrick  
14 Collins in the Southern and Central Districts of California, terminated as of this writing, and  
15 it appears that in no case have they served anybody.

16  
17 I declare under penalty of perjury under the laws of the United States of America that  
18 the foregoing is true and correct.

19  
20 Executed on September 21, 2012, at Manhattan Beach, California.

21  
22 /s/ Morgan E. Pietz

23 Morgan E. Pietz, Declarant  
24  
25  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

I hereby certify that on September 21, 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 21, 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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

	party_name	court_iccs_date_fics_date_tc	case_no	c_case_title	Movie	Hash File
1	Patrick Collins Incor	azdce	8/15/11	5/22/12	2:2011-cv-01602	h Patrick Collins Incorporated v. Unknown Party et al
2	Patrick Collins Incor	azdce	3/31/12		2:2012-cv-00687	h Patrick Collins Incorporated v. Unknown Parties
3	Patrick Collins, Inc.	caedce	3/18/11	9/30/11	2:2011-cv-02360	h Patrick Collins, Inc. v. John Does 1-8
4	Patrick Collins Inc	caedce	4/1/11	9/30/11	2:2011-cv-02796	h Patrick Collins Inc v. John Does
5	Patrick Collins, Inc.	caedce	4/1/11	12/13/11	2:2011-cv-02797	h Patrick Collins, Inc. v. John Does 1-10
6	Patrick Collins Inc	caedce	4/1/11	9/30/11	2:2011-cv-02798	h Patrick Collins Inc v. John Does
7	Patrick Collins Inc	caedce	4/1/11	9/30/11	2:2011-cv-02799	h Patrick Collins Inc v. John Does
8	Patrick Collins Inc	caedce	4/1/11	9/30/11	2:2011-cv-02802	h Patrick Collins Inc v. John Does
9	Patrick Collins Inc	caedce	4/1/11	9/30/11	2:2011-cv-02803	h Patrick Collins Inc v. John Does
10	Patrick Collins Inc	caedce	8/8/11	2/22/12	8:2011-cv-01180	h Patrick Collins Inc v. John Does 1-10
11	Patrick Collins Inc	caedce	2/27/12	6/26/12	2:2012-cv-01645	h Patrick Collins Inc v. John Does
12	Patrick Collins Inc	caedce	6/18/12		8:2012-cv-00975	h Patrick Collins Inc v. John Does
13	Patrick Collins Inc	caedce	6/18/12		8:2012-cv-00977	h Patrick Collins Inc v. John Does
14	Patrick Collins Inc	caedce	6/18/12		2:2012-cv-05267	h Patrick Collins Inc v. John Does
15	Patrick Collins Inc	caedce	6/18/12		2:2012-cv-05268	h Patrick Collins Inc v. John Does
16	Patrick Collins Inc	caedce	6/18/12		2:2012-cv-05269	h Patrick Collins Inc v. John Does
17	Patrick Collins, Inc.	caedce	5/10/12		2:2012-cv-01259	h Patrick Collins, Inc. v. Unknown
18	Patrick Collins, Inc.	caedce	5/29/12		2:2012-cv-01451	h Patrick Collins, Inc. v. Unknown
19	Patrick Collins, Inc.	caedce	5/29/12		2:2012-cv-01452	h Patrick Collins, Inc. v. Unknown
20	Patrick Collins, Inc.	caedce	5/29/12		2:2012-cv-01453	h Patrick Collins, Inc. v. Unknown
21	Patrick Collins, Inc.	caedce	5/29/12		2:2012-cv-01458	h Patrick Collins, Inc. v. Unknown
22	Patrick Collins, Inc.	caedce	7/31/12		2:2012-cv-02003	h Patrick Collins, Inc. v. Unknown
23	Patrick Collins, Inc.	caedce	7/31/12		2:2012-cv-02009	h Patrick Collins, Inc. v. Unknown
24	Patrick Collins, Inc.	caedce	7/31/12		2:2012-cv-02010	h Patrick Collins, Inc. v. Unknown
25	Patrick Collins, Inc.	candce	10/4/10	8/29/11	4:2010-cv-04468	h Patrick Collins, Inc. v. Does 1 - 1219
26	Patrick Collins, Inc.	candce	12/28/10	11/4/11	4:2010-cv-05886	h Patrick Collins, Inc. v. Does 1-3757
27	Patrick Collins, Inc.	candce	6/7/11	12/15/11	3:2011-cv-02766	h Patrick Collins, Inc. v. Does 1-2590
28	Patrick Collins, Inc.	candce	7/17/12		5:2012-cv-03742	h Patrick Collins, Inc. v. Does 1-93, inclusive
29	Patrick Collins, Inc.	casdce	9/15/11	12/8/11	3:2011-cv-02135	h Patrick Collins, Inc. v. John Does 1-4 Cuties 2
30	Patrick Collins, Inc.	casdce	9/15/11	7/27/12	3:2011-cv-02143	h Patrick Collins, Inc. v. John Does Gangbanged
31	Patrick Collins, Inc.	casdce	2/9/12	6/11/12	3:2012-cv-00354	h Patrick Collins, Inc. v. Does Asa Akira Is Insatiable 2
32	Patrick Collins, Inc.	casdce	6/6/12		3:2012-cv-01371-JAH-BGS	h Patrick Collins, Inc. v. John Does 1 tl Busy Construction GFB9554382FI
33	Patrick Collins, Inc.	casdce	6/6/12		3:2012-cv-01373-MMA-BLM	h Patrick Collins, Inc. v. John Does 1 tl DP Fanatic ED830E862CB
34	Patrick Collins, Inc.	casdce	6/13/12		3:2012-cv-01436-H-MDD	h Patrick Collins, Inc. v. John Does 1 tl Performers of the Ye. DDD535C0C54

35	Patrick Collins, Inc.	casdce	6/13/12	3:2012-cv-01437-BTM-MDD	h Patrick Collins, Inc. v. John Doe, et a Battle of the Asses 4	64E428E807C
36	Patrick Collins, Inc.	casdce	6/18/12	3:2012-cv-01474-WQH-DHB	h Patrick Collins, Inc. v. John Does 1 tl Best New Starlets 20	58046BCCA81
37	Patrick Collins, Inc.	casdce	6/18/12	3:2012-cv-01475-CAB-WMC	h Patrick Collins, Inc. v. John Does 1 tl Anal Students	2444E159640
38	Patrick Collins, Inc.	codce	6/23/11	10/27/11	1:2011-cv-01653	h K-Beech, Inc. v. John Does 1-35
39	Patrick Collins, Inc.	codce	6/23/11	10/19/11	1:2011-cv-01654	h Patrick Collins, Inc. v. John Does 1-25
40	Patrick Collins, Inc.	codce	6/23/11	4/3/12	1:2011-cv-01655	h K-Beech, Inc. v. John Does 1-20
41	Patrick Collins, Inc.	codce	6/23/11	10/25/11	1:2011-cv-01656	h Patrick Collins, Inc. v. John Does 1-26
42	Patrick Collins, Inc.	codce	8/18/11	3/6/12	1:2011-cv-02163	h Patrick Collins, Inc. v. John Does 1-33
43	Patrick Collins, Inc.	codce	8/18/11	4/4/12	1:2011-cv-02164	h Patrick Collins, Inc. v. John Does 1-15
44	Patrick Collins, Inc.	codce	8/18/11	10/19/11	1:2011-cv-02165	h Patrick Collins, Inc. et al v. John Doe
45	Patrick Collins, Inc.	codce	10/17/11	1/25/12	1:2011-cv-02701	h Patrick Collins, Inc. v. John Doe
46	Patrick Collins, Inc.	codce	10/17/11	2/1/12	1:2011-cv-02702	h Patrick Collins, Inc. v. Hansen
47	Patrick Collins, Inc.	codce	10/17/11	1/10/12	1:2011-cv-02703	h Patrick Collins, Inc. v. John Doe
48	Patrick Collins, Inc.	codce	10/17/11	2/14/12	1:2011-cv-02704	h Patrick Collins, Inc. v. John Doe
49	Patrick Collins, Inc.	codce	2/15/12	6/14/12	1:2012-cv-00404	h Patrick Collins, Inc. v. John Does 1-11
50	Patrick Collins, Inc.	codce	4/3/12		1:2012-cv-00848	h Patrick Collins, Inc. v. John Does 1-12
51	Patrick Collins, Inc.	codce	4/3/12		1:2012-cv-00849	h Patrick Collins, Inc. v. John Does 1-6
52	Patrick Collins, Inc.	codce	4/4/12	8/2/12	1:2012-cv-00887	h Patrick Collins, Inc., et al., v. Boussetta, et al.,
53	Patrick Collins, Inc.	codce	5/30/12	8/6/12	1:2012-cv-01409	h Patrick Collins, Inc. v. John Does 1-10
54	Patrick Collins, Inc.	codce	5/30/12		1:2012-cv-01410	h Patrick Collins, Inc. v. John Does 1-12
55	Patrick Collins, Inc.	codce	5/30/12		1:2012-cv-01411	h Patrick Collins, Inc. v. John Does 1-3, 5, and 7-10
56	Patrick Collins, Inc.	codce	5/30/12		1:2012-cv-01412	h Patrick Collins, Inc. v. John Does 1-10
57	Patrick Collins, Inc.	codce	6/24/12		1:2012-cv-01641	h Patrick Collins, Inc. v. John Does 1-23
58	Patrick Collins, Inc.	codce	6/24/12		1:2012-cv-01642	h Patrick Collins, Inc. v. John Does 1-32
59	Patrick Collins	codce	6/24/12		1:2012-cv-01643	h Patrick Collins v. John Does 1-18
60	Patrick Collins, Inc.	codce	7/27/12		1:2012-cv-01955	h Patrick Collins, Inc. v. John Does 1-27
61	Patrick Collins, Inc.	codce	7/27/12		1:2012-cv-01956	h Patrick Collins, Inc. v. John Does 1-12
62	PATRICK COLLINS, I'	dcdee	1/10/11		1:2011-cv-00058	h PATRICK COLLINS, INC. v. DOES
63	PATRICK COLLINS, I'	dcdee	2/29/12	3/8/12	1:2012-cv-00325	h PATRICK COLLINS, INC. et al v. DOE
64	PATRICK COLLINS, I'	dcdee	5/13/12		1:2012-cv-00767	h PATRICK COLLINS, INC. v. DOES 1-11
65	PATRICK COLLINS, I'	dcdee	5/13/12		1:2012-cv-00768	h PATRICK COLLINS, INC. v. DOES 1-5
66	PATRICK COLLINS, I'	dcdee	6/14/12		1:2012-cv-00971	h PATRICK COLLINS, INC. v JOHN DOES 1-6
67	PATRICK COLLINS, I'	dcdee	6/14/12		1:2012-cv-00972	h MALIBU MEDIA, LLC v. DOES, 1-5
68	PATRICK COLLINS, I'	dcdee	6/23/12		1:2012-cv-01039	h PATRICK COLLINS, INC. v. Does 1-11
69	PATRICK COLLINS, I'	dcdee	6/23/12		1:2012-cv-01040	h PATRICK COLLINS, INC. v. DOES 1-11

70	PATRICK COLLINS, I <sup>h</sup> dcdce	6/23/12	1:2012-cv-01041	h PATRICK COLLINS, INC. v. DOES 1-7
71	PATRICK COLLINS, I <sup>h</sup> dcdce	7/22/12	1:2012-cv-01198	h PATRICK COLLINS, INC. v. JIM
72	PATRICK COLLINS, I <sup>h</sup> dcdce	7/26/12	1:2012-cv-01242	h PATRICK COLLINS, INC. v. DOES 1-7
73	PATRICK COLLINS, I <sup>h</sup> dcdce	8/11/12	1:2012-cv-01328	h PATRICK COLLINS, INC. v. Does 1-6
74	PATRICK COLLINS, I <sup>h</sup> dcdce	8/22/12	1:2012-cv-01379	h PATRICK COLLINS, INC. v. DOES 1-7
75	PATRICK COLLINS, I <sup>h</sup> dcdce	8/23/12	1:2012-cv-01391	h PATRICK COLLINS, INC. v. DOES 1-11
76	Patrick Collins, Inc. flmdce	3/18/11	10/12/11 2:2011-cv-00153	h Patrick Collins, Inc. v. John Does 1-5
77	Patrick Collins, Inc. flmdce	3/18/11	8/31/11 6:2011-cv-00415	h Patrick Collins, Inc. v. John Does 1-4
78	Patrick Collins, Inc. flmdce	3/18/11	10/26/11 6:2011-cv-00417	h Patrick Collins, Inc. v. John Does 1-4
79	Patrick Collins, Inc. flmdce	3/18/11	10/14/11 8:2011-cv-00570	h Patrick Collins, Inc. v. Does 1-6
80	Patrick Collins, Inc. flmdce	3/18/11	8/29/11 8:2011-cv-00571	h Patrick Collins, Inc. v. Does
81	Patrick Collins, Inc. flmdce	3/18/11	8/29/11 8:2011-cv-00573	h Patrick Collins, Inc. v. Does 1-4
82	Patrick Collins, Inc. flmdce	3/18/11	10/18/11 8:2011-cv-00574	h Patrick Collins, Inc. v. Does 1-4
83	Patrick Collins, Inc. flmdce	3/21/11	8/30/11 6:2011-cv-00428	h Patrick Collins, Inc. v. John Does 1-7
84	Patrick Collins, Inc. flmdce	6/24/11	6/28/12 2:2011-cv-00358	h Patrick Collins, Inc. v. John Does 1-57
85	Patrick Collins, Inc. flmdce	3/28/12	5/14/12 6:2012-cv-00477	h Patrick Collins, Inc. v. Does 1-16
86	Patrick Collins, Inc. flmdce	3/28/12	8/6/12 6:2012-cv-00478	h Patrick Collins, Inc. v. Herron et al
87	Patrick Collins, Inc. flmdce	5/15/12	3:2012-cv-00574	h Patrick Collins, Inc. v. John Does 1-32
88	Patrick Collins, Inc. flmdce	7/26/12	2:2012-cv-00402	h Patrick Collins, Inc. v. Does 1-31
89	Patrick Collins, Inc. flmdce	7/26/12	8:2012-cv-01668	h Patrick Collins, Inc. v. John Does
90	Patrick Collins, Inc. flmdce	8/6/12	8:2012-cv-01769	h Patrick Collins, Inc. v. John Does 1-32
91	Patrick Collins, Inc. flmdce	9/19/12	2:2012-cv-00521	h Patrick Collins, Inc. v. Does 1-43
92	PATRICK COLLINS, I <sup>h</sup> flndce	1/5/12	4/3/12 4:2012-cv-00007	h PATRICK COLLINS, INC. v. DOES 1-85
93	PATRICK COLLINS, I <sup>h</sup> flndce	1/28/12	4/3/12 1:2012-cv-00018	h PATRICK COLLINS, INC. v. DOES
94	PATRICK COLLINS IN flndce	7/8/12	1:2012-cv-00150	h PATRICK COLLINS INC v. DOES
95	PATRICK COLLINS IN flndce	7/8/12	3:2012-cv-00339	h PATRICK COLLINS INC v. DOES
96	PATRICK COLLINS IN flndce	7/8/12	3:2012-cv-00340	h PATRICK COLLINS INC v. DOE
97	PATRICK COLLINS IN flndce	7/11/12	1:2012-cv-00155	h PATRICK COLLINS INC v. DOES
98	Patrick Collins, Inc. flsdce	3/16/11	9/15/11 2:2011-cv-14103	h Patrick Collins, Inc. v. Does 1-7
99	Patrick Collins, Inc. flsdce	3/16/11	9/16/11 2:2011-cv-14104	h Patrick Collins, Inc. v. Does 1-4
100	Patrick Collins, Inc. flsdce	3/16/11	3/16/11 1:2011-cv-20904	h Patrick Collins, Inc.
101	Patrick Collins, Inc. flsdce	3/16/11	9/15/11 1:2011-cv-20905	h Patrick Collins, Inc. v. Does 1-12
102	Patrick Collins, Inc. flsdce	3/16/11	9/30/11 1:2011-cv-20909	h Patrick Collins, Inc. v. Does 1-5
103	Patrick Collins, Inc. flsdce	3/16/11	7/15/11 1:2011-cv-20912	h Patrick Collins, Inc. v. Does 1-6
104	Patrick Collins, Inc. flsdce	3/16/11	12/9/11 1:2011-cv-20914	h Patrick Collins, Inc. v. Does 1-6

105	Patrick Collins, Inc.	flsdce	3/16/11	11/30/11	0:2011-cv-60568	h Patrick Collins, Inc. v. Does 1-6
106	Patrick Collins, Inc.	flsdce	3/16/11	12/6/11	0:2011-cv-60570	h Patrick Collins, Inc. v. Does 1-18
107	Patrick Collins, Inc.	flsdce	3/16/11	1/4/12	0:2011-cv-60571	h Patrick Collins, Inc. v. Does 1-4
108	Patrick Collins, Inc.	flsdce	5/11/12	9/17/12	9:2012-cv-80513	h Patrick Collins, Inc. v. John Does 1-8
109	Patrick Collins, Inc.	gandce	9/1/11		1:2011-cv-02940	h Patrick Collins, Inc. v. Does 1-35
110	Patrick Collins, Inc.	ilcdce	6/14/12		3:2012-cv-03161	h Patrick Collins, Inc. v. John Does 1-7
111	Patrick Collins, Inc.	ilcdce	8/11/12		1:2012-cv-01281	h Patrick Collins, Inc. v. John Does
112	Patrick Collins, Inc.	ilndce	8/21/12		1:2012-cv-06678	h Patrick Collins, Inc. v. John Does 1-47
113	Patrick Collins, Inc.	ilndce	8/21/12		1:2012-cv-06679	h Patrick Collins Inc v. Does 1-11
114	Patrick Collins Inc	innndce	7/30/12		4:2012-cv-00043	h Patrick Collins Inc v. Does 1-16
115	Patrick Collins Inc	innndce	9/11/12		2:2012-cv-00370	h PATRICK COLLINS, INC. v. DOES 1-13
116	PATRICK COLLINS, I <sup>n</sup> insdce		6/18/12		1:2012-cv-00844	h PATRICK COLLINS, INC. v. JOHN DOE 1-10
117	PATRICK COLLINS, I <sup>n</sup> insdce		9/11/12		1:2012-cv-01291	h Patrick Collins, Inc. v. Does 1-2,590
118	Patrick Collins, Inc.	ksdce	11/9/11	12/20/11	2:2011-mc-00231	h Barker v. Patrick Collins Inc. et al
119	Patrick Collins Inc.	kywdce	7/5/12		3:2012-cv-00372	h Patrick Collins, Inc. v. Does 1 - 79
120	Patrick Collins, Inc.	madce	3/23/12		1:2012-cv-10532	h Patrick Collins, Inc. v. Does 1 - 45
121	Patrick Collins, Inc.	madce	3/23/12		1:2012-cv-10537	h Patrick Collins, Inc. v. Does 1 - 38
122	Patrick Collins, Inc.	madce	4/28/12		1:2012-cv-10756	h Patrick Collins, Inc. v. Does 1 - 33
123	Patrick Collins, Inc.	madce	4/28/12		1:2012-cv-10757	h Patrick Collins, Inc. v. Does 1 - 36
124	Patrick Collins, Inc.	madce	4/28/12		1:2012-cv-10758	h Patrick Collins, Inc. v. Does 1 - 30
125	Patrick Collins, Inc.	madce	4/28/12		1:2012-cv-10759	h Patrick Collins, Inc. v. John Does 1-22
126	Patrick Collins, Inc.	mddce	6/28/11	7/11/12	8:2011-cv-01772	h Patrick Collins, Inc. v. John Does 1-14
127	Patrick Collins, Inc.	mddce	6/28/11	2/10/12	8:2011-cv-01773	h Patrick Collins, Inc. v. John Does 1-17
128	Patrick Collins, Inc.	mddce	6/28/11	2/7/12	8:2011-cv-01775	h Patrick Collins, Inc. v. John Does 1-11
129	Patrick Collins, Inc.	mddce	6/28/11	2/23/12	8:2011-cv-01776	h Patrick Collins, Inc. v. Does 1 - 44
130	Patrick Collins, Inc.	mddce	1/3/12	4/11/12	8:2012-cv-00020	h Patrick Collins, Inc. v. Anna R. Perez
131	Patrick Collins, Inc.	mddce	1/10/12		8:2012-cv-00087	h Patrick Collins, Inc. v. Ginger Vagnier
132	Patrick Collins, Inc.	mddce	1/10/12		1:2012-cv-00091	h Patrick Collins, Inc. v. Does 1-39
133	Patrick Collins, Inc.	mddce	1/10/12	6/6/12	8:2012-cv-00093	h Patrick Collins, Inc. v. Does 1-10
134	Patrick Collins, Inc.	mddce	1/10/12		8:2012-cv-00094	h Patrick Collins, Inc. v. Does 1-7
135	Patrick Collins, Inc.	mddce	1/10/12		8:2012-cv-00095	h Patrick Collins, Inc. v. John Doe #2
136	Patrick Collins, Inc.	mddce	1/10/12	6/26/12	8:2012-cv-00096	h Patrick Collins, Inc. v. John Does 1-7
137	Patrick Collins, Inc.	mddce	1/10/12	5/23/12	8:2012-cv-00097	h Patrick Collins, Inc. v. Does 1 - 60
138	Patrick Collins, Inc.	mddce	2/6/12	5/30/12	8:2012-cv-00346	h Patrick Collins, Inc. v. Does 1 - 70
139	Patrick Collins, Inc.	mddce	2/6/12	5/8/12	8:2012-cv-00350	



140	Patrick Collins, Inc.	mddce	4/19/12	8/17/12	8:2012-cv-01204	h Patrick Collins, Inc. v. John Does 1-11
141	Patrick Collins, Inc.	mddce	4/19/12	8/28/12	8:2012-cv-01205	h Patrick Collins, Inc v. John Does 1-10
142	Patrick Collins, Inc.	mddce	4/19/12	8/13/12	8:2012-cv-01206	h Patrick Collins, Inc v. John Does 1-10
143	Patrick Collins, Inc.	mddce	4/27/12		8:2012-cv-01294	h Patrick Collins, Inc. v. Does #1
144	Patrick Collins, Inc.	mddce	4/27/12		8:2012-cv-01295	h Patrick Collins, Inc. v. Does 1-50
145	Patrick Collins, Inc.	mddce	4/27/12	9/13/12	8:2012-cv-01296	h Patrick Collins, Inc. v. Does 1-51
146	Patrick Collins, Inc.	mddce	4/27/12		8:2012-cv-01302	h Patrick Collins, Inc. v. John Doe #1
147	PATRICK COLLINS, I	mddce	7/23/12		8:2012-cv-02166	h PATRICK COLLINS, INC v. TUNG
148	Patrick Collins, Inc.	mddce	7/23/12		8:2012-cv-02167	h Patrick Collins, Inc v. Morny
149	Patrick Collins, Inc.	miedce	11/29/11	4/2/12	2:2011-cv-15231	h Patrick Collins, Inc. v. Doe
150	Patrick Collins, Inc.	miedce	11/29/11		2:2011-cv-15232	h Patrick Collins, Inc. v. Does 1-21
151	Patrick Collins, Inc.	miedce	11/29/11	6/27/12	2:2011-cv-15236	h Patrick Collins, Inc. v. Does 1-30
152	Patrick Collins, Inc.	miedce	11/29/11	6/27/12	4:2011-cv-15237	h Patrick Collins, Inc. v. Doe
153	Patrick Collins, Inc.	miedce	6/14/12		2:2012-cv-12596	h Patrick Collins, Inc. v. Does 1-21
154	Patrick Collins, Inc.	miedce	7/26/12		4:2012-cv-13309	h Patrick Collins, Inc. v. John Does 1-33
155	Patrick Collins, Inc.	miedce	7/26/12		2:2012-cv-13310	h Patrick Collins, Inc. v. John Does 1-12
156	Patrick Collins, Inc.	miedce	8/19/12		1:2012-cv-13670	h Patrick Collins, Inc. v. John Does 1-28
157	Patrick Collins, Inc.	miedce	9/1/12		4:2012-cv-13888	h Patrick Collins, Inc. v. Maisonville
158	Patrick Collins, Inc.	miedce	9/6/12		2:2012-cv-13948	h Patrick Collins, Inc. v. Vanvalkenburg
159	Patrick Collins, Inc.	miwdce	6/14/12		1:2012-cv-00618	h Patrick Collins, Inc. v. Does 1-15
160	Patrick Collins, Inc.	mo wdce	5/12/11	5/16/11	5:2011-mc-09001	h Patrick Collins, Inc. v. DOES
161	Patrick Collins, Inc.	ncedce	8/15/11		5:2011-cv-00428	h Patrick Collins, Inc. v. Doe 1 et al
162	Patrick Collins, Inc.	ncwdce	8/15/11	2/3/12	3:2011-cv-00394	h Patrick Collins, Inc. v. John Does 1-26
163	Patrick Collins Inc.	njdce	3/16/11	11/15/11	2:2011-cv-01470	h PATRICK COLLINS, INC. v. JOHN DOES 1-13
164	PATRICK COLLINS, I	njdce	3/16/11	11/15/11	2:2011-cv-01470	h PATRICK COLLINS, INC. v. JOHN DOES 1-13
165	PATRICK COLLINS, I	njdce	3/16/11	4/25/12	2:2011-cv-01478	h PATRICK COLLINS, INC. v. JOHN DOES 1-7
166	PATRICK COLLINS, I	njdce	3/16/11	4/25/12	2:2011-cv-01483	h PATRICK COLLINS, INC. v. JOHN DOES 1-6
167	PATRICK COLLINS, I	njdce	3/16/11	11/13/11	2:2011-cv-01484	h PATRICK COLLINS, INC. v. JOHN DOES 1-10
168	PATRICK COLLINS, I	njdce	3/16/11	11/13/11	2:2011-cv-01485	h PATRICK COLLINS, INC. v. JOHN DOES 1-7
169	PATRICK COLLINS, I	njdce	3/16/11	11/13/11	2:2011-cv-01486	h PATRICK COLLINS, INC. v. JOHN DOES 1-5
170	PATRICK COLLINS, I	njdce	3/16/11	11/15/11	2:2011-cv-01512	h PATRICK COLLINS, INC. v. JOHN DOES 1-10
171	PATRICK COLLINS, I	njdce	3/16/11	4/25/12	2:2011-cv-01513	h PATRICK COLLINS, INC. v. JOHN DOES 1-9
172	PATRICK COLLINS, I	njdce	3/16/11	4/25/12	2:2011-cv-01514	h PATRICK COLLINS, INC. v. JOHN DOES 1-6
173	PATRICK COLLINS, I	njdce	3/16/11	11/13/11	2:2011-cv-01517	h PATRICK COLLINS, INC. v. JOHN DOES 1-7
174	PATRICK COLLINS, I	njdce	7/21/11	3/2/12	2:2011-cv-04203	h PATRICK COLLINS, INC. v. JEFF HITCHCOCK et al

175	PATRICK COLLINS, I# njdce	3/8/12	9/14/12	1:2012-cv-01452	h PATRICK COLLINS, INC. et al v. JOHN DOES 1-18
176	PATRICK COLLINS, I# njdce	6/26/12	2:2012-cv-03906	h PATRICK COLLINS, INC. v. JOHN DOES 1-47	
177	PATRICK COLLINS, I# njdce	6/26/12	2:2012-cv-03907	h PATRICK COLLINS, INC. v. JOHN DOES 1-44	
178	PATRICK COLLINS, I# njdce	6/26/12	2:2012-cv-03908	h PATRICK COLLINS, INC. v. JOHN DOES 1-43	
179	PATRICK COLLINS, I# njdce	7/26/12	3:2012-cv-04695	h PATRICK COLLINS, INC. v. JOHN DOES 1-41	
180	PATRICK COLLINS, I# njdce	7/26/12	1:2012-cv-04710	h PATRICK COLLINS, INC. v. JOHN DOES 1-37	
181	PATRICK COLLINS, I# njdce	8/16/12	2:2012-cv-05171	h PATRICK COLLINS, INC. v. JOHN DOES 1-17	
182	PATRICK COLLINS, I# njdce	8/17/12	3:2012-mc-00131	h DOE v. PATRICK COLLINS, INC.	
183	PATRICK COLLINS, I# njdce	8/17/12	3:2012-mc-00132	h DOE v. PATRICK COLLINS, INC.	
184	PATRICK COLLINS, I# njdce	9/13/12	2:2012-cv-05815	h PATRICK COLLINS, INC. v. JOHN DOES 1-50	
185	Patrick Collins, Inc. nyedce	9/21/95	8/30/96	1:1995-cv-03842	h Adornetti, et al v. New York City Employ, et al
186	Patrick Collins, Inc. nyedce	3/16/11	9/14/11	1:2011-cv-01264	h Patrick Collins, Inc. v. John Does 1-15
187	Patrick Collins, Inc. nyedce	3/16/11	9/14/11	1:2011-cv-01265	h Patrick Collins, Inc. v. John Does 1-8
188	Patrick Collins, Inc. nyedce	3/16/11	9/14/11	1:2011-cv-01267	h Patrick Collins, Inc. v. John Does 1-8
189	Patrick Collins, Inc. nyedce	3/16/11	9/14/11	1:2011-cv-01268	h Patrick Collins, Inc. v. John Does 1-10
190	Patrick Collins, Inc. nyedce	3/16/11	9/14/11	1:2011-cv-01269	h Patrick Collins, Inc. v. John Does 1-9
191	Patrick Collins, Inc. nyedce	3/16/11	4/24/12	1:2011-cv-01270	h Patrick Collins, Inc. v. John Does 1-7
192	Patrick Collins, Inc. nyedce	3/16/11	9/14/11	1:2011-cv-01271	h Patrick Collins, Inc. v. John Does 1-7
193	Patrick Collins, Inc. nyedce	3/16/11	9/14/11	1:2011-cv-01272	h Patrick Collins, Inc. v. John Does 1-5
194	Patrick Collins, Inc. nyedce	3/16/11	9/14/11	1:2011-cv-01273	h Patrick Collins, Inc. v. John Does 1-5
195	Patrick Collins, Inc. nyedce	3/16/11	9/14/11	1:2011-cv-01274	h Patrick Collins, Inc. v. John Does 1-6
196	Patrick Collins, Inc. nyedce	8/24/11	11/21/11	2:2011-cv-04094	h Patrick Collins, Inc. et al v. Doe
197	Patrick Collins, Inc. nyedce	11/29/11	1:2011-mc-00807	h Patrick Collins, Inc. v. Does 1-2,590	
198	Patrick Collins, Inc. nyedce	3/8/12	8/22/12	2:2012-cv-01153	h Patrick Collins, Inc. v. Does 1-11
199	Patrick Collins, Inc. nyedce	3/8/12	2:2012-cv-01154	h Patrick Collins, Inc. v. Does 1-9	
200	Patrick Collins, Inc. nysdce	8/18/11	3/21/12	1:2011-cv-05784	h Patrick Collins, Inc. v. John Does 1-21
201	Patrick Collins, Inc. nysdce	8/23/11	1:2011-cv-05912	h Patrick Collins, Inc. v. Doe	
202	Patrick Collins, Inc. nysdce	12/29/11	8/10/12	1:2011-cv-09705	h Patrick Collins, Inc. DBA Elegant Angel Productions 8015 Deering Ave. C
203	Patrick Collins, Inc. nysdce	2/10/12	5/30/12	1:2012-cv-01098	h Patrick Collins, Inc. v. Does 1-139
204	Patrick Collins, Inc. nysdce	4/13/12	1:2012-cv-02962	h Patrick Collins, Inc. v. John Does 1-4	
205	Patrick Collins, Inc. nysdce	4/13/12	5/25/12	7:2012-cv-02963	h Patrick Collins, Inc. v. John Does 1-7
206	Patrick Collins, Inc. nysdce	4/13/12	6/11/12	1:2012-cv-02964	h Patrick Collins, Inc. v. John Does 1-6
207	Patrick Collins, Inc. nysdce	5/3/12	8/23/12	1:2012-cv-03505	h Patrick Collins, Inc. v. Does 1-31
208	Patrick Collins, Inc. nysdce	5/3/12	8/30/12	1:2012-cv-03507	h Patrick Collins, Inc. v. Does 1-31
209	Patrick Collins, Inc. ohndce	8/17/11	1/24/12	3:2011-cv-01728	h Patrick Collins, Inc. v. Does

210	Patrick Collins, Inc.	ohndce	10/21/11	12/21/11	3:2011-mc-00095	h Patrick Collins, Inc. v. Does
211	Patrick Collins, Inc.	ohsdce	8/17/11	11/16/11	1:2011-cv-00564	h Patrick Collins, Inc. v. Does 1 - 50
212	PATRICK COLLINS, INC.	paedce	8/8/11	12/6/11	2:2011-cv-05059	h PATRICK COLLINS, INC. v. JOHN DOES 1-51
213	PATRICK COLLINS, INC.	paedce	8/15/11	4/25/12	2:2011-cv-05172	h PATRICK COLLINS, INC. v. JOHN DOES 32
214	PATRICK COLLINS, INC.	paedce	8/15/11	9/7/12	2:2011-cv-05173	h PATRICK COLLINS, INC. v. JOHN DOES 1-21
215	PATRICK COLLINS, INC.	paedce	10/14/11	9/18/12	5:2011-cv-06432	h K-BEECH, INC. v. VANDERHORST
216	PATRICK COLLINS, INC.	paedce	11/21/11	1/13/12	2:2011-cv-07247	h PATRICK COLLINS, INC. v. JOHN DOES 1-26
217	PATRICK COLLINS, INC.	paedce	11/21/11	6/6/12	2:2011-cv-07252	h PATRICK COLLINS, INC. v. JOHN DOES 1-18
218	PATRICK COLLINS, INC.	paedce	4/19/12	8/28/12	2:2012-cv-02079	h PATRICK COLLINS, INC. v. JOHN DOES 1-11
219	PATRICK COLLINS, INC.	paedce	4/19/12	8/17/12	2:2012-cv-02089	h PATRICK COLLINS, INC. v. JOHN DOES 1-8
220	PATRICK COLLINS, INC.	paedce	6/4/12		2:2012-cv-03138	h PATRICK COLLINS, INC. v. JOHN DOES 1-20
221	PATRICK COLLINS, INC.	paedce	6/4/12		2:2012-cv-03140	h PATRICK COLLINS, INC. v. JOHN DOES 1-18
222	PATRICK COLLINS, INC.	paedce	6/4/12		5:2012-cv-03146	h PATRICK COLLINS, INC. v. JOHN DOES 1-23
223	PATRICK COLLINS, INC.	paedce	6/4/12		2:2012-cv-03148	h PATRICK COLLINS, INC. v. JOHN DOES 1-30
224	PATRICK COLLINS, INC.	paedce	6/4/12		2:2012-cv-03150	h PATRICK COLLINS, INC. v. JOHN DOES 1-14
225	PATRICK COLLINS, INC.	paedce	6/28/12		2:2012-cv-03641	h PATRICK COLLINS, INC. v. JOHN DOES 1-14
226	PATRICK COLLINS, INC.	paedce	6/28/12		5:2012-cv-03642	h PATRICK COLLINS, INC. v. JOHN DOES 1-17
227	PATRICK COLLINS, INC.	paedce	6/28/12		2:2012-cv-03643	h PATRICK COLLINS, INC. v. JOHN DOES 1-18
228	PATRICK COLLINS, INC.	paedce	7/12/12		2:2012-cv-03955	h PATRICK COLLINS, INC. v. JOHN DOES 1-15
229	PATRICK COLLINS, INC.	paedce	7/12/12		5:2012-cv-03956	h PATRICK COLLINS, INC. v. JOHN DOES 1-24
230	PATRICK COLLINS, INC.	paedce	7/24/12		2:2012-cv-04199	h PATRICK COLLINS, INC. v. BUTLER
231	PATRICK COLLINS, INC.	paedce	7/31/12		2:2012-cv-04323	h PATRICK COLLINS, INC. v. JOHN DOES 1-31
232	PATRICK COLLINS, INC.	paedce	7/31/12		2:2012-cv-04324	h PATRICK COLLINS, INC. v. JOHN DOES 1-11
233	PATRICK COLLINS, INC.	paedce	8/22/12	8/31/12	2:2012-cv-04819	h PATRICK COLLINS, INC. v. JOHN DOES 1-17
234	Patrick Collins, Inc.	sddce	4/5/11	5/5/11	4:2011-mc-00035	h Patrick Collins, Inc. v. Does 1-1219
235	Patrick Collins Inc	txndce	8/27/12	8/31/12	6:2012-mc-00014	h Patrick Collins Inc v John Doe
236	Patrick Collins, Inc.	txsdce	8/19/11		3:2011-cv-00389	h Patrick Collins, Inc. v. Does 1-1219
237	Patrick Collins, Inc.	txsdce	8/25/11	1/20/12	4:2011-cv-03124	h Patrick Collins, Inc. v. Doe
238	Patrick Collins, Inc.	txsdce	8/25/11	2/13/12	4:2011-cv-03126	h Patrick Collins, Inc. v. Doe
239	Patrick Collins, Inc.	vaedce	4/15/11	1/24/12	1:2011-cv-00406	h Patrick Collins, Inc. v. Does 1-35
240	Patrick Collins, Inc.	vaedce	4/15/11	10/31/11	1:2011-cv-00407	h Patrick Collins, Inc. v. Does 1 - 30
241	Patrick Collins, Inc.	vaedce	4/15/11	1/30/12	1:2011-cv-00408	h Patrick Collins, Inc. v. Does 1-26
242	Patrick Collins, Inc.	vaedce	8/15/11	4/10/12	3:2011-cv-00531	h Patrick Collins, Inc. v. John Does 1-58
243	Patrick Collins, Inc.	vaedce	1/12/12	1/30/12	3:2012-mc-00001	h Patrick Collins, Inc. v. Does 1-44 et al
244	Patrick Collins, Inc.	vaedce	2/17/12	6/19/12	1:2012-cv-00167	h Patrick Collins, Inc. v. John Does 1-26

245 Patrick Collins, Inc. wvndce 9/24/10 1/11/11 3:2010-cv-00091

h Patrick Collins, Inc. v. DOES 1-281

1 Leemore Kushner (SBN 221969)  
KUSHNER LAW GROUP  
2 801 North Citrus Avenue  
Los Angeles, California 90038  
3 Telephone: (323) 515-7894  
Facsimile: (323) 544-8170  
4 Email: lkushner@kushnerlawgroup.com  
5 Attorneys for Plaintiff Malibu Media, LLC

6  
7  
8 **UNITED STATES DISTRICT COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA**

10  
11 Malibu Media, LLC, a California  
corporation,

12 Plaintiff,

13 v.

14 John Does 1 through 10,  
15 Defendants.

Case No. 2:12-cv-03614-GHK-E

**DECLARATION OF TOBIAS  
FIESER FOR JOHN DOE #5**

16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**DECLARATION OF TOBIAS FIESER**

I, Tobias Fieser, declare as follows:

1. My name is Tobias Fieser.

2. I am over the age of 18 and am otherwise competent to make this declaration.

3. This declaration is based on my personal knowledge and, if called upon to do so, I will testify that the facts stated herein are true and accurate.

4. I am employed by IPP, Limited ("IPP"), a company organized and existing under the laws of Germany, in its litigation support department.

5. Among other things, IPP is in the business of providing forensic investigation services to copyright owners.

6. As part of my duties for IPP, I routinely identify the Internet Protocol ("IP") addresses that are being used by those people that are using the BitTorrent protocol to reproduce, distribute, display or perform copyrighted Works.

7. An IP address is a unique numerical identifier that is automatically assigned to an internet user by the user's Internet Service Provider ("ISP").

8. ISPs keep track of the IP addresses assigned to their subscribers.

9. Only the ISP to whom a particular IP address has been assigned for use by its subscribers can correlate the IP address to a real person, the subscriber of the internet service.

10. From time to time, a subscriber of internet services may be assigned different IP addresses from their ISP. Accordingly, to correlate a person with an IP address the ISP also needs to know when the IP address was being used.

11. Many ISPs only retain the information sufficient to correlate an IP address to a person at a given time for a very limited amount of time.

12. Plaintiff retained IPP to identify the IP addresses that are being used by those people that are using the BitTorrent protocol and the internet to reproduce, distribute, display or perform Plaintiff's copyrighted works.

1 13. IPP tasked me with implementing, monitoring, analyzing, reviewing  
2 and attesting to the results of the investigation.

3 14. During the performance of my duties, I used forensic software named  
4 INTERNATIONAL IPTRACKER v1.2.1 and related technology enabling the  
5 scanning of peer-to-peer networks for the presence of infringing transactions.

6 15. INTERNATIONAL IPTRACKER v1.2.1 was correctly installed and  
7 initiated on a computer server.

8 16. I personally extracted the resulting data emanating from the  
9 investigation.

10 17. After reviewing the evidence logs, I isolated the transactions and the IP  
11 addresses being used on the BitTorrent peer-to-peer network to reproduce,  
12 distribute, display or perform Plaintiff's copyrighted work associated with the  
13 Unique Hash numbers.

14 18. The IP addresses, Unique Hash numbers and hit dates on the evidence  
15 logs show that John Doe 5's IP address, 68.6.124.183, had copied pieces of  
16 Plaintiff's Works and was distributing them to other peers in a BitTorrent swarm on  
17 the dates and times detailed below:

- 18 a. "Carlie Beautiful Blowjob" on April 3, 2012 at 01:27:54 UTC;
- 19 b. "Carlie Big Toy Orgasm" on April 3, 2012 at 01:27:54 UTC;
- 20 c. "Carlie Leila Strawberries and Wine" on April 3, 2012 at 01:27:54  
21 UTC;
- 22 d. "Daddy's Office" on April 3, 2012 at 01:27:54 UTC;
- 23 e. "Deep Inside Caprice" on April 3, 2012 at 01:27:54 UTC;
- 24 f. "Faye Prelude to an Orgy" on April 3, 2012 at 01:27:54 UTC;
- 25 g. "Hayden Pink and Tight" on April 3, 2012 at 01:27:54 UTC;
- 26 h. "Just Married" on April 3, 2012 at 01:27:54 UTC;
- 27 i. "Just the Two of Us" on April 3, 2012 at 01:27:54 UTC;
- 28 j. "Kat Translucence" on April 3, 2012 at 01:27:54 UTC;

- 1 k. "Katka Cum Like Crazy" on April 3, 2012 at 01:27:54 UTC;
- 2 l. "Katka Sweet Surprise" on April 3, 2012 at 01:27:54 UTC;
- 3 m. "Kristen Girl Next Door" on April 3, 2012 at 01:27:54 UTC;
- 4 n. "Leila Faye Awesome Threesome" on April 3, 2012 at 01:27:54
- 5 UTC;
- 6 o. "Leila Naked in the Hot Sun" on April 3, 2012 at 01:27:54 UTC;
- 7 p. "Leila Sex on the Beach" on April 3, 2012 at 01:27:54 UTC;
- 8 q. "MaryJane Young Love" on April 3, 2012 at 01:27:54 UTC;
- 9 r. "Megan Morning Bath" on April 3, 2012 at 01:27:54 UTC;
- 10 s. "Mina's Fantasy" on April 3, 2012 at 01:27:54 UTC;
- 11 t. "Tatiana The Voyeur" on April 3, 2012 at 01:27:54 UTC;
- 12 u. "The Ultimate Blowjob" on April 3, 2012 at 01:27:54 UTC;
- 13 v. "Tiffany Sex with a Supermodel" on April 3, 2012 at 01:27:54
- 14 UTC;
- 15 w. "Tiffany Teenagers in Love" on April 3, 2012 at 01:27:54 UTC;
- 16 x. "Tori The Endless Orgasm" on April 3, 2012 at 01:27:54 UTC;
- 17 y. "The Girl in My Shower" on April 3, 2012 at 01:27:54 UTC;
- 18 z. "The Art of Anal Sex" on April 3, 2012 at 01:27:54 UTC;

19 19. Indeed, a computer using the subject IP address connected to the  
20 investigative server in order to transmit a full copy, or a portion thereof, of a digital  
21 media file identified by the Unique Hash numbers.

22 20. Our software analyzed each BitTorrent "piece" distributed by  
23 Defendant's IP address and verified that reassembling the piece(s) using a  
24 specialized BitTorrent Client results in fully playable digital motion pictures.

25 21. I was provided with control copies of the copyrighted Works. I viewed  
26 the Works side-by-side with the digital media files identified by the Unique Hash  
27 numbers and determined that they were identical, striking similar or substantially  
28 similar.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

22. Once provided with the IP address, plus the dates and times of the detected and documented infringing activity, ISPs can use their subscriber logs to identify the name, address, email address, phone number and Media Access Control number of the Defendant subscriber.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 21st day of June, 2012.

  
\_\_\_\_\_  
Tobias Fieser