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9
10 **UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**
12

13 MALIBU MEDIA, LLC,

14 Plaintiff,

15 vs.

16 JOHN DOE subscriber assigned IP Address
17 108.228.12.17,

18 Defendant.

Case Number: 16-cv-05975-WHA

**PLAINTIFF’S RESPONSE TO THE
COURT’S ORDER TO SHOW CAUSE**

19 **PLAINTIFF’S RESPONSE TO THE COURT’S ORDER TO SHOW CAUSE**

20 **I. INTRODUCTION**

21 Plaintiff respectfully requests the Court allow its current cases to continue and not bar it
22 from future filings on the basis of its use of Maxmind’s geolocation database. Of the fifty-seven
23 cases Plaintiff filed in October of 2016, Plaintiff received the identity of thirty-five defendants.
24 Each of the defendants’ locations traced to a city located within this District, supporting the
25 accuracy of Maxmind’s geolocaton technology. Attached to this response is a declaration from
26 Plaintiff’s counsel, sworn under oath, and a copy of every subpoena and subpoena response it has
27 received from the defendants’ ISPs within these fifty-seven cases.

1 Of the twenty-two cases where Plaintiff did not receive the defendant's identity, or has not
2 yet received the defendant's identity, Plaintiff has no reason to believe any defendant did not reside
3 in this District. Although Plaintiff has dismissed many of the fifty-seven cases, it has not done so
4 on the basis of its geolocation technology. A detailed explanation for every dismissal is included
5 with undersigned's declaration. For the above reasons, as set forth more fully below, Plaintiff
6 respectfully responds to the Court's show cause and apologizes to the Court for any inconvenience
7 as a result of delays or extension requests. Any future filings will be done in a limited manner, with
8 additional case management resources, to avoid any delays to the Court. In the event the Court
9 determines that more vetting is necessary, Plaintiff will provide the Court with any additional
10 information, particularly relating to its geolocation technology, including all subpoena responses it
11 has received in the Northern District of California and in the State of California.

12 **II. ARGUMENT**

13 **A. Plaintiff's Geolocation Technology Has Been Accurate for Every Case Filed by** 14 **Plaintiff in this District in which it has Received Defendant's Identity**

15 As set forth in Plaintiff's Renewed Motion for Leave to take Early Discovery, Maxmind's
16 geolocation database had correctly predicted that the defendants resided in the Northern District of
17 California in every case in which Plaintiff received the identity of the defendant in this District. *See*
18 CM/ECF 11-7. Consistent with these results, in the fifty-seven cases filed by Plaintiff in October,
19 Plaintiff received the identity for thirty-five defendants. *See* Declaration of Henrik Mosesi, Exhibit
20 A at 4. Each of the thirty-five defendants resides in the Northern District of California, consistent
21 with Maxmind's geolocation database predictions. *Id.* at 5. Of the twenty-two cases in which
22 Plaintiff has not received the Defendant's identifying information, three cases were dismissed
23 because Plaintiff reached a settlement agreement with Defendant's counsel prior to receiving
24 Defendant's identity. *Id.* at 6. In those cases, opposing counsel never suggested that the defendant
25 resided in a different jurisdiction. *Id.* at 7. Moreover, in twelve of the cases, Plaintiff did not
26 receive the defendant's identity because the Internet Service Provider could not identify a defendant

1 on the basis of its data retention. *Id.* at 8. It is impossible for Plaintiff to verify the defendant's
2 location without the ISP's records. *Id.* at 9. In four cases, Plaintiff is still awaiting response from
3 the defendant's ISP. *Id.* at 10. And, finally, in three cases, Plaintiff dismissed its cases prior to
4 receiving the Court's Order for Leave, on the basis of either internal delays or because the
5 infringement was likely out of data retention. *Id.* at 11. In short, of the twenty-two cases dismissed
6 prior to receiving the defendant's identity, none of the cases were dismissed because Maxmind's
7 geolocation database was inaccurate. *Id.* at 12.

8 **B. Plaintiff Files Voluntary Dismissals for Several Reasons, All in Good Faith**

9 As set forth above, Plaintiff files voluntary dismissals prior to receiving the defendant's
10 identity for a variety of reasons. Plaintiff also files dismissals after receiving a defendant's identity
11 for a multitude of reasons, none of which are ever done in bad faith. Indeed, because Plaintiff only
12 knows a defendant by an IP address prior to bringing its suit, often times Plaintiff will not pursue a
13 case against a subscriber after learning the individual's identity. *Id.* at 13. In some cases, Plaintiff
14 dismissed its suit because the infringer was likely a minor teenage son. *Id.* at 14. In other cases,
15 Plaintiff dismissed its case because the subscriber was a business and Plaintiff could not determine
16 which individual was responsible for the infringement. *Id.* at 15. And, Plaintiff has dismissed
17 cases it does not desire to pursue against the elderly, (*id.* at 16) and those suffering financial
18 hardship. *Id.* at 17.

19 Plaintiff also recognizes that some of the dismissals filed were because its investigations
20 were often delayed. *Id.* at 18. Indeed, some investigations, particularly when multiple individuals
21 resided in the same household, took two to three weeks, causing unnecessary delay in serving the
22 defendant. *Id.* at 19. And, Plaintiff acknowledges that because its counsel requested the summons
23 by mail, Plaintiff had to dismiss some cases because of a delay in receiving its summons. *Id.* at 20.
24 Plaintiff sincerely apologizes to the Court for these errors. *Id.* at 21. It has recognized that in some
25 cases, it did not have the resources to expeditiously proceed with its cases, causing inconvenience to
26 the Court. *Id.* In the future, should Plaintiff file additional cases in this District, it will do so in

1 smaller limited numbers, with meticulous case management. *Id.* Plaintiff and undersigned
2 sincerely apologize for any inconvenience it has caused the Court due to the volume of its filings.
3 *Id.* at 22.

4 Attached to undersigned’s declaration, as Exhibit 2, is a complete and accurate description
5 of the reason for dismissal for every one of the dismissals filed in the fifty-seven cases initiated in
6 October. *Id.* at 23. For any case not dismissed, a status update is provided. *Id.* at 24. After each
7 case summary is a copy of the subpoena Plaintiff sent to the defendant’s Internet Service Provider
8 and an exact copy of the response Plaintiff received, demonstrating that the Maxmind geolocation
9 trace correctly identified the defendant as a resident of this District Court in each of the cases in
10 which Plaintiff received the defendant’s identity. *Id.*

11 Should the Court request any additional information in support of any of the statements
12 provided within this response, including previous subpoena responses, Plaintiff and its counsel will
13 promptly comply and are committed to candidly assisting the Court in resolving any inquiries or
14 issues. *Id.* at 25.

15 **III. CONCLUSION**

16 For the above stated reasons, Plaintiff, Malibu Media LLC, by and through its counsel,
17 respectfully requests the Court not bar it from future filings and submits the above response in
18 support of the Court’s Order to Show Cause.

19 Dated: May 16, 2017

20
21 Respectfully submitted,
22 By: /s/ Henrik Mosesi
23 Attorney for Plaintiff

24
25 **CERTIFICATE OF SERVICE**

26 I hereby certify that on May 16, 2017 service was perfected on all counsel of record and
27 interested parties through this system.

By: /s/ Henrik Mosei
Henrik Mosei, Esq.

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