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7  
8 **UNITED STATES DISTRICT COURT**  
9 **NORTHERN DISTRICT OF CALIFORNIA**  
10

11 MALIBU MEDIA, LLC,

12 Plaintiff,

13 vs.

14 JOHN DOE subscriber assigned IP address  
15 108.228.12.17,

16 Defendant.  
17

Case Number: 16-cv-05975-WHA

**DECLARATION OF ATTORNEY  
HENRIK MOSESI IN SUPPORT OF  
PLAINTIFF'S RESPONSE TO THE  
COURT'S ORDER TO SHOW CAUSE**

18 I, HENRIK MOSESI, DO HEREBY DECLARE:

19 1. I am over the age of eighteen (18) and otherwise competent to make this  
20 declaration. The facts stated in this declaration are based upon my personal knowledge.

21 2. I am an attorney licensed in the State of California and I currently represent  
22 Malibu Media, LLC.

23 3. I am submitting this declaration in support of Plaintiff's Response to the Court's  
24 Order to Show Cause.

25 4. In the fifty-seven cases filed by Plaintiff in October, Plaintiff received the  
26 identity for thirty-five defendants. *See* Exhibit 1.  
27  
28

1           5.       Each of the thirty-five defendants resides in the Northern District of California,  
2 consistent with Maxmind's geolocation database predictions. *Id.*

3           6.       Of the twenty-two cases in which Plaintiff has not received the Defendant's  
4 identifying information, three cases were dismissed because Plaintiff reached a settlement  
5 agreement with Defendant's counsel prior to receiving Defendant's identity. *Id.*

6           7.       In those cases, opposing counsel never suggested that the defendant resided in a  
7 different jurisdiction.

8           8.       Moreover, in twelve of the cases, Plaintiff did not receive the defendant's  
9 identity because the Internet Service Provider could not identify a defendant on the basis of its  
10 data retention. *Id.*

11           9.       It is impossible for Plaintiff to verify the defendant's location without the ISP's  
12 records.

13           10.      In four cases, Plaintiff is still awaiting response from the defendant's ISP. *Id.*

14           11.      And, finally, in three cases, Plaintiff dismissed its cases prior to receiving the  
15 Court's Order for Leave, on the basis of either internal delays or because the infringement was  
16 likely out of data retention. *Id.*

17           12.      In short, of the twenty-two cases dismissed prior to receiving the defendant's  
18 identity, none of the cases were dismissed because Maxmind's geolocation database was  
19 inaccurate.

20           13.      Because Plaintiff only knows a defendant by an IP address prior to bringing its  
21 suit, often times Plaintiff will not pursue a case against a subscriber after learning the  
22 individual's identity.

23           14.      In some cases, Plaintiff dismissed its suit because the infringer was likely a  
24 minor teenage son. *See* Exhibit 2, p. 517.

25           15.      In other cases, Plaintiff dismissed its case because the subscriber was a business  
26 and Plaintiff could not determine which individual was responsible for the infringement. *Id.* at  
27 p. 495.

1 16. And, Plaintiff has dismissed cases it does not desire to pursue against the elderly.  
2 *Id.* at p. 206.

3 17. Plaintiff also has dismissed cases against those suffering financial hardship. *Id.*  
4 at p. 306.

5 18. Plaintiff also recognizes that some of the dismissals filed were because its  
6 investigations were often delayed. *Id.* at p. 72.

7 19. Indeed, some investigations, particularly when multiple individuals resided in the  
8 same household, took two to three weeks, causing unnecessary delay in serving the defendant.  
9 *Id.*

10 20. And, Plaintiff acknowledges that because its counsel requested the summons by  
11 mail, Plaintiff had to dismiss some cases because of a delay in receiving its summons. *Id.* at p.  
12 282.

13 21. Plaintiff sincerely apologizes to the Court for these errors. It has recognized that  
14 in some cases, it did not have the resources to expeditiously proceed with its cases, causing  
15 inconvenience to the Court. In the future, should Plaintiff file additional cases in this District, it  
16 will do so in smaller limited numbers, with meticulous case management.

17 22. Plaintiff and undersigned sincerely apologize for any inconvenience it has caused  
18 the Court due to the volume of its filings.

19 23. Attached to undersigned's declaration, as Exhibit 2, is a complete and accurate  
20 description of the reason for dismissal for every one of the dismissals filed in the fifty-seven  
21 cases initiated in October.

22 24. For any case not dismissed, a status update is provided. After each case  
23 summary is a copy of the subpoena Plaintiff sent to the defendant's Internet Service Provider  
24 and an exact copy of the response Plaintiff received, demonstrating that the Maxmind  
25 geolocation trace correctly identified the defendant as a resident of this District Court in each of  
26 the cases in which Plaintiff received the defendant's identity.

27 25. Should the Court request any additional information in support of any of the  
28 statements provided within this response, including previous subpoena responses, Plaintiff and

1 undersigned will promptly comply and are committed to candidly assisting the Court in  
2 resolving any inquiries or issues.

3 **FURTHER DECLARANT SAYETH NAUGHT.**

4 **DECLARATION**

5 **PURSUANT TO 28 U.S.C. § 1746**, I hereby declare under penalty of perjury that the  
6 foregoing is true and correct.

7 Executed on this 16<sup>th</sup> day of May, 2017.

8 By: /s/ Henrik Mosesi  
9 **HENRIK MOSESI, ESQ.**