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11 Attorneys for Plaintiff
RON PAUL 2012 PRESIDENTIAL CAMPAIGN COMMITTEE, INC.

12
13 **UNITED STATES DISTRICT COURT**

14 **NORTHERN DISTRICT OF CALIFORNIA**

15 RON PAUL 2012 PRESIDENTIAL
16 CAMPAIGN COMMITTEE, INC.
17 A Delaware Corporation,

18 Plaintiff,

19 v.

20 John Does, 1 through 10,

21 Defendants.
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Case No. CV-12-00240-MEJ

**PLAINTIFF’S EX PARTE
APPLICATION FOR EXPEDITED
DISCOVERY; MEMORANDUM
OF POINTS AND AUTHORITIES
IN SUPPORT THEREOF**

**[DECLARATION OF JESSE
BENTON, REQUEST FOR
JUDICIAL NOTICE AND
[PROPOSED] ORDER GRANTING
EX PARTE APPLICATION ARE
FILED/LODGED
CONCURRENTLY HEREWITH]**

1 Plaintiff Ron Paul 2012 Presidential Campaign Committee, Inc. (“Plaintiff”)
2 respectfully applies to the Court *ex parte* for leave to take depositions and obtain
3 documents from YouTube, Inc. (“YouTube”) and Twitter, Inc. (“Twitter”) on an
4 expedited basis. Specifically, Plaintiff requests leave to promptly take depositions
5 and obtain documents from YouTube and Twitter to learn the identities of the Doe
6 defendants in this action and to require YouTube and Twitter to respond within 10
7 days of service of the subpoenas.

8 This discovery is needed to enable Plaintiff to identify the Does responsible
9 for engaging in the conduct complained of in the Complaint filed in this action.
10 The Complaint sets out information currently known to Plaintiff regarding the
11 defendants’ acts of false designation of origin, false advertising, and libel. More
12 detailed information of the Defendants is available only through the proposed
13 discovery. The discovery needs to be expedited so that the information can be
14 utilized to identify the Doe defendants and to provide them with notice of a
15 proposed preliminary injunction hearing. For these reasons, Plaintiff respectfully
16 requests that the Court approve the taking of the expedited depositions and
17 document production.

18
19 Dated: January 18, 2012

Respectfully submitted

AREN FOX LLP



JERROLD ABELES
DAVID G. BAYLES

Attorneys for Plaintiff
RON PAUL 2012 PRESIDENTIAL
CAMPAIGN COMMITTEE, INC.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. BACKGROUND**

3 Plaintiff Ron Paul 2012 Presidential Campaign Committee, Inc. (“Plaintiff”),
4 promotes supports and endorses Dr. Ron Paul as the 2012 Republican nominee for
5 President of the United States. Declaration of Jesse Benton filed concurrently
6 herewith (“Benton Decl.”), ¶ 2. The John Doe defendants described in the
7 Complaint uploaded the subject video onto YouTube entitled “Jon Huntsman’s
8 Values” (“the Video”). Benton Decl., ¶ 3. The Video, which is accompanied
9 throughout with traditional Chinese music in the background, begins with the text
10 “Jon Huntsman – American Values? / The Manchurian Candidate - What’s He
11 Hiding?” Benton Decl., ¶ 3. The Video shows, among other things, 2012
12 Republican presidential candidate Jon Huntsman speaking a foreign language and
13 then inquires whether Mr. Huntsman is “weak on China.” Benton Decl., ¶ 3. The
14 Video also questions Mr. Huntsman’s religious faith, refers to Mr. Huntsman as
15 “China Jon” and asks whether his daughters are “even adopted.” Benton Decl., ¶ 3.
16 The Video ends with a fictitious depiction of Mr. Huntsman in a Mao Zedong
17 uniform and the text “American Values and Liberty – Vote Ron Paul,” thereby
18 falsely implying that Plaintiff created, endorsed or is affiliated in some way with
19 the Video and its content. Benton Decl., ¶ 3. Plaintiff did not create or endorse the
20 Video and is not affiliated in any way with the Video or its content. Benton Decl.,
21 ¶ 4. Defendants did not publically use their true names or contact information in
22 association with the Video and, instead, have used the pseudonym NHLiberty4Paul.
23 Benton Decl., ¶ 5. The Defendants’ pseudonym NHLiberty4Paul is also an account
24 with Twitter, Inc. Benton Decl., ¶ 5. Plaintiff needs expedited discovery to
25 promptly identify the John Doe defendants so that this action may proceed.

1 **II. ARGUMENT**

2 Courts, including this circuit, routinely allow discovery to identify “Doe”
3 defendants. *See Wakefield v. Thompson*, 177 F. 3d 1160, 1163 (9th Cir. 1999) (error
4 to dismiss unnamed defendants given possibility that identity could be ascertained
5 through discovery); *Valentin v. Kinkins*, 121 F.3d 72, 75-76 (2nd Cir. 1997)
6 (vacating dismissal; pro se plaintiff should have been permitted to conduct
7 discovery to reveal identity of the defendant); *Dean v. Barber*, 951 F.2d 1210, 1215
8 (11th Cir. 1992) (error to deny the plaintiff’s motion to join John Doe defendant
9 where identity of John Doe could have been determined through discovery); *Munz*
10 *v. Parr*, 758 F.2d 1254, 1257 (8th Cir. 1985) (error to dismiss claim merely because
11 the defendant was unnamed; “Rather than dismissing the claim, the court should
12 have ordered disclosure of the Officer Doe’s identity”); *Maclin v. Paulson*, 627
13 F.2d 83, 87 (7th Cir. 1980) (where “party is ignorant of defendants’ true identity ...
14 plaintiff should have been permitted to obtain their identity through limited
15 discovery”).

16 Many courts, including this Court, have granted Plaintiff’s motions for leave
17 to take expedited discovery. *See, e.g., Order, Maverick Recording Co. v. Does 1-4*,
18 Case No. C-04-1135 MMC (N.D. Cal. April 28, 2004); *Order, Arista Records LLC*
19 *v. Does 1-16*, No. 07-1641 LKK EFB (E.D. Cal. Aug. 23, 2007); *Order, Sony BMG*
20 *Music Ent’t v. Does 1-16*, No. 07-cv-00581-BTM-AJJB (S.D. Cal. Apr. 19, 2007);
21 *Order, UMG Recordings, Inc. v. Does 1-2*, No. CV04-0960(RSL) (W.D. Wash.
22 May 14, 2004); *Order, Loud Records, LLC v. Does 1-5*, No. CV -04-0134-RHW
23 (E.D. Wash. May 10, 2004); *Order, London-Sire Records, Inc. v. Does 1-4*, No. CV
24 04-1962 ABC (AJWx) (C.D. Cal. Apr. 2, 2004); *Order, Interscope Records v. Does*
25 *1-4*, No. CV -04-131 TUC-JM (D. Ariz. Mar. 25, 2004) (true and correct copies of
26 these Orders are attached to the Request for Judicial Notice filed concurrently
27 herewith as Exhibit A.)

1 Courts allow parties to conduct expedited discovery in advance of a Rule
2 26(f) conference where the party establishes “good cause” for such discovery. See
3 *UMG Recordings, Inc.* 2006 WL 1343597 at * 1 (N.D. Cal. Mar. 6, 2000);
4 *Entertainment Tech. Corp. v. Walt Disney Imagineering*, No. Civ. A. 03-35456,
5 2003 WL 22519440, at *4 (E.D. Pa. Oct. 2, 2003) (applying reasonableness
6 standard); *Semitool, Inc. v. Tokyo Electron Am., Inc.*, 208 F.R.D. 273, 275-76 (N.D.
7 Cal. 2002); *Yokohama Tire Corp. v. Dealers Tire Supply, Inc.*, 202 F.R.D. 612,
8 613-614 (D. Ariz. 2001) (applying a good cause standard).

9 Plaintiff has good cause to seek expedited discovery because it cannot serve
10 the defendants and this action cannot proceed without discovery to determine the
11 identity of the defendants.

12 III. CONCLUSION

13 For all the foregoing reasons, Plaintiff respectfully requests that the Court
14 enter an order granting Plaintiff’s ex parte application and allow Plaintiffs to take
15 immediate discovery and to require response to the discovery within 10 days for the
16 limited purpose of discovering defendants’ identities.

17
18 Dated: January 18, 2012

Respectfully submitted

ARENTE FOX LLP

20
21 

22 JERROLD ABELES
DAVID G. BAYLES

23 Attorneys for Plaintiff
24 RON PAUL 2012 PRESIDENTIAL
CAMPAIGN COMMITTEE, INC.

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11 Attorneys for Plaintiff
RON PAUL 2012 PRESIDENTIAL CAMPAIGN COMMITTEE, INC.

13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA

16 RON PAUL 2012 PRESIDENTIAL
17 CAMPAIGN COMMITTEE, INC.
18 A Delaware Corporation,

19 Plaintiff,

20 v.

21 John Does, 1 through 10,

22 Defendants.
23

Case No. CV-12-00240-MEJ

**PLAINTIFF'S REQUEST FOR
JUDICIAL NOTICE IN SUPPORT
OF EX PARTE APPLICATION
FOR EXPEDITED DISCOVERY**

1 Plaintiff Ron Paul 2012 Presidential Campaign Committee, Inc. ("Plaintiff")
2 respectfully requests pursuant to Federal Rule of Evidence 201(b), that the Court
3 take judicial notice of the following orders granting expedited discovery in district
4 courts in the 9th Circuit in support of Plaintiff's request for expedited discovery:

- 5 1. Order, *Maverick Recording Co. v. Does 1-4*, Case No. C-04-1135
6 MMC (N.D. Cal. April 28, 2004), which is attached hereto as Exhibit A;
- 7 2. Order, *Arista Records LLC v. Does 1-16*, No. 07-1641 LKK EFB (E.D.
8 Cal. Aug. 23, 2007), which is attached hereto as Exhibit B;
- 9 3. Order, *Sony BMG Music Ent't v. Does 1-16*, No. 07-cv-00581-BTM-
10 AJJB (S.D. Cal. Apr. 19, 2007), which is attached hereto as Exhibit C;
- 11 4. Order, *UMG Recordings, Inc. v. Does 1-2*, No. CV04-0960(RSL)
12 (W.D. Wash. May 14, 2004), which is attached hereto as Exhibit D;
- 13 5. Order, *Loud Records, LLC v. Does 1-5*, No. CV -04-0134-RHW (E.D.
14 Wash. May 10, 2004), which is attached hereto as Exhibit E;
- 15 6. Order, *London-Sire Records, Inc. v. Does 1-4*, No. CV 04-1962 ABC
16 (AJWx) (C.D. Cal. Apr. 2, 2004), which is attached hereto as Exhibit F;
- 17 7. Order, *Interscope Records v. Does 1-4*, No. CV -04-131 TUC-JM (D.
18 Ariz. Mar. 25, 2004), which is attached hereto as Exhibit G.

19 Dated: January 18, 2012

Respectfully submitted

ARENT FOX LLP



JERROLD ABELES
DAVID G. BAYLES

Attorneys for Plaintiff
RON PAUL 2012 PRESIDENTIAL
CAMPAIGN COMMITTEE, INC.

Exhibit A

COBLENTZ, PATCH, DUFFY & BASS, LLP
One Ferry Building, Suite 200, San Francisco, CA 94111-4213
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1 JEFFREY G. KNOWLES (State Bar # 129754)
JULIA D. GREER (State Bar # 200479)
2 ZUZANA J. SVIHRA (State Bar # 208671)
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4 Telephone: (415) 391-4800
Facsimile: (415) 989-1663
5

6 Attorneys for Plaintiffs
MAVERICK RECORDING CO.; WARNER BROS.
RECORDS INC.; ARISTA RECORDS, INC.; VIRGIN
7 RECORDS AMERICA, INC.; UMG RECORDINGS, INC.;
INTERSCOPE RECORDS; BMG MUSIC; SONY MUSIC
8 ENTERTAINMENT INC.; ATLANTIC RECORDING
CORP.; MOTOWN RECORD COMPANY, L.P.; and
9 CAPITOL RECORDS, INC.

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

13 MAVERICK RECORDING COMPANY, a
California joint venture; WARNER BROS.
14 RECORDS INC., a Delaware corporation;
ARISTA RECORDS, INC., a Delaware
15 corporation; VIRGIN RECORDS AMERICA,
INC., a California corporation; UMG
16 RECORDINGS, INC., a Delaware
corporation; INTERSCOPE RECORDS, a
17 California general partnership; BMG MUSIC,
a New York general partnership; SONY
18 MUSIC ENTERTAINMENT INC., a
Delaware corporation; ATLANTIC
19 RECORDING CORPORATION, a Delaware
corporation; MOTOWN RECORD
20 COMPANY, L.P., a California limited
partnership; and CAPITOL RECORDS, INC.,
21 a Delaware corporation,

22 Plaintiffs,

23 vs.

24 DOES 1 - 4,

25 Defendants.

CASE NO. C-04-1135 MMC

**[PROPOSED] ORDER GRANTING
PLAINTIFFS' MISCELLANEOUS
ADMINISTRATIVE REQUEST FOR
LEAVE TO TAKE IMMEDIATE
DISCOVERY**

26
27
28

[PROPOSED] ORDER

EXHIBIT A PAGE 3

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(415) 391-4800 • (415) 989-1663

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Upon the Miscellaneous Administrative Request of Plaintiffs For Leave To Take Immediate Discovery, the Declaration of Jonathan Whitehead and the exhibit thereto, Plaintiffs' Request for Judicial Notice, and the Declaration of Zuzana J. Svihra, it is hereby:

ORDERED that Plaintiffs may serve immediate discovery on the University of California, Berkeley to obtain the identity of each Doe Defendant by serving a Rule 45 subpoena that seeks information sufficient to identify each Doe Defendant, including the name, address, telephone number, e-mail address, and Media Access Control addresses for each Defendant.

IT IS FURTHER ORDERED THAT any information disclosed to Plaintiffs in response to the Rule 45 subpoena may be used by Plaintiffs solely for the purpose of protecting Plaintiffs' rights under the Copyright Act.

Without such discovery, Plaintiffs cannot identify the Doe Defendants, and thus cannot pursue their lawsuit to protect their copyrighted works from infringement.

Dated: April 28, 2004

James Larson U.S. Magistrate Judge
~~United States District Judge~~

Exhibit B

1 Matthew Franklin Jaksa (CA State Bar No. 248072)
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8 Attorneys for Plaintiffs,
 9 ARISTA RECORDS LLC; ATLANTIC RECORDING CORPORATION;
 10 BMG MUSIC; CAPITOL RECORDS, INC.; ELEKTRA
 11 ENTERTAINMENT GROUP INC.; INTERSCOPE RECORDS; LAFACE
 12 RECORDS LLC; MAVERICK RECORDING COMPANY; MOTOWN
 13 RECORD COMPANY, L.P.; PRIORITY RECORDS LLC; SONY BMG
 14 MUSIC ENTERTAINMENT; UMG RECORDINGS, INC.; VIRGIN
 15 RECORDS AMERICA, INC.; and WARNER BROS. RECORDS INC.

16 UNITED STATES DISTRICT COURT
 17 EASTERN DISTRICT OF CALIFORNIA

18 ARISTA RECORDS LLC, a Delaware limited liability
 19 company; ATLANTIC RECORDING
 20 CORPORATION, a Delaware corporation; BMG
 21 MUSIC, a New York general partnership; CAPITOL
 22 RECORDS, INC., a Delaware corporation; ELEKTRA
 23 ENTERTAINMENT GROUP INC., a Delaware
 24 corporation; INTERSCOPE RECORDS, a California
 25 general partnership; LAFACE RECORDS LLC, a
 26 Delaware limited liability company; MAVERICK
 27 RECORDING COMPANY, a California joint venture;
 28 MOTOWN RECORD COMPANY, L.P., a California
 limited partnership; PRIORITY RECORDS LLC, a
 California limited liability company; SONY BMG
 MUSIC ENTERTAINMENT, a Delaware general
 partnership; UMG RECORDINGS, INC., a Delaware
 corporation; VIRGIN RECORDS AMERICA, INC., a
 California corporation; and WARNER BROS.
 RECORDS INC., a Delaware corporation,
 Plaintiffs,

CASE NO. 07-1641 LKK EFB

**ORDER GRANTING EX PARTE
 APPLICATION FOR LEAVE TO TAKE
 IMMEDIATE DISCOVERY**

23 v.
 24 DOES 1-16,
 25 Defendants.

1 Upon the Plaintiffs' *Ex Parte* Application for Leave to Take Immediate Discovery,
2 the Declaration of Carlos Linares, and the accompanying Memorandum of Law, it is hereby
3 ORDERED that Plaintiffs may serve immediate discovery on University of California, Davis to
4 obtain the identity of each Doe Defendant by serving a Rule 45 subpoena that seeks documents that
5 identify each Doe Defendant, including the name, current (and permanent) addresses and telephone
6 numbers, e-mail addresses, and Media Access Control addresses for each Defendant.

7 Although parties must generally meet and confer prior to seeking expedited
8 discovery, that requirement may be dispensed if good cause is shown. *See* Fed. R. Civ. P. 26(d);
9 *Semitoool, Inc. v. Tokyo Electron Am., Inc.*, 208 F.R.D. 273, 275-76 (N.D. Cal. 2002). Here, the
10 plaintiffs have presented evidence that the subpoena is necessary to identify the defendants, serve
11 them with the complaint and summons, and prosecute their claims of copyright infringement. *See*
12 *Gillespie v. Civletti*, 629 F.2d 637, 642 (9th Cir. 1980) ("where the identity of alleged defendants
13 will not be known prior to the filing of a complaint . . . the plaintiff should be given an opportunity
14 through discovery to identify the unknown defendants, unless it is clear that discovery would not
15 uncover the identities, or that the complaint would be dismissed on other grounds."). Plaintiffs have
16 further averred that records kept by internet service providers ("ISP") such as the University of
17 California, Davis, are regularly destroyed, sometimes on a daily or weekly basis. *See* Linares
18 Declaration, at ¶ 24. Based on the foregoing, the court finds that plaintiffs have demonstrated good
19 cause for the expedited discovery.

20 The disclosure of this information is ordered pursuant to 20 U.S.C. § 1232g(b)(2)(B).
21 Consistent with that provision, if and when the University of California, Davis is served with a
22 subpoena, it shall, within five business days, give written notice to the subscribers whose identities
23 are to be disclosed in response to the subpoena. Such written notice may be achieved by messages
24 sent via electronic mail. If the University of California, Davis, and/or any defendant wishes to move
25 to quash the subpoena, they shall do so before the return date of the subpoena.

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IT IS FURTHER ORDERED THAT any information disclosed to Plaintiffs in response to the Rule 45 subpoena may be used by Plaintiffs solely for the purpose of protecting Plaintiffs' rights under the Copyright Act.

Dated: August 23, 2007.


EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE

Exhibit C

FILED

2007 APR 23 PM 1:19

CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY RM DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SONY BMG MUSIC ENTERTAINMENT, a Delaware general partnership; UMG RECORDINGS, INC., a Delaware corporation; ARISTA RECORDS LLC, a Delaware limited liability company; CAPITOL RECORDS, INC., a Delaware corporation; WARNER BROS. RECORDS INC., a Delaware corporation; INTERSCOPE RECORDS, a California general partnership; PRIORITY RECORDS LLC, a California limited liability company; ATLANTIC RECORDING CORPORATION, a Delaware corporation; FONOVISA, INC., a California corporation; MAVERICK RECORDING COMPANY, a California joint venture; MOTOWN RECORD COMPANY, L.P., a California limited partnership; ELEKTRA ENTERTAINMENT GROUP INC., a Delaware corporation; BMG MUSIC, a New York general partnership; VIRGIN RECORDS AMERICA, INC., a California corporation; and LAFACE RECORDS LLC, a Delaware limited liability company,

Plaintiff,

v.

DOES 1 - 16,

Defendants.

Case 07CV 0581 BTM AJB

~~PROPOSED~~ ORDER GRANTING PLAINTIFFS' *EX PARTE* APPLICATION FOR LEAVE TO TAKE IMMEDIATE DISCOVERY

1 Upon the Plaintiffs' *Ex Parte* Application for Leave to Take Immediate Discovery, the
2 Declaration of Carlos Linares, and the accompanying Memorandum of Law, it is hereby:

3 ORDERED that Plaintiffs may serve immediate discovery on SBC Internet Services, Inc. to
4 obtain the identity of each Doe Defendant by serving a Rule 45 subpoena that seeks documents that
5 identify each Doe Defendant, including the name, current (and permanent) addresses and telephone
6 numbers, e-mail addresses, and Media Access Control addresses for each Defendant. The disclosure
7 of this information is ordered pursuant to 47 U.S.C. § 551(c)(2)(B).

8 IT IS FURTHER ORDERED THAT any information disclosed to Plaintiffs in response to the
9 Rule 45 subpoena may be used by Plaintiffs solely for the purpose of protecting Plaintiffs' rights under
10 the Copyright Act.

11
12 DATED: 4-19-07

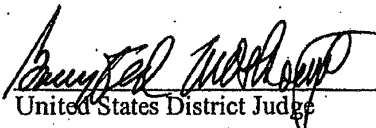
By: 
United States District Judge

Exhibit D

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04-CV-00960-IEP

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

UMG RECORDINGS, INC., a Delaware corporation; ATLANTIC RECORDING CORPORATION, a Delaware corporation; WARNER BROS. RECORDS INC., a Delaware corporation; SONY MUSIC ENTERTAINMENT INC., a Delaware corporation; BMG MUSIC, a New York general partnership; and VIRGIN RECORDS AMERICA, INC., a California corporation,

Plaintiffs,

v.

DOES 1 - 2,

Defendants.

No. 04-09600-L

[PROPOSED] ORDER GRANTING PLAINTIFFS' MOTION FOR LEAVE TO TAKE IMMEDIATE DISCOVERY

Upon the Motion of Plaintiffs for Leave to Take Immediate Discovery and the supporting Memorandum of Law, and the declaration of Jonathan Whitehead and the exhibit thereto, it is hereby:

ORDERED that Plaintiffs may serve immediate discovery on Microsoft Corporation to obtain the identity of each Doe Defendant by serving a Rule 45 subpoena that seeks information sufficient to identify each Doe Defendant, including the name, address, telephone number, e-mail address, and Media Access Control addresses for each Defendant.

[PROPOSED] ORDER GRANTING PLAINTIFFS' MOTION FOR LEAVE TO TAKE IMMEDIATE DISCOVERY
Page 1

YARMUTH WILSON CALFO PLLC
THE IDX TOWER
925 FOURTH AVENUE, SUITE 2500
SEATTLE, WA 98104
T 206 416 3800 F 206 410 3888

1 IT IS FURTHER ORDERED THAT any information disclosed to Plaintiffs in
2 response to the Rule 45 subpoena may be used by Plaintiffs solely for the purpose of
3 protecting Plaintiffs' rights under the Copyright Act.

4
5 Dated: May 14, 2004

MA S. CARMIK
United States District Judge

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~~PROPOSED~~ ORDER GRANTING
PLAINTIFFS' MOTION FOR LEAVE TO
TAKE IMMEDIATE DISCOVERY
Page 2

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Exhibit E

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FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

MAY 10 2004

JAMES R. LARSEN, CLERK
DEPUTY
SPOKANE, WASHINGTON

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

LOUD RECORDS, LLC, a
Delaware corporation; WARNER
BROS. RECORDS INC., a
Delaware corporation; ATLANTIC
RECORDING CORPORATION, a
Delaware corporation; VIRGIN
RECORDS AMERICA, INC., a
California corporation; PRIORITY
RECORDS LLC, a California
limited liability company;
ELEKTRA ENTERTAINMENT
GROUP INC., a Delaware
corporation; BMG RECORDINGS,
INC, a Delaware corporation;
ARISTA RECORDS, INC., a
Delaware corporation; BMG
MUSIC, a New York general
partnership; SONY MUSIC
ENTERTAINMENT INC., a
Delaware corporation; MAVERICK
RECORDING COMPANY, a
California joint venture; and
CAPITOL RECORDS, INC., a
Delaware corporation,

Plaintiffs,

v.

DOES 1-5,

Defendants.

NO. CV-04-0134-RHW

**ORDER GRANTING PLAINTIFFS'
MOTION FOR LEAVE TO TAKE
IMMEDIATE DISCOVERY**

Before the Court is Plaintiffs' Motion for Leave to Take Immediate
Discovery (Ct. Rec. 7). The Plaintiffs, members of the Recording Industry
Association of America, Inc. ("RIAA"), have filed a complaint alleging that DOES

**ORDER GRANTING PLAINTIFFS' MOTION FOR LEAVE TO TAKE
IMMEDIATE DISCOVERY * 1**

1 1-5 illegally engaged in uploading and downloading copyrighted recordings
2 through www.KaZaA.com, a peer to peer ("P2P") internet service (Ct. Rec. 1).
3 While Plaintiffs are unable to identify the Does, they collected records of
4 Defendants' Internet Protocol ("IP") address, the times the downloads or uploads
5 took place, and information regarding the specific recordings that were
6 downloaded or uploaded. The Plaintiffs were able to ascertain from Defendants'
7 IP addresses that they were utilizing Gonzaga University as their Internet Service
8 Provider ("ISP"). Plaintiffs seek statutory damages under 17 U.S.C. § 504(c),
9 attorneys fees and costs pursuant to 17 U.S.C. § 505, and injunctive relief under
10 17 U.S.C. §§ 502 and 503.

11 In their Motion for Leave to Take Immediate Discovery, the Plaintiffs seek
12 leave to serve Gonzaga University, the ISP for Does 1-5, with a Rule 45 Subpoena
13 Duces Tecum, requiring Gonzaga University to reveal the Defendant's names,
14 addresses, email addresses, telephone number, and Media Access Control
15 ("MAC") addresses.

16 The Ninth Circuit has held that "where the identity of alleged defendants
17 will not be known prior to the filing of a complaint . . . the plaintiff should be
18 given an opportunity through discovery to identify the unknown defendants,
19 unless it is clear that discovery would not uncover the identities, or that the
20 complaint would be dismissed on other grounds." *Gillespie v. Civiletti*, 629 F.2d
21 637, 642 (9th Cir. 1980). Presumably, the discovery device anticipated by this
22 ruling was Rule 45, under which a party may compel a nonparty to produce
23 documents or other materials that could reveal the identities. *See Pennwalt Corp.*
24 *v. Durand-Wayland, Inc.*, 708 F.2d 492 (9th Cir. 1983). The Court finds that this
25 instance presents the very situation indicated by *Gillespie*. The Plaintiffs' case
26 relies on the disclosure of the Does' identities, and those identities are likely
27 discoverable from a third party.

28 Under Rule 26(d), Rule 45 subpoenas should not be served prior to a Rule

ORDER GRANTING PLAINTIFFS' MOTION FOR LEAVE TO TAKE
IMMEDIATE DISCOVERY * 2

1 26(f) conference unless the parties can show good cause. Fed. R. Civ. P. 26(d) (“a
2 party may not seek discovery from any source before the parties have conferred as
3 required by Rule 26(f) . . . [u]nless the court upon motion . . . orders
4 otherwise”); see *Semitool, Inc. V. Tokyo Electron Am., Inc.*, 208 F.R.D. 273, 275-
5 76 (N.D. Cal. 2002). The Plaintiffs have presented compelling evidence that the
6 records kept by ISP providers of IP addresses are regularly destroyed. Thus, good
7 cause has been shown.

8 Accordingly, **IT IS ORDERED** that:

9 1. Plaintiffs’ Motion for Leave to Take Immediate Discovery (Ct. Rec.
10 7) is **GRANTED**.

11 2. Plaintiffs are **GIVEN LEAVE** to serve immediate discovery on
12 Gonzaga University to obtain the identity of each Doe Defendant by serving a
13 Rule 45 subpoena duces tecum that seeks each Doe Defendants’ name, address,
14 telephone number, email address, and Media Access Control address. As agreed
15 by Plaintiffs, this information disclosed will be used solely for the purpose of
16 protecting their rights under the copyright laws.

17 3. Plaintiffs are **ORDERED** to review Local Rule 7.1(g)(2) regarding the
18 citation of unpublished decisions. All unpublished decisions cited to the Court
19 have been disregarded.

20 **IT IS SO ORDERED.** The District Court Executive is hereby directed to
21 enter this order and to furnish copies to counsel of record.

22 **DATED** this 10 day of May, 2004.

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25 **ROBERT H. WHALEY**
26 United States District Judge

27 Q:\Civi\2004\Loud Records\Loud.immediatediscovery.order.wpd

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**ORDER GRANTING PLAINTIFFS’ MOTION FOR LEAVE TO TAKE
IMMEDIATE DISCOVERY * 3**

Exhibit F

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FRI 17:22 FAX 213 894 1815 U.S DISTRICT COURT

002

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

CIVIL MINUTES - GENERAL

Case No. CV 04-1962 ABC (AJWx)

Date: April 2, 2004

Title: LONDON-SIRE RECORDS, INC., et. al., v. DOES 1-4

PRESENT:

HON. ANDREW J. WISTRICH, MAGISTRATE JUDGE

Ysela Benavides
Deputy Clerk

Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS:
None Present

ATTORNEYS PRESENT FOR DEFENDANTS:
None Present

ORDER REGARDING PLAINTIFFS' EX PARTE APPLICATION FOR LEAVE TO TAKE IMMEDIATE DISCOVERY

Plaintiffs are thirteen record companies who have filed a lawsuit against four unnamed "doe" defendants for alleged copyright infringement. Plaintiffs filed a motion for leave to take immediate discovery on March 23, 2004. [Notice of Ex Parte Application for Leave to Take Immediate Discovery ("Notice") filed March 23, 2004]. Plaintiffs allege that defendants, using an online peer-to-peer ("P2P") media distribution system, made available for distribution, and in fact distributed, copyrighted songs without license or other authority to do so, thereby infringing plaintiffs' copyrights. [See Memorandum of Law in Support of Ex Parte Application For Leave to Take Immediate Discovery ("Memorandum") filed March 23, 2004, at 2]. Plaintiffs have acquired the Internet Protocol ("IP") addresses assigned to each of the four defendants on the dates and times of the infringing activity. [Memorandum 2]. Using a public database, plaintiffs determined that the subject IP addresses belong to the University of Southern California ("USC"). [Memorandum 2-3]. As an Internet Service Provider ("ISP"), USC maintains a subscriber activity log indicating which of its subscribers were assigned the IP addresses in question on the relevant dates and times. [Memorandum 3]. In plaintiffs' experience, most ISPs maintain subscriber activity logs for only a short period of time before destroying the information contained in the logs. [Memorandum 3]. From the subscriber logs, USC can use the IP addresses and temporal information provided by plaintiffs to identify the true names, street addresses, phone numbers, e-mail addresses, and Media Access Control ("MAC") addresses for each defendant. [Memorandum 3]. Plaintiffs ask this Court to allow immediate issuance of a subpoena directing USC to produce defendants' names and the other personal information described above so that plaintiffs may contact defendants in an attempt to negotiate a resolution to plaintiffs' claims, or failing that, to add defendants as named parties to this litigation.

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003

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES--GENERAL

Generally, parties must meet and confer prior to seeking expedited discovery. See Fed. R. Civ. P. 26(f). That requirement, however, may be dispensed with if good cause is shown. See Semitool, Inc. v. Tokyo Electron Am., Inc., 208 F.R.D. 273, 275-76 (N.D. Cal. 2002). Plaintiffs have shown good cause. The true identities of defendants are unknown to plaintiffs, and this litigation cannot proceed without discovery of defendants' true identities. [See Memorandum 7-9].

Subject to the following qualifications, plaintiffs' ex parte application for leave to take immediate discovery is granted.

If USC wishes to file a motion to quash the subpoena or to serve objections, it must do so before the return date of the subpoena, which shall be no less than twenty-one (21) days from the date of service of the subpoena. Among other things, USC may use this time to notify the subscribers in question.

USC shall preserve any subpoenaed information or materials pending compliance with the subpoena or resolution of any timely objection or motion to quash.

Plaintiffs must serve a copy of this order on USC when they serve the subpoena.

Any information disclosed to plaintiffs in response to the Rule 45 subpoena must be used by plaintiffs solely for the purpose of protecting plaintiffs' rights under the Copyright Act as set forth in the complaint.

IT IS SO ORDERED.

cc: Parties

MINUTES FORM 11
CIVIL-GEN

Initials of Deputy Clerk _____

CIVIL MINUTES - GENERAL

Page 2 of 2

EXHIBIT F PAGE 16

Exhibit G

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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Interscope Records, et al.,

Plaintiffs,

v.

Docs 1 - 4,

Defendants.

No. CV-04-131 TUC - JM

ORDER

Pending before the Court is the Plaintiffs' *ex parte* Motion for Leave to Take Immediate Discovery [Docket No. 2]. Upon consideration of the Motion and the supporting Memorandum of Law, and the declaration of Jonathan Whitehead and the exhibit attached thereto, it is hereby:

ORDERED that Plaintiffs' Motion for Leave to Take Immediate Discovery [Docket No. 2] is GRANTED;

IT IS FURTHER ORDERED that Plaintiffs may serve immediate discovery on the University of Arizona to obtain the identity of each Doe Defendant by serving a Rule 45 subpoena that seeks information sufficient to identify each Doe Defendant, including the name, address, telephone number, e-mail address, and Media Access Control addresses for each Defendant;

IT IS FURTHER ORDERED that any information disclosed to Plaintiffs in response to the Rule 45 subpoena shall be used by Plaintiffs solely for the purpose of protecting Plaintiffs' rights under the Copyright Act as set forth in the Complaint;

JM

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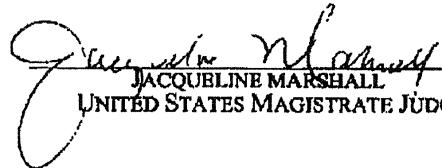
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1 IT IS FURTHER ORDERED that, if and when the University of Arizona is served
2 with a subpoena, within five (5) business days thereof it shall give written notice, which can
3 include use of e-mail, to the subscribers whose identities are to be disclosed in response to
4 the subpoena. If the University of Arizona and/or any Defendant wishes to move to quash
5 the subpoena, they shall do so before the return date of the subpoena, which shall be twenty-
6 five (25) business days from the date of service;

7 IT IS FURTHER ORDERED that, if and when the University of Arizona is served
8 with a subpoena, the University of Arizona shall preserve the data and information sought
9 in the subpoena pending resolution of any timely filed motion to quash;

10 IT IS FURTHER ORDERED that counsel for Plaintiffs shall provide a copy of this
11 Order to the University of Arizona when the subpoena is served.

12 Dated this 25th day of March, 2004.

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16 JACQUELINE MARSHALL
17 UNITED STATES MAGISTRATE JUDGE
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Attorneys for Plaintiff
RON PAUL 2012 PRESIDENTIAL CAMPAIGN COMMITTEE, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RON PAUL 2012 PRESIDENTIAL
CAMPAIGN COMMITTEE, INC.
A Delaware Corporation,

Plaintiff,

v.

John Does, 1 through 10,

Defendants.

Case No. CV-12-00240-MEJ

**DECLARATION OF JESSE
BENTON IN SUPPORT OF
PLAINTIFF'S EX PARTE
APPLICATION FOR EXPEDITED
DISCOVERY**

1 I, Jesse Benton hereby declares:

2 1. I have personal knowledge of the matters stated herein and, if called
3 upon, I could and would testify competently thereto. I submit this declaration in
4 support of Plaintiff Ron Paul 2012 Presidential Campaign Committee, Inc.'s
5 ("Plaintiff") *ex parte* application for expedited discovery. I am Plaintiff's
6 Campaign Manager and my responsibilities include supervision of all campaign
7 commercials.

8 2. Plaintiff promotes, supports, and endorses Dr. Ron Paul as the 2012
9 Republican nominee for President of the United States.

10 3. The John Doe defendants described in the Complaint uploaded the
11 subject video onto YouTube entitled "Jon Huntsman's Values" ("the Video"). The
12 Video, which is accompanied throughout with traditional Chinese music in the
13 background, begins with the text "Jon Huntsman – American Values? / The
14 Manchurian Candidate - What's He Hiding?" The Video shows, among other
15 things, 2012 Republican presidential candidate Jon Huntsman speaking a foreign
16 language and then inquires whether Mr. Huntsman is "weak on China." The Video
17 also questions Mr. Huntsman's religious faith, refers to Mr. Huntsman as "China
18 Jon," and asks whether his daughters are "even adopted." The Video ends with a
19 fictitious depiction of Mr. Huntsman in a Mao Zedong uniform and the text
20 "American Values and Liberty – Vote Ron Paul," thereby falsely implying that
21 Plaintiff created, endorsed, or is affiliated in some way with the Video and its
22 content.

23 4. Plaintiff did not create or endorse the Video and is not affiliated in any
24 way with the Video or its content.


25 5. Defendants did not publicly use their true names or contact
26 information in association with the Video and, instead, have used the pseudonym
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NHLiberty4Paul. The Defendants' pseudonym NHLiberty4Paul is also an account with Twitter, Inc.

I declare under penalty of perjury of the laws of the United States of America that the foregoing is true and correct and that this declaration is executed on this 13th day of January 2012, at Rock Hill, SC.



Jesse Benton

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11 Attorneys for Plaintiff
12 RON PAUL 2012 PRESIDENTIAL CAMPAIGN COMMITTEE, INC.

13 UNITED STATES DISTRICT COURT
14
15 NORTHERN DISTRICT OF CALIFORNIA

16 RON PAUL 2012 PRESIDENTIAL
17 CAMPAIGN COMMITTEE, INC.
A Delaware Corporation,

18
19 Plaintiff,

20 v.

21 John Does, 1 through 10,

22
23 Defendants.

Case No. CV-12-00240-MEJ

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S EX PARTE MOTION
FOR EXPEDITED DISCOVERY**

24
25 Having fully considered the matter, and good cause appearing therefor,
26 Plaintiff's *Ex Parte* Application for Expedited Discovery is hereby GRANTED.
27 Pursuant to Federal Rule of Civil Procedure 45, Plaintiff is allowed to promptly

28 [PROPOSED] ORDER GRANTING
EX PARTE MOTION
CASE NO. CV-12-00240-MEJ

1 propound on YouTube, Inc. and Twitter, Inc. subpoenas requiring depositions and
2 production of documents within 10 days of service of the subpoenas relating to the
3 identity of those persons responsible for engaging in the conduct complained of in
4 the Complaint filed herein.

5 **IT IS SO ORDERED**

6
7 Dated: _____

The Hon. Maria-Elena James
United States Magistrate Judge

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10 Dated: January 18, 2012

Respectfully submitted

AREN FOX LLP

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14 _____
JERROLD ABELES
DAVID G. BAYLES

15 Attorneys for Plaintiff
16 RON PAUL 2012 PRESIDENTIAL
17 CAMPAIGN COMMITTEE, INC.
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