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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 Axel Braun, ) Case No.: 4:12-cv-03690-YGR  
12 )  
13 Plaintiff, ) DOE X’s MOTION TO DISMISS FOR  
14 ) MISJOINDER AND/OR FOR A  
15 vs. ) PROTECTIVE ORDER  
16 )  
17 PRIMARY DISTRIBUTOR DOE NUMBER ) Hon. Yvonne G. Rogers  
18 1 and DEFENDANT DOES 2 through 69, )  
19 )  
20 Defendants. )

21 **TO ALL COUNSEL AND THEIR ATTORNEY’S OF RECORD:**

22 Pursuant to the Federal Rules of Civil Procedure and the inherent power of this Court, the  
23 Defendant DOE “X” does hereby move that this Court dismiss this case for misjoinder under  
24 FRCP Rule 19.

25 Further DOE “X” requests a protective order until Plaintiff sues each Defendant  
26 individually.

This motion will be based on this notice, the argument presented herein, and any oral  
argument.

1 **SUMMARY**

2 Plaintiff Axel Braun has filed yet another “BitTorrent” case that seeks to bring a number  
3 of unrelated Defendants together, alleging infringement of pornographic films.

4 The first issue in this motion is Plaintiff’s tactic of misjoinder in an effort to avoid paying  
5 a separate filing fee for each defendant. Plaintiff should be required pick one defendant in this  
6 matter. Fed. R. Civ. P. 19. This Court should dismiss the Complaint for misjoinder.  
7

8 The second issue in this motion is a request for a protective order. There is no need for  
9 the ISP to disclose the identities of the DOES until the DOES are sued on an individual basis.

10 Defendant DOE X seeks the relief of dismissal and a protective order preventing the  
11 release of his or her name until Plaintiff names Defendant individually in this case.  
12

13 **INTRODUCTION**

14 The business side of this case involves the use of mass joinder and the threat of litigation  
15 to extract settlements (typically \$2-3K). (See generally *Mick Haig Productions E.K. vs. DOES*  
16 *1-670*, 5<sup>th</sup> Cir 11-10977, 7/12/2012). See Exhibit A. Mass joinder to make money is not a new  
17 concept in California. The Trevor Law Group used a similar technique to extract settlements at  
18 the beginning of this century. *People ex rel. Lockyer v. Brar*, 115 Cal. App. 4th 1315, 1316-  
19 1317 (Cal. App. 2004); see also *Molski v. Mandarin Touch Restaurant*, 347 F. Supp. 2d 860, 867  
20 (C.D. Cal., 2004).  
21

22 Plaintiff attempts to differentiate this lawsuit from the epidemic of BitTorrent lawsuits  
23 that have spread throughout the U.S. District Courts. Plaintiff’s novel arguments, however, serve  
24 only to hide the true nature of this case, which is essentially the same as all the others: to use the  
25 façade of copyright infringement to carry out an extra-judicial shakedown for pre-Complaint  
26

1 settlements. See Exhibit B for an example settlement letter used by Plaintiff's counsel in prior  
2 litigation.

3  
4 **1. The Court should dismiss Plaintiff's Complaint with leave to amend for**  
5 **improper joinder.**  
6

7 The current standard for Bittorrent Cases is that the Plaintiff must proceed against each  
8 defendant individually. Fed. R. Civ. P. Rule 19. In *Patrick Collins v. Does 1-54*, No. 2:1-cv-  
9 01602; 2012 WL 911432 (D. Ariz. 2012), a BitTorrent copyright case like the instant matter, the  
10 court faced a situation where only two defendants remained in the action. The court, after a  
11 thorough discussion of the joinder rules, determined that the joinder of even two individuals  
12 based solely on the allegation that they participated in the same swarm was improper. The  
13 court's reasoning is persuasive. It stated that:

14  
15 "Plaintiff alleges that the two remaining Defendants 'participat[ed] in the  
16 BitTorrent swarm with other infringers' but does not claim that John Doe 6  
17 provided data to the former John Doe 12 or vice versa. Plaintiff included as  
18 Defendants only those IP addresses from the swarm in question that were located  
19 in Arizona, demonstrating that the actions of the individual members of the  
20 swarm are easily distinguishable. Plaintiff alleges no facts that these two  
21 particular Defendants shared data with each other, and provides data instead that  
22 they were logged on to BitTorrent weeks apart." *Patrick Collins, Inc. v. Does 1-54*, 2012 WL 911432 at \*5 (D. Ariz. 2012).

23 As in the Arizona Case, the Plaintiff's own exhibits show no commonality between the  
24 Defendant's acts of alleged infringement. (See Docket # 4-1, Exhibit A). Therefore Plaintiff's  
25 complaint should be dismissed with leave to amend to identify a single Defendant.

26 Misjoinder fails to promote trial convenience and expedition of the ultimate  
determination of the substantive issues in this case. See *Pac. Century Int'l*, 2011 U.S. Dist.  
LEXIS 124518, 2011 WL 5117424, at \*3 (describing the "logistical nightmare" of joining 101

1 Doe defendants in such an action). Though the 69 Doe defendants may have engaged in similar  
2 behavior, they are likely to present different defenses. See *BMG Music v. Does 1-203*, No. Civ.  
3 A. 04-650, 2004 U.S. Dist. LEXIS 8457, 2004 WL 953888, at \*1 (E.D. Pa. Apr. 2, 2004). As  
4 one court noted,

5 “Comcast subscriber John Doe 1 could be an innocent parent whose internet access was  
6 abused by her minor child, while Jon Doe 2 might share a computer with a roommate  
7 who infringed Plaintiffs’ works. John Does 3 through 10 could be thieves, just as  
8 Plaintiffs believe.” *Id.*

9 **2. The Court should issue a protective order to protect the DOE identities until a**  
10 **proper suit is filed.**

11 Fed. R. Civ. P. 26(c)(1) allows a protective order to issue that protects a person from  
12 annoyance, embarrassment, oppression, or undue burden or expense. Requests for pseudonymity  
13 have been granted when anonymity is necessary to preserve privacy in a matter of a sensitive and  
14 highly personal nature. See *Does I Thru XXIII v. Advanced Textile Corp.*, 214 F.3d 1058, 1068  
15 (9th Cir. 2000). An allegation that an individual illegally downloaded adult entertainment likely  
16 goes to matters of a sensitive and highly personal nature. “[U]nder Rule 26(c), the Court may *sua*  
17 *sponte* grant a protective order for good cause shown.” *McCoy v. Southwest Airlines Co., Inc.*,  
18 211 F.R.D. 381, 385 (C.D. Cal. 2002). The Court issues the limited protective order described  
19 below because the ISP subscribers may be innocent third parties, the subject matter of the suit  
20 deals with sensitive and personal matters, and the jurisdictional and procedural complications  
21 might otherwise dissuade innocent third parties from contesting the allegations.  
22

23  
24 Here, as has been previously discussed by other courts in this district, the ISP subscribers  
25 may not be the individuals who infringed Axel Braun’s copyright. See, e.g., *Pac. Century Int’l*,  
26 2011 U.S. Dist. LEXIS 124518, 2011 WL 5117424, at \*2; see also *IO Group, Inc. v. Does 1-19*,

1 No. C 10-03851 SI, 2011 WL 772909, at \*1 (N.D. Cal. Mar. 1, 2011) (granting the plaintiff  
2 additional time to identify and serve the true defendant where a subscriber asserted that he did  
3 not infringe plaintiff's work, suggesting that someone else used his IP address to infringe the  
4 plaintiff's work, and the plaintiff claimed that it needed to take third-party discovery from the  
5 subscriber to try to identify who actually used the subscriber's IP address to allegedly infringe  
6 the plaintiff's work).

8 Clearly, the privacy interests of innocent third parties weighs heavily against the public's  
9 interest in access to court documents. See *Gardner v. Newsday, Inc.*, 895 F.2d 74, 79-80 (2d Cir.  
10 1990).

11 The protective order is an equitable and fair way to allow Axel Braun to litigate their  
12 rights and for potentially innocent third parties to not have their names sullied.

14 **CONCLUSION**

15 This Court should dismiss this case for Misjoinder and issue an appropriate protective  
16 order protecting the identities of Primary Distributor Doe 1 and Defendant Does 2 through 69  
17 and until individual lawsuits are filed.

19 Dated: October 29, 2012

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2 Declaration of J. Curtis Edmondson in the Motion to Dismiss and/or for a Protective Order

3 I, J. Curtis Edmondson, declare this to be true under penalty of perjury, pursuant to 28  
4 U.S.C. 1746 on the date set forth at my signature below:

- 5
- 6 1. I am an attorney licensed to practice in the State of California and have been admitted  
7 to the bar of the Central District of California. I am counsel of record in this matter.
  - 8 2. I represent a defendant who resides in this judicial district. This defendant is named  
9 “DOE X” to prevent his or her name from being associated with pornography.
- 10

11

12 I declare under penalty of perjury under the laws of the state of California that the  
13 foregoing is true and correct.

14 Executed this 29th day of October, 2012, at Hillsboro, Oregon.

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16 /s/ J. Curtis Edmondson

17 Declarant

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