

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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MALIBU MEDIA, LLC,	:	
	:	Civil Action No. <u>2012-2078</u>
Plaintiff,	:	
	:	Consolidated from Cases:
vs.	:	2:12-cv-02078-MMB
	:	2:12-cv-02084-MMB
JOHN DOES 1, 6, 13, 14, and 16,	:	5:12-cv-02088-MMB
	:	
Defendants.	:	
-----X	:	

MOTION TO VOLUNTARILY DISMISS JOHN DOE 16,
AND
MOTION TO AMEND COMPLAINT TO ADD NEW JOHN DOE 16

Pursuant to Fed.R.Civ.P. 15 and 41, Plaintiff, Malibu Media, LLC (“Plaintiff”), moves for entry of an order voluntarily dismissing John Doe 16 and permitting the Complaint to be amended for the purpose of adding a new John Doe 16, and states:

1. Plaintiff deposed John Doe 16 and John Doe 16’s husband on Monday, March 11, 2013. During the applicable period of infringement, *only* John Doe 16 and her husband resided in the home to which the IP address which was used to infringe Plaintiff’s copyrights was assigned. The internet service was password protected during the applicable period of infringement.

2. After taking the depositions, for myriad reasons, undersigned is convinced that John Doe 16’s husband committed the infringement. To explain, John Doe 16’s husband has an associate’s degree in electronics. He built his desktop computer with one terabyte of memory, and enjoys playing computer games. John Doe 16’s husband only watches television on his computer. Indeed, he does not have cable television. Although he denied committing the

infringement, John Doe 16's husband knew about BitTorrent and Pirate Bay, one of the most widely known torrent websites, prior to the applicable dates of infringement. Additionally, he admitted to watching similar content to that which Plaintiff alleges was infringed. Conversely, John Doe 16 is a teacher at a religious school and did not know about BitTorrent prior to this lawsuit, nor did she otherwise appear to be the infringer.

3. Undersigned has conferred with counsel for John Doe 16 and her husband regarding the relief requested herein, who has advised undersigned that neither John Doe 16 nor John Doe 16's husband oppose the entry of an order granting this motion. Counsel for John Doe 16 has agreed to accept service on behalf of John Doe 16's husband.

4. Counsel for new John Doe 16 has agreed to adopt the Answer and Affirmative Defenses to the Amended Complaint first filed by the original John Doe 16. Further, Plaintiff has agreed to adopt its response to John Doe 16's Answer and Affirmative Defenses. Therefore, the pleadings can remain closed.

5. Further, counsel for John Doe 16 has agreed to answer the Amended Complaint within three (3) days after accepting service of same.

6. The substitution of Defendants should not affect the pacing of this litigation or the current trial date. John Doe 16's husband has known about this case throughout litigation and has already been deposed. Therefore, neither party will be prejudiced by the amendment.

7. Plaintiff has been diligent in pursuing discovery in this matter since its inception and good cause exists for the amendment.

8. Indeed, the necessity of this amendment was contemplated by Plaintiff which agreed to allow the John Doe defendants to remain anonymous throughout the discovery period, precisely because this type of substitution may be necessary.

WHEREFORE, Plaintiff respectfully requests that this Court enter an order dismissing John Doe 16 from this case without prejudice and adding John Doe 16's husband as the new John Doe 16. A proposed order is attached for the Court's convenience.

Dated: March 19, 2013

Respectfully submitted,

By: /s/ M. Keith Lipscomb

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Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on March 19, 2013, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF and that service was perfected on all counsel of record and interested parties through this system.

By: /s/ M. Keith Lipscomb