

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION**

MALIBU MEDIA, LLC,	)	
	)	
Plaintiff,	)	Civil Case No. <u>1:14-cv-20393-CMA</u>
	)	
v.	)	
	)	
JOHN DOE subscriber assigned IP address	)	
66.176.59.75,	)	
	)	
Defendant.	)	
_____	)	

**PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANT'S OMNIBUS  
MOTION TO DISMISS ACTION WITH MOTION TO QUASH NON-PARTY  
SUBPOENAS OR ENTER PROTECTIVE ORDER WITH INCORPORATED  
MEMORANDUM OF LAW**

## **I. INTRODUCTION**

Defendant John Doe's Omnibus Motion to Dismiss Action With Motion to Quash Non-Party Subpoenas or Enter Protective Order, With Incorporated Memorandum of Law (CM/ECF 9) ("the Motion") should be denied. Defendant has failed to articulate any reason under Fed. R. Civ. P. 45 to quash the subpoena. While Defendant correctly asserts that Malibu Media, LLC ("Malibu") paid IPP International UG ("IPP"), who is not licensed by the State of Florida as an investigator, for its data collection services, Defendant erroneously argues that the physical evidence obtained by IPP is inadmissible and therefore this Court should quash the subpoena, vacate its previous order, and dismiss the case. Neither paying a service provider to record computer data nor the failure of a service provider to have a license is a basis under the Federal Rules of Evidence to exclude relevant evidence or for any of the relief Defendant requests. Further, Defendant's reliance on Judge Ungaro's opinion fails to account that Plaintiff pled a plausible claim that Defendant is the infringer. Defendant does not dispute that venue is improper, nor provide an affidavit or any evidence that would support that theory. For all the foregoing reasons, as more fully explained below, Defendant's Motion should be denied.

## **II. FACTUAL BACKGROUND**

### **A. Online Copyright Infringement Through the BitTorrent Protocol is a Serious and Significant Threat to Plaintiff's Business**

Plaintiff, Malibu Media LLC, brings its lawsuit against Defendant in good faith in order to stop ongoing, long term, copyright infringement. Colette Pelissier Field, with her husband Brigham Field, are the owners of Malibu Media and began their business from scratch. *See* CM/ECF 6-1 at ¶3. Ms. Field was a real estate agent and Mr. Field was a photographer. *Id.* at ¶4. When the real estate market started heading south, Ms. Field knew she and her husband needed to start a business together. *Id.* at ¶5. The Fields both felt that there was a lack of adult content that was beautiful and acceptable for women and couples. *Id.* at ¶6. The Fields wanted to create this type of content to satisfy what they hoped was an unfulfilled demand. *Id.* Their goal was to create erotica that is artistic and beautiful. *Id.* at ¶7. The Fields chose the name 'X-Art' to reflect their artistic aspirations, and began investing all of their available money and resources into the production of content – particularly erotic movies with high production value and a cinematic quality. *Id.* at ¶8.

Their vision has come to fruition. Currently, X-Art.com has tens of thousands of