

9/22/15
9:45

UNITED STATES DISTRICT COURT

for the Middle District of Florida

MALIBU MEDIA, LLC	Civil Action No. 14-cv-02138
<i>Plaintiff</i>	
v.	
WILLIAM SHARP	
<i>Defendants.</i>	



**SUBPOENA DUCES TECUM WITH 30(b)(6) CORPORATE DEPOSITION DE BENE
ESSE OF RECORDS CUSTODIAN FOR VERIZON**

To: Verizon Internet Services
Verizon Legal Compliance – Custodian of Record
C/O Laura Rebecca Barron & Neil T. Schmidt
2701 South Johnson Street, MC-TXD01613
San Angelo, TX 76904

[X] Production: YOU ARE COMMANDED to appear at the time, date, and place set forth below; to bring with you the documents responsive to the requests set forth on Schedule "A"; and to be prepared to discuss the topics set forth on Schedule "B".

In accordance with Fed. R. Civ. P. Rule 30(b)(6), YOU shall designate one or more officers, directors or managing agents, or other persons who are most knowledgeable about the subject matter categories set forth in Schedule "B". The deposition testimony will be recorded by stenographic and video means. In addition, YOU shall provide the documents responsive to Schedule "A" within three (3) days prior to the date of the deposition by emailing same to dshatz@lcbfirm.com

Place: Springhill Suites 2544 Southwest Boulevard San Angelo, TX 79601	Date and Time: September 28, 2015 @ 10:00 a.m.
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[] *Inspection of Premises*: YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:
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The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: _____
CLERK OF COURT

Signature of Clerk or Deputy Clerk

OR /s/ Daniel C. Shatz
Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing Plaintiff, who issues or requests this subpoena, are:

Daniel C. Shatz, Esq., LIPSCOMB EISENBERG & BAKER PL, 2 South Biscayne Blvd.
Penthouse 3800, Miami, FL 33131, Telephone: (786) 431-2322; Email: dshatz@lcbfirm.com

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Definitions

1. “Communication” means any oral or written statement, dialog, colloquy, discussion or conversation, and also means any transfer of thoughts or ideas between persons by means of documents and includes any transfer of data from one location to another by electronic or similar means.

2. If not expressly stated, “control” means in your possession, custody, or control.

3. “Documents” shall mean the original or exact copies of any tangible written, typed, printed or other form of recorded or graphic matter of every kind or description, however produced or reproduced, whether mechanically or electronically recorded, draft, final, original, reproduction, signed or unsigned, regardless of whether approved, signed, sent, received, redrafted, or executed, and whether handwritten, typed, printed, photostated, duplicated, carbon or otherwise copies or produced in any other manner whatsoever. Without limiting the generality of the foregoing, “documents” shall include correspondence, letters, telegrams, telexes, mailgrams, memoranda, including interoffice and interoffice memoranda, memoranda for files, memoranda of telephone or other conversations, and including meetings, invoices, reports, receipts and statements of account, ledgers, notes or notations, booklets, books, drawings, graphs, telephone records, video cassettes, electronic tapes, discs or other recordings, computer programs, hard drives, discs, printouts, data cards, studies, analysis, e-mails, computer files, back-up tapes, hard disks, litigation data bases and other data compilations from which information can be obtained. Copies of documents which are not identical duplications of the originals, or which contain additions to or deletions from the originals, or copies of documents which are identical duplications of the originals if the originals are not available, shall be considered to be separate documents.

4. “Related to” shall mean directly or indirectly, refer to, reflect, describe, pertain to, arise out of or in connection with, or in any way legally, logically, or factually be connected with the matter discussed.

5. “You” or “Your” refers to the person upon whom this request was propounded and any other person(s) or entity(ies) acting or purporting to act on your behalf or under your control.

6. The words “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope hereof any responses to interrogatories, documents, or communications, which might otherwise be construed to be outside the scope hereof.

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Schedule A
DOCUMENTS AND ITEMS REQUESTED

- (a) Any and all document(s) that refers, relates to or comprises a record that the Defendant received a DMCA notice, pursuant to 17 U.S.C. 512(c)(1)(C), including but not limited to the DMCA record;
- (b) Any and all document(s) that refers, relates to or comprises a record that the Defendant received a copyright infringement notice forwarded by Verizon, pursuant to any copyright infringement alert system or any other internal procedure which Verizon follows;
- (c) Any and all document(s) that refers, relates to or comprises a record of Verizon's lease or rental of any electronic devices to Defendant. This includes any documentation which state the make, model number, and serial numbers of any and all modems and routers which Verizon leased to Defendant;
- (d) Any and all document(s) that refers, relates to or comprises a record of Verizon's policies and procedures regarding the installation and maintenance of passwords on a subscriber's modem or router;
- (e) Any and all document(s) that refers, relates to or comprises a record of Verizon's policies and procedures of correlating internet subscribers to IP addresses, and any information regarding the accuracy of such correlations.
- (f) Any and all document(s) that refers, relates to or comprises a record that the Defendant was the internet subscriber assigned IP address 96.252.235.193 on July 30, 2014 at 18:23:16 UTC.

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Schedule B
TOPICS FOR 30(b)(6) DEPOSITION OF VERIZON

- (a) Discussion of any and all document(s) Verizon produced in response to Schedule A of this Subpoena, including all information necessary to lay the foundation for each document to be introduced into evidence;
- (b) Discussion of any DMCA notice Verizon forwarded to Defendant;
- (c) Discussion of any notice of copyright infringement Verizon forwarded to Defendant;
- (d) Discussion of any devices Verizon leased to Defendant, including but not limited to modems and routers;
- (e) Discussion of Verizon's policies and procedures regarding the installation and maintenance of passwords on a subscriber's modem or router;
- (g) Discussion of the records proving that the Defendant was the internet subscriber assigned IP address 96.252.235.193 on July 30, 2014 at 18:23:16 UTC; and
- (f) Explanation of the process Verizon used to correlate the IP address, 96.252.235.193 with the Defendant in the instant matter.

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AO 88B (Rev. 06/09) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action (page 3)

Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)

(c) Protecting a Person Subject to a Subpoena.

(1) Avoiding Undue Burden or Expense; Sanctions.

A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(d) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information.

These procedures apply to producing documents or electronically stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such



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sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial preparation material must: (i) expressly make the claim; and (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(c) Contempt. The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

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