UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

MALIBU MEDIA, LLC,

No. 12-cv-2954 (NRB)

AFFIDAVIT

Plaintiff,

-against-

JOHN DOES 1-5,

Defendants.

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STATE OF NEW YORK ) ) ss.: COUNTY OF QUEENS )

MORLAN TY ROGERS, being duly sworn, deposes and says:

1. I am a member of the bar of this Court and Of Counsel to Ray Beckerman, P.C., attorneys for defendant John Doe No. 4 ("Doe 4"), and respectfully submit this affidavit in support his motion for an Order (a) pursuant to Rules 20(a) and 21 of the Federal Rules of Civil Procedure, severing and dismissing the action as to defendants John Doe Nos. 2 through 5 on the ground that plaintiff Malibu Media, LLC improperly joined said defendants in this action, and (b) pursuant to Rule 45(c)(3) of the Federal Rules of Civil Procedure, quashing the subpoenas issued under the Court's April 30, 2012 *ex parte* discovery order (the "*Ex Parte* Order") which seek disclosure of the identities of defendants John Doe Nos. 2 through 5.

2. I know the identity of Doe 4, who wishes to remain anonymous. As set forth in this individual's accompanying declaration, Doe 4 has never downloaded nor uploaded the movie file "Tiffany Sex With A Supermodel" which is the subject of this action.

3. Annexed hereto as Exhibit "A" is a copy of plaintiff's complaint herein, including exhibits thereto. Annexed hereto as Exhibit "B" is a copy of the *Ex Parte* Order.

4. For the reasons set forth in the accompanying memorandum of law, the Court should grant the within motion in all respects.

Sworn to before me this 28th day of June, 201 Notary Public

02