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6 IN THE UNITED STATES DISTRICT COURT FOR THE  
7  
8 EASTERN DISTRICT OF CALIFORNIA  
9

10 In the Matter Of a Petition By, )  
11 )  
INGENUITY 13 LLC, )  
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13 )  
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\_\_\_\_\_ )

No.2:11-mc-00084 JAM DAD

**ORDER GRANTING  
PETITIONER’S VERIFIED PETITION  
TO PERPETUATE TESTIMONY**

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16 **ORDER GRANTING PETITIONER’S VERIFIED PETITION TO PERPETUATE  
TESTIMONY**

17 On October 28, 2011, Plaintiff filed its Verified Petition to Perpetuate Tetimony (hereinafter  
18 merely “Petition”) pursuant to Federal Rule of Civil Procedure (“FRCP”) 27. In its Petition,  
19 Petitioner requested an Order from this Court pursuant to FRCP 27 authorizing the issuance of  
20 subpoenas *duces tecum* to the Internet Service Providers (“ISP”) listed on Exhibit A to its Petition.  
21 Having considered Petitoiner’s Petition, Exhibits, and suporting Memorandum of Law, the Court  
22 hereby finds that Petitioner has satisfied the necessary elements required by the Ninth Circuit when  
23 bringing forth a FRCP 27 petition. *See, e.g., Tennison v. Henry*, 203 F.R.D. 435 (N.D. Cal. 2001)  
24 (elements discussed). Specifically, Petitioner has shown that discovery is essential to permit  
25 Petitioner to bring suit against a potential defendant(s), and this information sought may soon no  
26 longer be available to Petitioner. *See GWA, LLC v. Cox Communications, Inc.*, No. #:10-cv-741  
27  
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1 (WWE), 2010 WL 1957864, at \*1 (D. Conn. May 17, 2010) (granting Rule 27 request by  
2 prospective plaintiff to subpoena information from communications company for purposes of  
3 learning the identity of a subscriber using a certain IP address so that individual could be named as a  
4 defendant in an action alleging unauthorized access to plaintiff's computer system); *General Board*  
5 *of Global Ministries of the United Methodist Church v. Cablevision Lightpath, Inc.*, No. CV 06-  
6 3669 (DRH)(ETB, 2006 WL 3479332, at \*4-5 (E.D.N.Y. Nov. 30, 2006) (granting Rule 27 request  
7 where the "identity of the unknown party defendant may be obtained through Cablevision, which is  
8 able to match the IP address to its subscriber" and where Cablevision destroys that information in the  
9 ordinary course of business after 90 days).  
10

11 In light of this, the Court hereby **GRANTS** Petitioner's Petition and adopts the general  
12 discovery plan proposed in Plaintiff's Memorandum of Law in Support of Rule 27 Verified Petition.  
13

14 Accordingly, IT IS ORDERED THAT:

- 15 1. Petitioner may immediately serve Rule 45 subpoenas on the ISPs listed in  
16 Exhibit A to the Petition to obtain the following information about the  
17 subscribers corresponding to the IP addresses listed on Exhibit B: the  
18 names, addresses, telephone numbers, email addresses, and media access  
19 control information. Each subpoena shall have a copy of this Order  
20 attached.  
21
- 22 2. Each ISP will have thirty (30) days from the date a copy of this Order and  
23 a copy of the subpoena are served to respond, so that it may have  
24 sufficient time to provide notice to the subscribers whose information  
25 Petitioner seeks to obtain.
- 26 3. Account holders shall have thirty (30) days from the date of notice of the  
27 subpoena upon them to file relevant motions in this Court to contest the  
28

1 subpoena. Account holders only have standing to raise certain objections  
2 to Petitioner's subpoena. For example, under Federal Rule of Civil  
3 Procedure 45, an individual can move to quash a nonparty subpoena if it  
4 "requires disclosure of privileged or other protected matter, if no  
5 exception or waiver applies." Fed. R. Civ. P. 45(c)(3)(A)(iii). If the thirty-  
6 day period lapses without a contest, the ISPs will have ten (10) days  
7 thereafter to produce the information responsive to the subpoena to  
8 Petitioner.  
9

- 10 4. The subpoenaed entity shall preserve any subpoenaed information pending  
11 the resolution of any time-filed motion to quash.  
12  
13 5. Any ISP that receives a subpoena pursuant to this Order shall confer with  
14 Petitioner before assessing any charge in advance of providing the  
15 information requested in the subpoena. Any ISP that elects to charge for  
16 the costs of production shall provide Petitioner with a billing summary and  
17 cost reports.  
18  
19 6. Petitioner shall serve a copy of this Order along with any subpoenas issued  
20 pursuant to this Order to the necessary ISP entities.  
21  
22 7. Any information disclosed to Petitioner in response to a Rule 45 subpoena  
23 may not be used for any improper purpose and may only be used for  
protecting its rights as set forth in the Petition.

24 IT IS SO ORDERED.

25 Dated: 11/11/2011

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DALE A. DROZD  
UNITED STATES MAGISTRATE JUDGE

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