

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

Strike 3 Holdings, LLC v. Doe

Case No. 3:25-cv-01450-RBM-AHG (S.D. Cal. June 23, 2025) · No. 3:25-cv-01450-RBM-AHG · Decided June
23, 2025

OPINION

Strike 3 Holdings, LLC v. Doe

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 SOUTHERN DISTRICT OF CALIFORNIA

10 11 STRIKE 3 HOLDINGS, LLC, Case No.: 3:25-cv-01450-RBM-AHG 12 Plaintiff,

ORDER GRANTING EX PARTE

13 v. APPLICATION FOR LEAVE TO

SERVE A THIRD-PARTY

14 JOHN DOE subscriber assigned IP

SUBPOENA PRIOR TO A RULE

address 99.127.179.17,

15 26(f) CONFERENCE

Defendant. 16 [ECF No. 4] 17 18 Before the Court is Plaintiff Strike 3 Holdings, LLC’s
 (“Plaintiff”) Ex Parte 19 Application for Leave to Serve a Third Party Subpoena Prior to a Rule
 26(f) Conference. 20 ECF No. 4. No defendant has been named or served, so no opposition or
 reply briefs have 21 been filed. For the reasons discussed below, the Court GRANTS Plaintiff’s ex
 parte 22 application.

23 I. BACKGROUND

24 On June 6, 2025, Plaintiff filed a Complaint against Defendant “John Doe,” who is 25
 allegedly a subscriber of AT&T Internet and assigned Internet Protocol (“IP”) address 26
 99.127.179.17. ECF No. 1 at ¶ 5. Plaintiff Strike 3 Holdings, LLC, is the owner of 27 numerous
 adult motion pictures, which Plaintiff distributes through adult websites and 28 DVDs. Id. at ¶¶ 2–
 3. Plaintiff asserts that Defendant is committing “rampant and wholesale 1 copyright
 infringement” by downloading, recording, and distributing copies of Plaintiff’s 2 copyrighted
 motion pictures without authorization through the use of the BitTorrent file 3 distribution network.
 Id. at ¶¶ 4, 18–29. 4 In the instant motion, Plaintiff seeks leave to conduct early discovery prior to
 the 5 mandated Rule 26(f) conference to learn Defendant’s identity. ECF No. 4. Specifically, 6
 Plaintiff seeks an order permitting it to serve a third-party subpoena under Federal Rule of 7 Civil
 Procedure 45 on AT&T Internet, the Internet Service Provider (“ISP”) who leased 8 the IP address

belonging to Defendant John Doe, which would require AT&T Internet to supply the name and address of its subscriber to Plaintiff. ECF No. 4-1 at 7–8.1 Through service of the third-party subpoena, Plaintiff seeks only “the true name and address of Defendant.” *Id.* at 8. Additionally, Plaintiff represents to the Court that it will only use this information to prosecute the claims made in its Complaint. *Id.*

13 II. LEGAL STANDARD

14 A party is generally not permitted to obtain discovery without a court order before the parties have conferred pursuant to Federal Rule of Civil Procedure 26(f). Fed. R. Civ. P. 26(d) (1). However, courts make exceptions to allow limited discovery after a complaint is filed to permit the plaintiff to learn the identifying information necessary to serve the defendant. *Columbia Ins. Co. v. Seescandy.com*, 185 F.R.D. 573, 577 (N.D. Cal. 1999); see, e.g., *UMG Recordings, Inc. v. Doe*, No. C-08-3999-RMW, 2008 WL 4104207, at *2 20 (N.D. Cal. Aug. 29, 2008) (noting, in an infringement case, that “a plaintiff cannot have a discovery planning conference with an anonymous defendant[,]” thus, limited expedited discovery would “permit the [plaintiff] to identify John Doe and serve the defendant, 23 permitting this case to go forward.”). 24 25 26 27 1 Due to discrepancies between original and imprinted page numbers, page numbers for docketed materials cited in this Order refer to those imprinted by the court’s electronic case 28 1 Consistent with this generally recognized exception to Rule 26(f), the Ninth Circuit 2 has held that “‘where the identity of the alleged defendant[] [is] not [] known prior to the 3 filing of a complaint[,] the plaintiff should be given an opportunity through discovery to 4 identify the unknown defendants, unless it is clear that discovery would not uncover the 5 identities, or that the complaint would be dismissed on other grounds.’” *Wakefield v. 6 Thompson*, 177 F.3d 1160, 1163 (9th Cir. 1999) (quoting *Gillespie v. Civiletti*, 629 F.2d 7 637, 642 (9th Cir. 1980)). 8 A party who requests early or expedited discovery must make a showing of good 9 cause. See *Semitool, Inc. v. Tokyo Electron Am., Inc.*, 208 F.R.D. 273, 275–76 (N.D. Cal. 10 2002) (applying “the conventional standard of good cause in evaluating Plaintiff’s request 11 for expedited discovery”). Good cause is established through a balancing test “where the 12 need for expedited discovery, in consideration of the administration of justice, outweighs 13 the prejudice to the responding party.” *Id.* at 276. To determine whether “good cause” 14 exists to permit expedited discovery to identify John Doe defendants, district courts in the 15 Ninth Circuit consider whether the plaintiff (1) “identif[ies] the missing party with 16 sufficient specificity such that the Court can determine that the defendant is a real person 17 or entity who could be sued in federal court”; (2) “identif[ies] all previous steps taken to 18 locate the elusive defendant” to ensure that plaintiff has made a good faith effort to identify 19 the defendant; and (3) “establish[es] to the Court’s satisfaction that plaintiff’s suit against 20 defendant could withstand a motion to dismiss.” *Columbia Ins.*, 185 F.R.D. at 578–80. 21 Additionally, the plaintiff should demonstrate the discovery will likely lead to identifying 22 information that will permit service of process. *Id.* at 580. These factors are considered to 23 ensure the expedited discovery procedure

“will only be employed in cases where the plaintiff has in good faith exhausted traditional avenues for identifying a civil defendant pre-service, and will prevent use of this method to harass or intimidate.” Id. 26 // 27 // 28 //

1 III. DISCUSSION

2 Plaintiff contends that there is good cause for this Court to allow expedited 3 discovery. ECF No. 4-1 at 11–17. For the reasons stated below, the Court agrees. 4 a. Identification of Missing Party with Sufficient Specificity 5 To satisfy the first prong, Plaintiff must identify Defendant with enough specificity 6 to enable the Court to determine that Defendant is a real person or entity who would be 7 subject to the jurisdiction of this Court. *Columbia Ins.*, 185 F.R.D. at 578. District courts 8 in this circuit have determined “a plaintiff identifies Doe defendants with sufficient 9 specificity by providing the unique IP addresses assigned to an individual defendant on the 10 day of the allegedly infringing conduct, and by using ‘geolocation technology’ to trace the 11 IP addresses to a physical point of origin.” 808 Holdings, LLC v. Collective of December 12 29, 2011 Sharing Hash, No. 12cv186 MMA-RBB, 2012 WL 12884688, at *4 (S.D. Cal.

13 May 4, 2012); see *Openmind Solutions, Inc. v. Does 1-39*, No. C-11-3311-MEJ, 2011 WL 14 4715200, at *2 (N.D. Cal. Oct. 7, 2011) (concluding that plaintiff satisfied the first factor 15 by identifying the defendants’ IP addresses and by tracing the IP addresses to a point of 16 origin within the State of California); *Pink Lotus Entm’t, LLC v. Does 1-46*, No. C-11- 17 02263, 2011 WL 2470986, at *3 (N.D. Cal. June 21, 2011) (same). Other courts have 18 concluded that merely identifying the IP addresses on the day of the alleged infringement 19 satisfies this factor. 808 Holdings, 2012 WL 12884688, at *4 (collecting cases). 20 Here, Plaintiff has identified the Doe Defendant with sufficient specificity. First, in 21 support of the present motion, Plaintiff provided a Declaration by Jorge Arco, an 22 independent contractor hired by General Media Systems LLC, the parent company of 23 Plaintiff, as a Lead Systems Administrator and Enterprise Architect. ECF No. 4-2 at 2–15 24 (“Ex. A”). In those roles, Mr. Arco testifies he “was part of a team that developed the 25 infringement detection system VXN Scan ... which Strike 3 both owns and uses to identify 26 the IP addresses used by individuals infringing Plaintiff’s movies via the BitTorrent 27 protocol.” Ex. A at ¶ 41. Mr. Arco’s Declaration explains the VXN Scan system in detail, 28 which involves, in part, the development of a proprietary BitTorrent client that emulates 1 the behavior of a standard BitTorrent client by repeatedly downloading data pieces from 2 peers within the BitTorrent network that are distributing Plaintiff’s movies. Id. at ¶¶ 53– 3 56. Mr. Arco testifies that another component of the VXN Scan system is the PCAP2 4 Recorder / Capture Card, which is able to record the IP addresses connecting to the 5 Proprietary Client and send the infringed copies of Plaintiff’s movies to the Proprietary 6 Client through the BitTorrent network. Id. at ¶¶ 58–60. Not only does a PCAP contain the 7 IP addresses used in the network transaction; it also records the port number and BitTorrent 8 client used to accomplish each transaction, and the “Info Hash” associated with the 9 infringing computer file, which reflects the metadata of the particular underlying .torrent 10 file being shared without authorization. Id. at ¶¶ 62–63. The

PCAP Capture Card records 11 PCAPs in real time and is able to record perfect copies of every network packet received 12 by the Proprietary Client. Id. at ¶ 66. Although this Order touches only on two of the 13 components of the VXN Scan system, Mr. Arco's 83-paragraph Declaration sets forth 14 additional in-depth details of all six components of the system, providing the Court a 15 thorough understanding of how the system reliably pinpoints the IP addresses used by 16 individuals infringing Plaintiff's movies and verifies the infringement. 17 Second, Plaintiff also provided a declaration by Patrick Paige, a computer forensics 18 expert retained by Plaintiff to analyze and retain forensic evidence captured by the VXN 19 Scan system. ECF No. 4-2 at 17–22 ("Ex. B"). Mr. Paige explains that VXN Scan recorded 20 numerous BitTorrent computer transactions with IP address 99.127.179.17 in the form of 21 PCAPs, and that he reviewed the PCAP to confirm that it evidences a recorded transaction 22 with that IP address on April 11, 2025, at 01:18:04 UTC involving the IP address uploading 23 a piece or pieces of a file corresponding to the hash value that is unique to one of Plaintiff's 24 movies. Ex. B at ¶¶ 13–19. Mr. Paige also testified that based on his experience in similar 25 26 27 28 2 1 cases, Defendant's ISP, AT&T Internet, is the only entity that can correlate the IP address 2 99.127.179.17 to its subscriber to pinpoint Defendant's identity. Ex. B at ¶ 28. 3 Third, Plaintiff provided a declaration by Susan Stalzer, one of Plaintiff's employees 4 who verified that each digital file that the Proprietary Client received through its 5 transactions with IP address 99.127.179.17 is a copy of one of Plaintiff's copyrighted 6 works, by viewing the unauthorized motion pictures corresponding with the file hashes 7 side-by-side with Plaintiff's original movies. ECF No. 4-2 at 24–26 ("Ex. C"); see also 8 ECF No. 1-2 (Exhibit A to the Complaint, listing the hash values of the 57 torrent files 9 received by the Proprietary Client from the IP address 99.127.179.17). 10 Finally, Plaintiff provides a declaration by Emilie Kennedy, Plaintiff's in-house 11 General Counsel. ECF No. 4-2 at 28–30 ("Ex. D"). Ms. Kennedy explains that after 12 Plaintiff received infringement data from VXN Scan identifying IP address 99.127.179.17 13 as infringing its works, the IP address was automatically input into Maxmind's Geolocation 14 Database on November 28, 2022, which traced the IP address location to San Diego, 15 California, within this Court's jurisdiction. Ex. D at ¶¶ 4–5. Plaintiff has since repeated the 16 trace through the Geolocation Database twice more, prior to filing the Complaint and prior 17 to filing the present Motion, confirming the IP address continues to trace to this District, 18 specifically to San Diego. Id. at ¶¶ 6–8; see ECF No. 4-2 at 31. The Court is satisfied that 19 these multiple geolocation traces over the course of multiple months indicating that the 20 Defendant is located in this District are reliably accurate. 21 Based on all of the information above, the Court concludes Plaintiff has provided a 22 sufficient showing that it seeks to sue a real person subject to the Court's jurisdiction. 23 Likewise, if Plaintiff obtains the identifying information from the ISP for the subscriber 24 assigned the IP address at issue, the information sought in the subpoena would likely enable 25 Plaintiff to serve Defendant. Therefore, the Court finds Plaintiff satisfied the "sufficient 26 specificity" threshold. 27 // 28 // 1 b. Previous Attempts to Locate Defendant 2

Next, Plaintiff is required to describe all steps taken to identify the Doe defendant in 3 a good-faith effort to locate and serve them. Plaintiff states that it attempted to locate 4 Defendant by searching for Defendant's IP address using online search engines and other 5 web search tools. ECF No. 4-1 at 14. Plaintiff also reviewed numerous sources of authority 6 such as legislative reports, agency websites, informational technology guides, etc. 7 regarding whether it is possible to identify such a defendant by other means, and 8 extensively discussed this issue with its computer investigators and cyber security 9 consultants. *Id.* Despite these diligent efforts, Plaintiff was unable to identify any means of 10 obtaining the identity of Defendant other than through subpoenaing the information from 11 the ISP. *Id.*; see also Ex. B at ¶ 28. Thus, the Court finds Plaintiff has shown it made a 12 good-faith effort to identify and locate Defendant before resorting to filing the instant 13 motion. 14 c. Whether Plaintiff Can Withstand a Motion to Dismiss 15 Lastly, Plaintiff must establish it could survive a motion to dismiss. See Fed. R. Civ. 16 P. 12(b); *Columbia Ins.*, 185 F.R.D. at 579. To survive a motion to dismiss for failure to 17 state a claim upon which relief can be granted, "a complaint must contain sufficient factual 18 matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. 19 Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 20 (2007)). To present a prima facie case of copyright infringement, Plaintiff must show: (1) 21 ownership of a valid copyright; and (2) that Defendant violated the copyright owner's 22 exclusive rights under the Copyright Act. *Range Road Music, Inc. v. East Coast Foods, 23 Inc.*, 668 F.3d 1148, 1153 (9th Cir. 2012). In addition, for direct infringement Plaintiff is 24 required to show causation by Defendant. *Perfect 10, Inc. v. Giganews, Inc.*, 847 F.3d 657, 25 666 (9th Cir. 2017). 26 Here, Plaintiff's Complaint clearly alleges that Plaintiff owns a valid copyright in 27 the works at issue, which are registered with the United States Copyright Office. See ECF 28

1 No. 1 at ¶¶ 43, 44, 46, 50, 51. And again, Ms. Stalzer attests that she reviewed the files 2 correlating to the hashes identified in Exhibit A to the Complaint and confirmed that they 3 are "identical, strikingly similar or substantially similar" to Strike 3's original copyrighted 4 Works. Ex. C at ¶¶ 7–11; ECF No. 1 at ¶¶ 34–35. Plaintiff's Complaint also alleges 5 Defendant used BitTorrent to copy and distribute the copyrighted works without 6 authorization, and that the infringement was continuous and ongoing. ECF No. 1 at ¶¶ 4, 7 19–30, 33–36, 45–46. Thus, Plaintiff's Complaint has stated a claim for copyright 8 infringement against the Doe Defendant sufficient to survive a motion to dismiss. 9 Additionally, Plaintiff has alleged sufficient facts to show it could withstand a motion to 10 dismiss for lack of personal jurisdiction or a motion for improper venue, because 11 Defendant's IP address was traced to locations in this District. Accordingly, the Court 12 concludes Plaintiff has met the third prong necessary to establish good cause for granting 13 early discovery.

14 IV. CONCLUSION

15 For the reasons set forth above, and for good cause shown, the Court GRANTS 16 Plaintiff's ex parte application for leave to serve a subpoena prior to a Rule 26(f) 17 conference. ECF No. 4.

However, the Court is cognizant of the potential embarrassment of 18 being identified in this type of case and “shares the growing concern about unscrupulous 19 tactics used by certain plaintiffs, especially in the adult film industry, to shake down the 20 owners of IP addresses.” *Malibu Media, LLC v. Does 1-5*, No. 12-Civ-2950-JPO, 2012 WL 21 2001968, at *1 (S.D.N.Y. June 1, 2012). Anticipating and sharing these concerns, Plaintiff 22 invites the Court to issue a protective order establishing procedural safeguards if the Court 23 24 25 26 3 Exhibit A to the Complaint, which shows the hash values of the purportedly infringing 27 movies downloaded from the IP address 99.127.179.17, also contains the United States Copyright Office registration information of the works that correspond with those hash 28 1 finds such procedures appropriate. ECF No. 4-1 at 18. Accordingly, the Court ORDERS 2 as follows: 3 1. Plaintiff shall attach a copy of this Order to any subpoena. 4 2. Plaintiff may serve the ISP with a Rule 45 subpoena commanding the ISP to 5 provide Plaintiff with only the true name and address of the Defendant to 6 whom the ISP assigned an IP address as set forth on Exhibit A to the 7 Complaint. The ISP is not to release the Defendant’s telephone number or 8 email address. 9 3. Within fourteen (14) calendar days after service of the subpoena, the ISP shall 10 notify the subscriber that his or her identity has been subpoenaed by Plaintiff. 11 The ISP must also provide a copy of this Order along with the required notice 12 to the subscriber whose identity is sought pursuant to this Order. 13 4. The subscriber whose identity has been subpoenaed shall have thirty (30) 14 calendar days from the date of such notice to challenge the disclosure of his 15 or her name and contact information by filing an appropriate pleading with 16 this Court contesting the subpoena. A subscriber who moves to quash or 17 modify the subpoena may proceed anonymously as “John Doe,” and shall 18 remain anonymous until the Court orders that the identifying information may 19 be released. 20 5. If the ISP wishes to move to quash the subpoena, it shall do so before the 21 return date of the subpoena. The return date of the subpoena must allow for 22 at least forty-five (45) days from service to production. If a motion to quash 23 or other challenge is brought, the ISP shall preserve the information sought 24 by Plaintiff in the subpoena pending resolution of such motion or challenge. 25 6. Plaintiff may only use the information disclosed in response to a Rule 45 26 subpoena served on the ISP for the purpose of protecting and enforcing 27 Plaintiff’s rights as set forth in its Complaint. If Defendant wishes to proceed 28 1 anonymously, Plaintiff may not release any identifying information without a 2 court order allowing the release of the information. 3 IT IS SO ORDERED. 4 || Dated: June 23, 2025 5 6 ion H. Xovolasrle 7 Honorable Allison i. Goddard United States Magistrate Judge 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28