UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA

Strike 3 Holdings, LLC v. John Doe

Strike 3 Holdings · No. 25cv1132-RBM (MSB) · Decided June 11, 2025

SUMMARY

The United States District Court for the Southern District of California grants Strike 3 Holdings, LLC's ex parte application for leave to serve a third-party subpoena on AT&T Internet before a Rule 26(f) conference. The subpoena may seek only the name and address of the subscriber assigned to IP address 23.113.27.81, subject to notice, challenge, preservation, and use restrictions.

OPINION

2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 SOUTHERN DISTRICT OF CALIFORNIA 10 11 STRIKE 3 HOLDINGS, LLC, Case No.: 25cv1132-RBM (MSB) 12 Plaintiff, ORDER GRANTING PLAINTIFF'S EX 13 v. PARTE APPLICATION FOR LEAVE TO SERVE A THIRD-PARTY SUBPOENA 14 JOHN DOE subscriber assigned IP address PRIOR TO A RULE 26(f) CONFERENCE 23.113.27.81, 15 [ECF NO. 4] Defendant.

16 17 18 On May 15, 2025, Plaintiff Strike 3 Holdings, LLC ("Strike 3") filed an "Ex-Parte 19 Application for Leave to Serve a Third-Party Subpoena Prior to a Rule 26(f) Conference" 20 ("Ex Parte Application"). (ECF No. 4.) Plaintiff seeks to subpoena Defendant John Doe's 21 Internet Service Provider ("ISP") AT&T Inc. (AT&T Internet) for "limited, immediate 22 discovery... so that Plaintiff may learn Defendant's identity, further investigate 23 Defendant's role in the infringement, and effectuate service." (ECF No. 4-1 at 7.)

24 Because Defendant has not been identified, no opposition or reply briefs have been 25 filed. For the following reasons, the Ex Parte Application is GRANTED. 26 / / / 27 / / / 2 Plaintiff owns the copyright to certain motion pictures. (ECF No. 4-1 at 8.)

On 3 May 4, 2025, Plaintiff filed a Complaint alleging that Defendant John Doe, an internet 4 subscriber assigned Internet protocol ("IP") address 23.113.27.81, has been using the 5 BitTorrent protocol to commit "rampant and wholesale copyright infringement" by 6 downloading and distributing twenty-six movies over an extended period. (ECF No. 1 at 7 2.) Plaintiff alleges it used its proprietary forensic software, VXN Scan, to discover that 8 Defendant's IP address was illegally distributing Plaintiff's copyrighted motion pictures.

9 (ECF No. 4-1 at 7; ECF No. 4-2 at 19–20.) 10 On May 15, 2025, Plaintiff filed the instant Ex Parte Application seeking leave to 11 serve a subpoena pursuant to Federal Rule of Civil

Procedure 45 on Defendant's ISP, 12 AT&T Inc. (ECF No. 4-1 at 8, 18.) Plaintiff maintains that the Rule 45 subpoena "will only 13 demand the true name and address of Defendant[,]" and "Plaintiff will only use this 14 information to prosecute the claims made in its Complaint." (ECF No. 4-1 at 8.)

Plaintiff 15 further claims that "[w]ithout this information, Plaintiff cannot serve Defendant nor 16 pursue this lawsuit and protect its copyrights." (Id.) 17 II. LEGAL STANDARD 18 Generally, formal discovery is not permitted before the parties have conferred 19 pursuant to Federal Rule of Civil Procedure 26(f). Fed. R. Civ. P. 26(d)(1). Courts, 20 however, have made exceptions "in rare cases... permitting limited discovery to ensue 21 after filing of the complaint to permit the plaintiff to learn the identifying facts 22 necessary to permit service on the defendant." Columbia Ins.

Co. v. Seescandy.com, 185 23 F.R.D. 573, 577 (N.D. Cal. 1999). Courts in the Ninth Circuit apply a "good cause" 24 standard to decide whether to permit early discovery. Semitool, Inc. v. Tokyo Electron 25 Am., Inc., 208 F.R.D. 273, 275–76 (N.D. Cal. 2002). "Good cause" is established "where 26 the need for expedited discovery, in consideration of the administration of justice, 27 outweighs the prejudice to the responding party." Id. 2 filed, courts may grant plaintiffs leave to take early discovery to determine the 3 defendants' identities 'unless it is clear that discovery would not uncover the identities, 4 or that the complaint would be dismissed on other grounds.'" 808 Holdings, LLC v. 5 Collective of Dec.

29, 2011 Sharing Hash E37917C8EEB4585E6421358FF32F29C 6 D63C23C91, No. 12cv186-MMA (RBB), 2012 WL 12884688, at *3 (S.D. Cal. May 8, 2012) 7 (quoting Gillespie v. Civiletti, 629 F.2d 637, 642 (9th Cir. 1980)). "A district court's 8 decision to grant discovery to determine jurisdictional facts is a matter of discretion." 9 Columbia Ins. Co., 185 F.R.D. at 578.

10 District Courts in the Ninth Circuit typically apply a three-factor test when 11 considering motions for early discovery to identify Doe defendants. Id. at 578–80. First, 12 the moving party should be able to "identify the missing party with sufficient specificity 13 such that the Court can determine that defendant is a real person or entity who could 14 be sued in federal court." Id. at 578.

Second, the movant "should identify all previous 15 steps taken to locate the elusive defendant" to ensure "that [the movant has made] a 16 good faith effort to comply with the requirements of the service of process and 17 specifically identifying defendants." Id. at 579.

Third, the plaintiff "should establish to 18 the Court's satisfaction that plaintiff's suit against defendant could withstand a motion 19 to dismiss." Id.; see also Gillespie, 629 F.2d at 642 (stating early discovery to identify 20 unknown defendants should be permitted unless the complaint would be dismissed on 21 other grounds). 22 In addition to satisfying all three factors, plaintiff should provide "reasons 23 justifying the specific discovery requested [and] identification of a

limited number of 24 persons or entities on whom discovery process might be served and for which there is a 25 reasonable likelihood that the discovery process will lead to identifying information 26 about defendant that would make service of process possible." Columbia Ins.

Co., 185 27 F.R.D. at 580; see also Gillespie, 629 F.2d at 642 (explaining that early discovery is 2 plaintiff has in good faith exhausted traditional avenues for identifying a civil defendant 3 pre-service, and will prevent use of this method to harass or intimidate." Columbia Ins. 4 Co., 185 F.R.D. at 578. 5 III. ANALYSIS 6 Plaintiff seeks leave to serve a subpoena pursuant to Federal Rule of Civil 7 Procedure 45 on Defendant's ISP, AT&T Inc. (ECF No. 4-1 at 8.)

The Cable Privacy Act 8 generally prohibits a cable operator from disclosing "personally identifiable information 9 concerning any subscriber without the prior written or electronic consent of the 10 subscriber concerned." 47 U.S.C. § 551(c)(1). A cable operator, however, may disclose 11 the information if the disclosure is made pursuant to a court order and the cable 12 operator notifies the subscriber of the order.

47 U.S.C. § 551(c)(2)(B). A cable operator 13 is "any person or group of persons" who "provides cable service over a cable system and 14 directly or through one or more affiliates owns a significant interest in such cable 15 system," or "otherwise controls or is responsible for, through any arrangement, the 16 management and operation of such a cable system." 47 U.S.C. § 522(5).

17 AT&T Inc. is a cable operator, and the information Plaintiff seeks falls within the 18 exception to the Cable Privacy Act's disclosure prohibition. See 47 U.S.C. §551(c)(2)(B). 19 Accordingly, if Plaintiff satisfies the multi-factor test used by district courts to determine 20 whether early discovery is warranted, Defendant's ISP may disclose the requested 21 information pursuant to this Court's order.

22 A. Plaintiff Has Identified Defendant with Sufficient Specificity 23 Plaintiff must identify Defendant with enough specificity to allow the Court to 24 determine that Defendant is a real person or entity, subject to the jurisdiction of this 25 Court. See Columbia Ins. Co., 185 F.R.D. at 578. "[A] plaintiff identifies Doe defendants 26 with sufficient specificity by providing the unique IP addresses assigned to an individual 27 defendant on the day of the allegedly infringing conduct, and by using 'geolocation 2 2012 WL 12884688, at *4.

3 In support of its Ex Parte Application, Plaintiff submitted the Declaration of Jorge 4 Arco, an Enterprise Architect Contractor for the parent company for Plaintiff, General 5 Media Systems, LLC. (See ECF No. 4-2 at 4.) Mr. Arco uses Plaintiff's infringement 6 detection system, VXN Scan, to identify the IP addresses used by individuals infringing 7 Plaintiff's movies through the BitTorrent protocol.

(Id. at 9.) Further, although the 8 BitTorrent protocol contains some default and automatic functions, the functions that 9 Plaintiff accuses Defendant of using require human operation. See

Christopher 10 Civil, Mass Copyright Infringement Litigation: Of Trolls, Pornography, Settlement and 11 Joinder, 30 Syracuse J. Sci. & Tech. L. 2, 12 (2014) ("BitTorrent transfers do not involve a 12 centralized server that hosts or transfers the data files in question.

Instead, BitTorrent 13 involves users interacting directly with other users to upload and download the 14 content."). Accordingly, Plaintiff has established that an actual human was involved in 15 the downloading and sharing of Plaintiff's allegedly infringed works. 16 Plaintiff also submitted the Declaration of Patrick Paige, a Managing Member at 17 Computer Forensics, LLC, where Mr. Paige contends that he utilized Packet Capture 18 ("PCAP"), "a computer file containing captured or recorded data transmitted between 19 network devices[,]" and VXN Scan to connect Defendant's IP address to the alleged 20 "piece of an infringing copy of Plaintiff's works." (ECF No. 4-2 at 18, 20.)

According to 21 Mr. Paige, "[t]he PCAP contains a record data concerning that transaction, including, but 22 not limited to, the [IP] Addresses used in the network transaction, the date and time of 23 the network transaction, the port number used to accomplish each network transaction, 24 and the Info Hash value that the VXN Scan used as the subject of its request for data." 25 (Id. at 20.)

Mr. Paige contends that the contents of the PCAP confirm that the infringing 26 activity connected to the IP address 23.113.27.81 was initiated on April 22, 2025, at 27 15:24:22 UTC. (Id.) Mr. Paige concludes that "the PCAP evidence shows that within that 2 correspond with the date and time when one of Plaintiff's works were allegedly illegally 3 downloaded according to Exhibit A of Plaintiff's Complaint.

(ECF No. 1-2 at 1.) 4 In addition, Plaintiff submitted the Declaration of Emilie Kennedy, Plaintiff's in- 5 house General Counsel, in which Ms. Kennedy asserts geolocation was done by an 6 unspecified person to identify the location of Defendant on three separate occasions. 7 (ECF No. 4-2 at 29.)

First, "[a]fter [Plaintiff] received infringement data from VXN Scan 8 identifying IP address 23.113.27.81 as infringing its works, the IP address was 9 automatically inputted into Maxmind's Geolocation Database." (Id.) Based on this 10 search, Ms. Kennedy contends that "Maxmind determined that the IP address traced to 11 a location in Oceanside, California, which is within this Court's jurisdiction." (Id.)

12 Defendant's IP address was subsequently inputted by Plaintiff into Maxmind's Database 13 prior to the filing of Plaintiff's Complaint, and prior to the filing of her Declaration. (Id.) 14 On both occasions, the IP address linked to Defendant, 23.113.27.81, continued to trace 15 to this District.1 16 Plaintiff has provided sufficient information about infringing activity tied to 17

Defendant's unique IP address, the specific date and time associated with the activity, 18 and the location of the activity.

Therefore, Plaintiff has demonstrated with sufficient 19 specificity that Defendant is a real person or entity, likely subject to the jurisdiction of 20 this Court. See Crim. Prods., Inc. v. Doe-72.192.163.220, No. 16cv2589-WQH (JLB), 2016 21 WL 6822186, at *3 (S.D. Cal. Nov. 18, 2016) (holding that the sufficient specificity 22 threshold is satisfied when the IP address identified by Maxmind geolocation services 23 identifies a physical location within the court's jurisdiction).

24 / / / 25 / / / 26 27 1 Attached as Exhibit 1 to Ms. Kennedy's Declaration is a chart reflecting the results of the third and 2 Plaintiff must also demonstrate that it has taken previous steps to locate and 3 serve the Defendant. See Columbia Ins. Co., 185 F.R.D. at 579.

Although Plaintiff 4 maintains it diligently attempted to identify Defendant by searching for Defendant's IP 5 address "on various web search tools, including basic search engines like 6 www.google.com," Plaintiff does not submit evidence supporting this claim. (ECF No. 4- 7 1 at 14.)

However, Ms. Kennedy's Declaration and the MaxMind results attached as 8 Exhibit 1 indicate that Plaintiff took substantial steps to locate Defendant's IP address 9 and identify Defendant's ISP. (ECF No. 4-2 at 29–32.) Despite these efforts, Plaintiff was 10 unable to correlate the IP address to Defendant's identity. Plaintiff maintains that it has 11 been "unable to identify any other way to go about obtaining the identities of its 12 infringers and does not know how else it could possibly enforce its copyrights from 13 illegal piracy over the Internet." (ECF No. 4-1 at 14.)

The Court therefore finds that 14 Plaintiff has made a good faith effort to identify, locate, and serve the Defendant. See 15 Malibu Media, LLC v. John Does 1 through 6, No. 12cv1355-LAB (DHB), 2012 WL 16 4471538, at *3 (S.D. Cal. Sept. 26, 2012) (finding plaintiff's efforts to identify Doe 17 defendant were sufficient because "there is no other way for [p]laintiff to obtain 18 [d]efendants' identities, except by serving a subpoena on [d]efendants' ISPs demanding 19 it[]"); see also Digital Sin, Inc. v. Does 1-5698, No. C 11-04397 LB, 2011 WL 5362068, at 20 *2 (N.D.

Cal. Nov. 4, 2011) (finding plaintiff's attempts to identify and locate defendant 21 sufficient, where the plaintiff "investigated and collected data on unauthorized 22 distribution of copies of the [alleged infringed work] on BitTorrent-based peer-to-peer 23 networks."). 24 C. Plaintiff's Suit Could Withstand a Motion to Dismiss 25 Plaintiff must further show that the Complaint in this case could withstand a 26 motion to dismiss.

See Columbia Ins. Co., 185 F.R.D. at 579. A suit may be dismissed 27 pursuant to Rule 12(b) on several bases. Of all the bases that bear dismissal, those 2 personal jurisdiction, Plaintiff has

alleged facts sufficient to survive a motion to dismiss. 3 For subject matter jurisdiction, Plaintiff's Complaint alleges that "[t]his Court has subject 4 matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question); and 5 28 U.S.C. § 1338 (jurisdiction over copyright actions)." (ECF No. 1 at 2.)

On the issue of 6 personal jurisdiction, Plaintiff maintains it used geolocation technology to determine 7 that Defendant's IP address correlates to a physical address in the Southern District of 8 California. (Id. at 2–3.) 9 A motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure 10 tests the sufficiency of the allegations in the Complaint.

Navarro v. Block, 250 F.3d 729, 11 732 (9th Cir. 2001). Plaintiff's Complaint alleges a single cause of action against 12 Defendant for direct copyright infringement. (ECF No. 1 at 8–9.) To allege a claim for 13 direct copyright infringement, a plaintiff must show: "(1) ownership of a valid copyright; 14 and (2) that the defendant violated the copyright owner's exclusive rights under the 15 Copyright Act." Ellison v. Robertson, 357 F.3d 1072, 1076 (9th Cir.

2004). "In addition, 16 direct infringement requires the plaintiff to show causation (also referred to as 17 'volitional conduct') by the defendant." Perfect 10, Inc. v. Giganews, Inc., 847 F.3d 657, 18 666 (9th Cir. 2017). 19 Plaintiff alleges it owns the copyrights to the works that are the subject of this suit 20 and claims that the works "have been registered with the United States Copyright 21 Office." (ECF No. 1 at 8.)

Plaintiff also alleges that "Defendant used the BitTorrent File 22 Distribution Network with the purpose of distributing digital media files that have been 23 determined to be identical (or substantially similar) to Plaintiff's copyrighted motion 24 pictures[,]" and did so "without authorization." (Id. at 7, 8.) Assuming Plaintiff's 25 allegations are true, they state a claim on which relief can be granted.

See A&M Recs., 26 Inc. v. Napster, Inc., 239 F.3d 1004, 1013–14 (9th Cir. 2001) (finding plaintiffs sufficiently 27 demonstrated ownership and infringement by showing Napster allowed its users to 2 GPC (JMA), 2016 WL 6216183, at *2 (S.D. Cal. Oct. 25, 2016) (holding that plaintiff 3 alleged a prima facie case of copyright infringement against defendant by alleging that 4 plaintiff owned twelve copyrighted movies at issue, and that defendant infringed 5 plaintiff's copyrights by copying and distributing plaintiff's movies through the 6 BitTorrent network without plaintiff's permission).

Therefore, Plaintiff has sufficiently 7 alleged the prima facie elements of copyright infringement, and the Complaint will likely 8 withstand a motion to dismiss. 9 D. Whether Requested Discovery Will Lead to Identifying Information 10 Finally, Plaintiff is required to demonstrate that "there is a reasonable likelihood 11 that the discovery process will lead to identifying information about defendant that 12 would make service of process possible." Columbia Ins.

Co., 185 F.R.D. at 580. As 13 discussed above, Plaintiff's forensic investigation uncovered the unique IP address 14 23.113.27.81. (ECF No. 4-2 at 20.) Further, Exhibit 1 to Ms. Kennedy's declaration 15 indicates that her MaxMind search revealed that the ISP AT&T Internet owned 16 Defendant's IP address at the time of the infringement. (Id. at 32.) Based on his 17 experience in similar cases, Mr. Paige explains that "AT&T Internet is the only entity that 18 can correlate" Defendant's IP address to the IP address owner's identity.

(Id. at 22.) 19 Accordingly, if AT&T Internet provides Plaintiff with Defendant's name and address, this 20 will likely lead to information making it possible for Plaintiff to effectuate service on 21 Defendant. 22 IV. CONCLUSION 23 For the foregoing reasons, the Court GRANTS the Ex Parte Application for Leave 24 to Serve a Third-Party Subpoena Prior to a Rule 26(f) Conference [ECF No. 4] as follows: 25 1.

Plaintiff may serve a subpoena pursuant to Federal Rule of Civil Procedure 26 45 on AT&T Internet, seeking only the name and address of the subscriber assigned to 27 the IP address 23.113.27.81. Plaintiff may not subpoena additional information about 1 2. Plaintiff may only use the disclosed information to protect its copyrights in 2 || the instant litigation; 3 3.

Within fourteen (14) calendar days after service of the subpoena, AT&T 4 || Internet shall notify the subscriber assigned the IP address 23.113.27.81 that his, her, or 5 |lits identity has been subpoenaed by Plaintiff; 6 4.

The subscriber whose identity has been subpoenaed shall have thirty (30) 7 calendar days from the date of the notice to challenge the disclosure of his, her, or its 8 ||name and address by filing an appropriate pleading with this Court contesting the 9 || subpoena; 10 5. If AT&T Internet wishes to move to quash the subpoena, it shall do so 11 || before the return date of the subpoena.

The return date of the subpoena must allow 12 || for at least forty-five (45) days from service to production. If a motion to quash or other 13 || customer challenge is brought, AT&T Internet shall preserve the information sought by 14 || Plaintiff in the subpoena pending resolution of the motion or challenge; 15 6. Plaintiff shall serve a copy of this Order with any subpoena obtained and 16 ||served to AT&T Internet pursuant to this Order; 17 7.

AT&T Internet must provide a copy of this Order along with the required 18 || notice to the subscriber whose identity is sought pursuant to this Order. 19 8. No other discovery is authorized at this time. 20 IT IS SO ORDERED. 21 ||Dated: June 11, 2025 _ = _ 2 FF 33 Honorable Michael S. Berg United States Magistrate Judge 24 25 26 27 28