UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA

Strike 3 Holdings, LLC v. Doe

Case No. 3:25-cv-01139-GPC-VET · No. 3:25-cv-01139-GPC-VET · Decided June 2, 2025

OPINION

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-01139-GPC-VET 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 76.167.168.217, 15 26(f) CONFERENCE Defendant. 16 [Doc. No. 4] 17 18 19 Before the Court is Plaintiff Strike 3 Holdings, LLC's ("Plaintiff") Ex Parte 20 Application for Leave to Serve a Third-Party Subpoena Prior to a Rule 26(f) Conference 21 ("Application").

Doc. No. 4. No defendant has been named or served. For the reasons 22 discussed below, the Court GRANTS Plaintiff's Application. 23 I. BACKGROUND 24 On May 4, 2025, Plaintiff filed a Complaint against Defendant "John Doe," who is 25 allegedly a subscriber of Spectrum and assigned Internet Protocol ("IP") address 26 76.167.168.217. Doc. No. 1 at ¶ 5. Plaintiff is the owner of numerous adult motion pictures, 27 which Plaintiff distributes through adult websites and DVDs.

Id. at ¶¶ 2–3. Plaintiff asserts 28 that Defendant is committing "rampant and wholesale copyright infringement" by 1 downloading, recording, and distributing copies of Plaintiff's copyrighted motion pictures 2 without authorization, using the BitTorrent file distribution network. Id. at ¶¶ 4, 18–29. 3 Plaintiff seeks leave to conduct early discovery prior to the mandated Rule 26(f) 4 conference to learn the Doe defendant's identity.

Doc. No. 4. Specifically, Plaintiff seeks 5 leave to serve a Rule 45 third-party subpoena on Spectrum, the Internet Service Provider 6 ("ISP") who leased the IP address belonging to Defendant John Doe. Doc. No. 4-1 at 7–8.1 7 The proposed subpoena would require Spectrum to supply only "the true name and address 8 of Defendant." Id. at 8. Additionally, Plaintiff represents to the Court that it will only use 9 this information to prosecute the claims in its Complaint.

Id. 10 II. LEGAL STANDARD 11 A party is generally not permitted to obtain discovery without a court order before 12 the parties have conferred pursuant to Rule 26(f). Fed. R. Civ. P. 26(d)(1). "However, 13 situations arise, such as the present, where the identity of alleged defendants will not be 14 known prior to the filing of a complaint." Gillespie v. Civiletti, 629 F.2d 637, 642 (9th Cir.

15 1980). In those circumstances, the Ninth Circuit recognizes that "the plaintiff should be 16 given an opportunity through discovery to identify the unknown defendants, unless it is 17 clear that discovery would not uncover the identities, or that the complaint would be 18 dismissed on other grounds." Id.; see also Wakefield v. Thompson, 177 F.3d 1160, 1163 19 (9th Cir.

1999) (same). For this reason, courts allow limited discovery after a complaint is 20 filed to permit a plaintiff to identify and serve a defendant. See, e.g., Columbia Ins. Co. v. 21 Seescandy.com, 185 F.R.D. 573, 577 (N.D. Cal. 1999); UMG Recordings, Inc. v. Doe, No. 22 C-08-3999-RMW, 2008 WL 4104207, at *2 (N.D. Cal. Aug. 29, 2008) (noting, in an 23 infringement case, that "a plaintiff cannot have a discovery planning conference with an 24 anonymous defendant[,]" thus, limited expedited discovery would "permit the [plaintiff] 25 to identify John Doe and serve the defendant, permitting this case to go forward").

Further, 26 27 1 Page numbers for docketed materials cited in this Order refer to those imprinted by the 28 1 courts "permit expedited discovery before the Rule 26(f) conference upon a showing of 2 good cause." Am. LegalNet, Inc. v. Davis, 673 F. Supp. 2d 1063, 1066 (C.D. Cal. 2009). 3 "Good cause exists where the need for expedited discovery, in consideration of the 4 administration of justice, outweighs the prejudice to the responding party." Id. (internal 5 quotations omitted).

6 When considering a request for expedited discovery to uncover the identity of a 7 defendant, the Court applies the following "limiting principles:" (1) "the plaintiff should 8 identify the missing party with sufficient specificity such that the Court can determine that 9 defendant is a real person or entity who could be sued in federal court;" (2) the plaintiff 10 "should identify all previous steps taken to locate the elusive defendant," confirming that 11 plaintiff made a good faith effort to identify and serve the defendant; and (3) the "plaintiff 12 should establish to the Court's satisfaction that plaintiff's suit against defendant could 13 withstand a motion to dismiss." Columbia Ins., 185 F.R.D. at 578–80.

These factors ensure 14 this unusual discovery procedure is employed only "in cases where the plaintiff has in good 15 faith exhausted traditional avenues for identifying a civil defendant pre-service" and 16 "prevent use of this method to harass or intimidate." Id. 17 III. DISCUSSION 18 Plaintiff contends there is good cause for this Court to allow expedited discovery.

19 Doc. No. 4-1 at 11–17. For the reasons stated below, the Court agrees. 20 A. Identification of Doe Defendant with Sufficient Specificity 21 Courts in this circuit agree that "a plaintiff identifies Doe defendants with sufficient 22 specificity by providing the unique IP addresses assigned to an individual defendant on the 23 day of the allegedly infringing conduct, and by using 'geolocation technology' to trace the 24 IP addresses to a physical point of origin." See 808 Holdings, LLC v. Collective of 25 December 29, 2011 Sharing Hash, No. 12-cv-186-MMA (RBB), 2012 WL 12884688, at 26 *4 (S.D.

Cal. May 4, 2012); OpenMind Solutions, Inc. v. Does 1-39, No. C-11-3311-MEJ, 27 2011 WL 4715200, at *2 (N.D. Cal. Oct. 7, 2011) (concluding that plaintiff satisfied the 28 first factor by identifying the defendants' IP addresses and by tracing the IP addresses to a 1 point of origin within the State of California); Pink Lotus Entm't, LLC v. Does 1–46, No. 2 C-11-02263, 2011 WL 2470986, at *3 (N.D.

Cal. June 21, 2011) (same). Other courts 3 conclude that merely identifying the IP addresses on the day of the alleged infringement 4 satisfies this factor. 808 Holdings, 2012 WL 12884688, at *4 (collecting cases). 5 Here, Plaintiff identified the Doe defendant with sufficient specificity.

First, Plaintiff 6 provides a Declaration by Jorge Arco, an independent contractor hired by Plaintiff as an 7 "Enterprise Architect." Doc. No. 4-2, Ex. A at ¶ 12 ("Ex. A"). Mr. Arco "was part of the 8 team that developed the infringement detection system VXN Scan ("VXN Scan")," which 9 Plaintiff "owns and uses to identify IP addresses used" to infringe Plaintiff's movies via 10 the BitTorrent protocol.2 Ex. A at ¶ 41.

Mr. Arco currently participates in "the maintenance 11 and evaluation of VXN components." Id. Mr. Arco explains VXN Scan in detail, which 12 involves, in part, the development of a proprietary BitTorrent client that emulates the 13 behavior of a standard BitTorrent client by repeatedly downloading data pieces from peers 14 within the BitTorrent network that are distributing Plaintiff's movies.

Id. at ¶¶ 53–56. 15 Per Mr. Arco, a separate component of VXN Scan is the PCAP3 Recorder / Capture 16 Card, which allows Plaintiff to "record numerous infringing BitTorrent computer 17 transactions in the form of PCAPs." Id. at ¶¶ 58–60; see also Declaration of Patrick Paige, 18 Doc. No. 4-2, Ex. B at ¶ 14 ("Ex. B") (explaining that "PCAP is a computer file containing 19 captured or recorded data transmitted between network devices;" "it is a recording of 20 network traffic").

The PCAPs show "particular IP addresses connecting to the Proprietary 21 Client and sending pieces of a computer file (which contains an infringing copy of 22 23 24 2 "BitTorrent is a system designed to quickly distribute large files over the Internet." Doc. 25 No. 1 at 4. Rather than download a movie file from a single source, BitTorrent users connect to the computers of other BitTorrent users to simultaneously download and 26 upload pieces of the file from and to other users.

Id. 27 3 PCAP stands for "Packet Capture," a computer file containing captured or recorded 28 1 Plaintiff's works) to the Proprietary Client." Ex. A at ¶ 60; Ex. B at ¶ 15. Not only does a 2 PCAP contain the IP addresses used in the network transaction, it also records the port 3 number and BitTorrent client used to accomplish each transaction, and the "Info Hash 4 value used to obtain the transacted piece," which in turn, "identifies the data that was shared 5 in the recorded transaction." Ex. A at ¶¶ 62–63.

The PCAP Capture Card records perfect 6 copies of every network packet received by the Proprietary Client. Id. at ¶ 66. Although 7 this Order touches only on two of the components of VXN Scan, Mr. Arco's 83-paragraph 8 Declaration sets forth additional in-depth details of all five components of the system, 9 providing a thorough explanation of how the system reliably pinpoints the IP addresses 10 used by individuals infringing Plaintiff's movies and verifies the infringement.

11 Second, Plaintiff also provides a declaration by Patrick Paige, a computer forensics 12 expert retained by Plaintiff to analyze and retain forensic evidence captured by VXN Scan. 13 Ex. B at ¶¶ 3, 12. Mr. Paige "received a PCAP from Strike 3 containing information relating 14 to a transaction initiated on 04/05/2025 23:56:43 UTC involving IP address 15 76.167.168.217." Id. at ¶ 16.

Based on his review, Mr. Paige confirms that the "PCAP is 16 evidence of a recorded transaction with IP address 76.167.168.217 initiated at 04/05/2025 17 23:56:43 UTC" and "shows that within that transaction, IP address 76.167.168.217 18 uploaded a piece or pieces of a file corresponding to hash value 19 B0DBA440CA8BAB48253B31C3268EC35BEC952798 to VXN Scan.," i.e., a hash value 20 that is unique to one of Plaintiff's movies.

Id. at ¶¶ 13–19. 21 Third, Plaintiff provides a declaration by Susan Stalzer, Plaintiff's employee. Doc. 22 No. 4-2 at Ex. C ("Ex. C"). Based on a side-by-side comparison with Plaintiff's original 23 movies, Ms. Stalzer verifies that each digital file that the Proprietary Client received 24 through its transactions with IP address 76.167.168.217 is a copy of one of Plaintiff's 25 copyrighted works that is identical, strikingly similar, or substantially similar to the original 26 work.

Id. at ¶¶ 8–11; see also Doc. No. 1-2. 27 Finally, Plaintiff provides a declaration by Emilie Kennedy, Plaintiff's in-house 28 General Counsel. Doc. No. 4-2 at Ex. D ("Ex. D"). Ms. Kennedy explains that after Plaintiff 1 received infringement data from VXN Scan, identifying IP address 76.167.168.217 as 2 infringing its works, the IP address was automatically input into Maxmind's Geolocation 3 Database, which first traced the IP address to a location in San Diego, California.

Id. 4 at ¶¶ 4–5. Per Ms. Kennedy, Plaintiff subsequently repeated the trace through the Maxmind 5 Database (prior to filing the Complaint and prior to filing her declaration), which again 6 traced the IP address to San Diego, California, a location within this Court's jurisdiction. 7 Id. at ¶¶ 6–7; see Doc. No. 4-2 at 32.

The Court is satisfied that these multiple geolocation 8 traces are reliably accurate and support a finding that the Doe defendant is located in this 9 District. 10 Based on the foregoing, the Court finds that Plaintiff identified the Doe defendant 11 with sufficient specificity and seeks to sue a real person subject to the Court's jurisdiction. 12 Moreover, by obtaining the identifying

information for the IP address at issue, the 13 discovery sought would likely enable Plaintiff to serve the Doe defendant.

14 B. Previous Attempts to Locate the Doe Defendant 15 The Application also describes Plaintiff's efforts to identify, locate, and serve the 16 Doe defendant. Plaintiff attempted to locate the Doe defendant by searching for the IP 17 address using online search engines and other web search tools. Doc. No. 4-1 at 14. Plaintiff 18 also reviewed numerous sources of authority such as legislative reports, agency websites, 19 informational technology guides, etc. regarding whether it is possible to identify such a 20 defendant by other means, and extensively discussed this issue with its computer 21 investigators and cyber security consultants.

Id. Despite these diligent efforts, Plaintiff was 22 unable to identify any means of obtaining the identity of Doe defendant other than through 23 subpoenaing the information from the ISP. Id.; see also Ex. B at ¶ 28.

Thus, the Court finds 24 Plaintiff has shown it has made a good faith effort to identify and locate the Doe defendant 25 before resorting to filing the instant Application. 26 C. Whether Plaintiff's Complaint Can Withstand a Motion to Dismiss 27 Lastly, to establish that the Complaint could survive a motion to dismiss, Plaintiff 28 must "make some showing that an act giving rise to civil liability actually occurred and 1 that the discovery is aimed at revealing specific identifying features of the person or entity 2 who committed that act." Columbia Ins., 185 F.R.D. at 580; see also Fed.

R. Civ. P. 12(b). 3 To present a prima facie case of copyright infringement, Plaintiff must show: (1) ownership 4 of a valid copyright; and (2) that Defendant violated the copyright owner's exclusive rights 5 under the Copyright Act. Bell v. Wilmott Storage Servs., LLC, 12 F.4th 1065, 1071 (9th 6 Cir. 2021). A prima facie case of direct copyright infringement must also show causation 7 by the Defendant.

Id. at 1080. 8 Here, the Complaint alleges that Plaintiff owns a valid copyright in the works at 9 issue, which are registered with the United States Copyright Office. See Doc. No. 1 at 10 ¶¶ 46, 47, 49.4 Ms. Stalzer attests that she reviewed the files correlating to the hashes 11 identified in Exhibit A to the Complaint and confirmed that they are "identical, strikingly 12 similar, or substantially similar" to Strike 3's original copyrighted Works.

Ex. C at ¶¶ 7– 13 11; Doc. No. 1 at ¶¶ 29–31. Plaintiff's Complaint also alleges Doe defendant used 14 BitTorrent to copy and distribute the copyrighted works without authorization, and that the 15 infringement was continuous and ongoing. Doc. No. 1 at ¶¶ 4, 17–26, 38–40, 47–48.

Thus, 16 Plaintiff's Complaint has stated a claim for copyright infringement against the Doe 17 defendant. Additionally, Plaintiff has alleged sufficient facts to show it could withstand a 18 motion to dismiss for lack of personal jurisdiction or a motion for improper venue because 19

Plaintiff traced the IP address at issue to this District. Further, Mr. Paige declares that based 20 on his experience in similar cases, the ISP, Spectrum, is the only entity that can correlate 21 the IP address 76.167.168.217 to its subscriber to pinpoint the Doe defendant's identity.

22 Ex. B at ¶ 28. 23 24 25 26 4 Exhibit A to the Complaint, which shows the hash values of the purportedly infringing 27 movies downloaded from IP address 76.167.168.217, also contains the United States Copyright Office registration information of the works that correspond with those hash 28 1 Accordingly, coupled with the information provided by Mr. Arco and Mr. Paige in 2 their respective declarations, the Court is satisfied that Plaintiff's Complaint would survive 3 a motion to dismiss.

4 IV. CONCLUSION 5 For the reasons set forth above, and for good cause shown, the Court GRANTS 6 Plaintiff's Application. Doc. No. 4. However, the Court is cognizant of the potential 7 embarrassment of being identified in this type of case and "shares the growing concern 8 about unscrupulous tactics used by certain plaintiffs, especially in the adult film industry, 9 to shake down the owners of IP addresses." Malibu Media, LLC v. Does 1-5, No. 12-Civ- 10 2950-JPO, 2012 WL 2001968, at *1 (S.D.N.Y.

June 1, 2012). Anticipating and sharing 11 these concerns, Plaintiff invites the Court to issue a protective order establishing procedural 12 safeguards if the Court finds such procedures appropriate. Doc. No. 4-1 at 18.

Accordingly, 13 the Court ORDERS as follows: 14 1. Plaintiff shall attach a copy of this Order to any Rule 45 subpoena. 15 2. Plaintiff may serve the ISP with a Rule 45 subpoena commanding the ISP to 16 provide Plaintiff with only the true name and address of the subscriber to whom the ISP 17 assigned IP address 76.167.168.217, as set forth on Exhibit A to the Complaint.

The ISP is 18 not to release the subscriber's telephone number or email address. 19 3. Within fourteen (14) calendar days after service of the subpoena, the ISP shall 20 notify the subscriber that his or her identity has been subpoenaed by Plaintiff.

The ISP must 21 also provide a copy of this Order along with the required notice to the subscriber whose 22 identity is sought pursuant to this Order. 23 4. The subscriber whose identity has been subpoenaed shall have thirty (30) 24 calendar days from the date of such notice to challenge the disclosure of his or her name 25 and address by filing an appropriate pleading with this Court contesting the subpoena.

A 26 subscriber who moves to quash or modify the subpoena may proceed anonymously as 27 "John Doe," and shall remain anonymous until the Court orders that the identifying 28 information may be released. 1 5. If the ISP wishes to move to quash the subpoena, it shall do so before the 2 ||return date of the subpoena.

The return date of the subpoena must allow for at least forty- 3 || five (45) days from service to production. Ifa motion to quash or other challenge is brought, 4 ISP shall preserve the information sought by Plaintiff in the subpoena pending 5 resolution of such motion or challenge. 6 6. Plaintiff may only use the information disclosed in response to a Rule 45 7 ||subpoena served on the ISP for the purpose of protecting and enforcing Plaintiffs rights 8 set forth in its Complaint.

If the subscriber wishes to proceed anonymously, Plaintiff 9 ||may not release any identifying information without a court order allowing the release of 10 || the information. H IT IS SO ORDERED. ( ) es — 12 Dated: June 2, 2025 Honorable Valerie E. Torres 13 United States Magistrate Judge 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28