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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

STRIKE 3 HOLDINGS, LLC,  
  
Plaintiff,  
  
v.  
  
JOHN DOE, Subscriber Assigned IP  
Address 75.80.132.231,  
  
Defendant.

Case No.: 22-cv-00296-LL-JLB

**ORDER GRANTING PLAINTIFF’S  
EX PARTE MOTION FOR LEAVE  
TO SERVE A THIRD-PARTY  
SUBPOENA PRIOR TO A RULE  
26(f) CONFERENCE**

**[ECF No. 4]**

Before the Court is an *Ex Parte* Motion for Leave to Serve a Third-Party Subpoena Prior to a Rule 26(f) Conference filed by Plaintiff Strike 3 Holdings, LLC (“Plaintiff”). (ECF No. 4.) No opposition has been filed, as no defendant has been named or served in this case. For the reasons set forth below, Plaintiff’s *ex parte* motion is **GRANTED**.

**I. BACKGROUND**

This is one of the numerous cases filed by Plaintiff alleging copyright infringement claims against a John Doe defendant using the BitTorrent file-sharing system.<sup>1</sup> Plaintiff

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<sup>1</sup> From January 2020 to date, Strike 3 Holdings, LLC has filed seventy-two cases, including the present case, in this District.

1 alleges that it is the copyright owner of motion pictures distributed through adult content  
2 websites *Blacked*, *Tushy*, *Vixen*, and *Blacked Raw*. (ECF No. 1 ¶¶ 2–4.) Plaintiff alleges  
3 that between April 25, 2021, and January 20, 2022,<sup>2</sup> the person or entity assigned Internet  
4 Protocol (“IP”) address 75.80.132.231 illegally downloaded and distributed twenty-nine of  
5 Plaintiff’s motion pictures through his, her, or its use of the online BitTorrent file  
6 distribution network. (*Id.* ¶¶ 4–5, 44, 49–53; ECF No. 1-2.) Plaintiff commenced this  
7 action against Defendant “John Doe, subscriber assigned IP address 75.80.132.231” on  
8 March 4, 2022, alleging a single cause of action of direct copyright infringement. (ECF  
9 No. 1 ¶¶ 48–53.)

10 Because Defendant used the Internet to commit the alleged infringement, Plaintiff  
11 alleges that it knows Defendant only by his, her, or its IP address, which was assigned to  
12 Defendant by the Internet Service Provider (“ISP”), Spectrum. (*Id.* ¶¶ 5, 13.) In the instant  
13 motion, Plaintiff asserts that Spectrum is the owner of Defendant’s IP address, and thus,  
14 “is the only party with the information necessary to identify Defendant.” (ECF No. 4-1 at  
15 7.) Plaintiff therefore seeks leave to serve a Rule 45 subpoena on Spectrum requesting the  
16 name and address associated with IP address 75.80.132.231. (*Id.* at 7–8.) Without  
17 Defendant’s identity, Plaintiff cannot serve Defendant and prosecute this case.

## 18 **II. LEGAL STANDARD**

19 Discovery is not permitted before the parties have conferred pursuant to Federal Rule  
20 of Civil Procedure 26(f) unless authorized by court order. Fed. R. Civ. P. 26(d)(1).  
21 “[H]owever, in rare cases, courts have made exceptions, permitting limited discovery to  
22 ensue after filing of the complaint to permit the plaintiff to learn the identifying facts  
23 necessary to permit service on the defendant.” *Columbia Ins. Co. v. Seescandy.com*, 185  
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25  
26 <sup>2</sup> Plaintiff does not specifically allege this infringement period in the Complaint.  
27 However, attached as an exhibit to the Complaint is a table reflecting that the subscriber  
28 assigned IP address 75.80.132.231 engaged in allegedly infringing activity between  
April 25, 2021 and January 20, 2022. (ECF No. 1-2.)

1 F.R.D. 573, 577 (N.D. Cal. 1999). Requests to conduct discovery prior to a Rule 26(f)  
2 conference are granted upon a showing of good cause by the moving party, which may be  
3 found “where the need for expedited discovery, in consideration of the administration of  
4 justice, outweighs the prejudice to the responding party.” *Semitoool, Inc. v. Tokyo Electron*  
5 *Am., Inc.*, 208 F.R.D. 273, 275–76 (N.D. Cal. 2002). “A district court’s decision to grant  
6 discovery to determine jurisdictional facts is a matter of discretion.” *Columbia Ins. Co.*,  
7 185 F.R.D. at 578.

8 District courts in the Ninth Circuit apply a three-factor test to determine whether  
9 good cause exists to allow for expedited discovery to identify a Doe defendant. *Id.* at 578–  
10 80. “First, the plaintiff should identify the missing party with sufficient specificity such  
11 that the Court can determine that [the] defendant is a real person or entity who could be  
12 sued in federal court.” *Id.* at 578. Second, the plaintiff “should identify all previous steps  
13 taken to locate the elusive defendant” to ensure that the plaintiff has made a good faith  
14 effort to identify and serve process on the defendant. *Id.* at 579. Third, the plaintiff “should  
15 establish to the Court’s satisfaction that [the] plaintiff’s suit against [the] defendant could  
16 withstand a motion to dismiss.” *Id.* “Lastly, the plaintiff should file a request for discovery  
17 with the Court, along with a statement of reasons justifying the specific discovery requested  
18 as well as identification of a limited number of persons or entities on whom discovery  
19 process might be served and for which there is a reasonable likelihood that the discovery  
20 process will lead to identifying information about [the] defendant that would make service  
21 of process possible.” *Id.* at 580.

### 22 **III. DISCUSSION**

#### 23 **A. Identification of Missing Party with Sufficient Specificity**

24 For the Court to grant Plaintiff’s motion, Plaintiff must first identify Defendant with  
25 enough specificity to enable the Court to determine that Defendant is a real person or entity  
26 who is subject to the Court’s jurisdiction. *See Columbia Ins. Co.*, 185 F.R.D. at 578. The  
27 Court finds that Plaintiff has met this burden.

28 Courts in the Ninth Circuit have determined that “a plaintiff identifies Doe

1 defendants with sufficient specificity” in cases like the instant case “by providing the  
2 unique IP addresses assigned to an individual defendant on the day of the allegedly  
3 infringing conduct, and by using ‘geolocation technology’ to trace the IP addresses to a  
4 physical point of origin.” *808 Holdings, LLC v. Collective of December 29, 2011 Sharing*  
5 *Hash E37917C8EEB4585E6421358FF32F29C D63C23C91*, No. 12-cv-00186 MMA  
6 (RBB), 2012 WL 12884688, at \*4 (S.D. Cal. May 8, 2012); *see also Pink Lotus Entm’t,*  
7 *LLC v. Does 1–46*, No. C-11-02263, 2011 WL 2470986, at \*3 (N.D. Cal. June 21, 2011)  
8 (finding that the plaintiff met its burden to identify the Doe defendants with sufficient  
9 specificity by identifying the Doe defendants’ IP addresses and then using geolocation  
10 technology to trace the IP addresses to a point of origin).

11 Here, Plaintiff has sufficiently demonstrated that Defendant is a real person or entity  
12 likely subject to the Court’s jurisdiction. Plaintiff attached to its Complaint a table  
13 reflecting that the subscriber assigned IP address 75.80.132.231 engaged in allegedly  
14 infringing activity between April 25, 2021, and January 20, 2022, in San Diego, California.  
15 (ECF No. 1-2.) To substantiate these claims, Plaintiff attached four declarations to the  
16 instant motion.

17 Plaintiff first attached the Declaration of David Williamson, an independent  
18 contractor hired by Plaintiff as an Information Systems and Management Consultant. (ECF  
19 No. 4-2 at 1–15 (“Ex. A”).) Mr. Williamson states that he “oversaw the design,  
20 development, and overall creation of the infringement detection system called VXN Scan[,]  
21 which [Plaintiff] both owns and uses to identify the IP addresses used by individuals  
22 infringing Plaintiff’s movies via the BitTorrent protocol.” (Ex. A ¶ 40.) Mr. Williamson’s  
23 declaration explains in detail how VXN Scan operates and its five components. One  
24 component of VXN Scan is a proprietary BitTorrent client that emulates the behavior of a  
25 standard BitTorrent client by repeatedly downloading data pieces from peers within the  
26 BitTorrent network that are distributing Plaintiff’s movies. (*Id.* ¶¶ 52–55.) Another  
27 component of VXN Scan is the PCAP Recorder, which records infringing BitTorrent  
28 computer transactions in the form of PCAPs, or packet captures. (*Id.* ¶¶ 57–70.) The

1 PCAPs contain the IP addresses that connect to the Proprietary Client and send pieces of  
2 the computer file containing an infringing copy of one of Plaintiff’s movies to the  
3 Proprietary Client through the BitTorrent network. (*Id.* ¶¶ 57–59.) Not only do PCAPs  
4 record the IP addresses used in the network transaction, but they also record the date and  
5 time of the transaction, the port number used, and the BitTorrent client used to accomplish  
6 each transaction. (*Id.* ¶ 61.) PCAPs also identify the “Info Hash value that was used to  
7 obtain the transacted piece.” (*Id.* ¶ 62.) This information identifies the data that was shared  
8 in the recorded transaction as part of a file containing an infringing copy of one of  
9 Plaintiff’s movies. (*Id.*) This Order touches on only two of the components of VXN Scan,  
10 but Mr. Williamson’s eighty-one-paragraph declaration sets forth additional, in-depth  
11 details of all five components of the system, providing the Court with a thorough  
12 understanding of how the system reliably identifies the IP addresses assigned to individuals  
13 infringing Plaintiff’s movies and verifies the infringement. (*See id.* ¶¶ 63–81.)

14         Second, Plaintiff attached the Declaration of Patrick Paige, a computer forensics  
15 expert Plaintiff retained to analyze and retain evidence captured by VXN Scan. (ECF No.  
16 4-2 at 16–22 (“Ex. B”).) Mr. Paige explains that VXN Scan “recorded numerous  
17 BitTorrent computer transactions between the system and IP address 75.80.132.231 in the  
18 form of PCAPs.” (Ex. B ¶ 13.) Mr. Paige states that, using a program called Wireshark,  
19 he viewed and analyzed a PCAP he received from Plaintiff and was able to confirm that on  
20 January 20, 2022, “IP address 75.80.132.231 uploaded a piece or pieces of a file  
21 corresponding to hash value F7FBE7C20F3E39CEEEE8F065200583B579018D3E to  
22 VXN Scan.” (*Id.* ¶¶ 16–19.) The hash value, or Info Hash, is the data used by BitTorrent  
23 to identify and locate other pieces of a desired file; in this case, the desired file contained  
24 an infringing copy of one of Plaintiff’s movies. (*Id.* ¶ 22; *see also* ECF No. 1-2 at 1.)  
25 Based on his experience in similar cases, Mr. Paige opines that Spectrum, Defendant’s ISP,  
26 “is the only entity that can correlate the IP address [75.80.132.231] to its subscriber and  
27 identify Defendant as the person assigned [this] IP address . . . during the time of the alleged  
28 infringement.” (*Id.* ¶ 28.)

1 Third, Plaintiff attached the Declaration of Susan B. Stalzer, an employee of  
2 Plaintiff's who verified that each digital file VXN Scan received through its transactions  
3 with IP address 75.80.132.231 was identical, strikingly similar, or substantially similar to  
4 one of Plaintiff's original copyrighted works. (ECF No. 4-2 at 23–26 (“Ex. C”).) To do  
5 so, Ms. Stalzer viewed each of the digital media files side-by-side with Plaintiff's original  
6 films. (Ex. C ¶¶ 8–10.)

7 Last, Plaintiff attached the Declaration of Emilie Kennedy, Plaintiff's in-house  
8 General Counsel. (ECF No. 4-2 at 27–30 (“Ex. D”).) Ms. Kennedy explains that after  
9 Plaintiff received data from VXN Scan identifying IP address 75.80.132.231 as infringing  
10 its movies, “the IP address was automatically inputted into Maxmind's Geolocation  
11 Database” on February 24, 2022.<sup>3</sup> (Ex. D ¶ 4.) “Maxmind [then] determined that the IP  
12 address traced to a location in San Diego, California.” (*Id.* ¶ 5.) Ms. Kennedy states that  
13 Plaintiff inputted IP address 75.80.132.231 again into the Maxmind Database “[p]rior to  
14 filing its Complaint” and “before filing [her] [D]eclaration” on January 27, 2021, and both  
15 times the IP address traced to San Diego, California. (*Id.* ¶¶ 6–7.) In its motion, Plaintiff  
16 argues that this Court has previously “accepted Maxmind's findings for purposes of  
17 allowing expedited discovery.” (ECF No. 4-1 at 13 (citing *Criminal Prods., Inc. v. Doe*,  
18 No. 16-cv-2589 WQH (JLB), 2016 WL 6822186, at \*3 (S.D. Cal. Nov. 18, 2016).)

19 \_\_\_\_\_  
20  
21 <sup>3</sup> Mr. Williamson provides in his declaration that:

22 Maxmind is “an industry-leading provider of IP intelligence and online fraud  
23 detection tools.” “Over 5,000 companies use GeoIP data to locate their  
24 Internet visitors and show them relevant content and ads, perform analytics,  
25 enforce digital rights, and efficiently route Internet traffic.” Maxmind is not  
26 “software” or technology, but . . . a database. Maxmind compiles information  
27 it receives from Internet Service Providers (ISPs) containing the city and state  
28 locations of the users of the ISPs and their respective IP addresses. Maxmind  
maintains and updates this list weekly and sells access to it.

(Ex. A ¶ 77 (footnotes omitted).)

1           Based on Plaintiff’s IP address tracing efforts, the timing of its efforts, and Plaintiff’s  
2 continued tracing of IP address 75.80.132.231 to a location within San Diego, California,  
3 the Court concludes that Plaintiff has met its evidentiary burden of identifying Defendant  
4 with sufficient specificity and has shown that Defendant’s IP address likely relates to a  
5 physical address within the Court’s jurisdiction.

6 **B. Previous Attempts to Locate Defendant**

7           Plaintiff must next identify all steps it took to locate Defendant to ensure the Court  
8 that it has made a good-faith effort to identify and serve process on Defendant. *See*  
9 *Columbia Ins. Co.*, 185 F.R.D. at 579. The Court finds that Plaintiff has met this burden.

10           In its motion, Plaintiff states that it has diligently attempted to locate Defendant by  
11 searching for Defendant’s IP address using online search engines and “various web search  
12 tools.” (ECF No. 4-1 at 14.) Plaintiff has also “review[ed] numerous sources of authority,”  
13 such as “legislative reports, agency websites, informational technology guides, [and]  
14 governing case law” regarding whether it is possible to identify such a defendant by other  
15 means and has “discussed the issue at length with computer investigators and cyber security  
16 consultants.” (*Id.*) Plaintiff argues that it cannot determine any other means of obtaining  
17 Defendant’s identity other than through subpoenaing the information from Defendant’s  
18 ISP, as it has “exhausted all other alternatives for identifying Defendant.” (*Id.*)

19           Further, as discussed above, Plaintiff retained Mr. Paige, a computer forensics  
20 expert, who analyzed the data captured by VXN Scan and was able to determine that IP  
21 address 75.80.132.231 was engaged in the allegedly infringing activity on January 20,  
22 2022. (*See* Ex. B ¶¶ 13–25.) Mr. Paige also opined that Defendant’s ISP is the only entity  
23 that can correlate IP address 75.80.132.231 to its subscriber and identify Defendant as the  
24 person assigned this IP address during the time of the alleged infringement. (*Id.*  
25 ¶ 28.)

26           Based on the foregoing, the Court is satisfied that Plaintiff has attempted in good  
27 faith to locate Defendant and that Plaintiff cannot, on its own, identify Defendant with any  
28 greater specificity than as the subscriber assigned by Spectrum to IP address

1 75.80.132.231. Accordingly, the Court finds that Plaintiff has made a good-faith effort to  
2 identify and locate Defendant before filing the instant motion.

3 **C. Whether Plaintiff’s Complaint Could Withstand a Motion to Dismiss**

4 Lastly, Plaintiff must establish that its Complaint could survive a motion to dismiss.  
5 *Columbia Ins. Co.*, 185 F.R.D. at 579. The Court finds that Plaintiff has met this burden.

6 Plaintiff’s Complaint alleges a single cause of action against Defendant: direct  
7 copyright infringement. (ECF No. 1 ¶¶ 48–53.) To survive a motion to dismiss for failure  
8 to state a claim upon which relief can be granted, “a complaint must contain sufficient  
9 factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’”  
10 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S.  
11 544, 570 (2007)). To state a claim of direct copyright infringement, a plaintiff “must show:  
12 (1) ownership of a valid copyright; and (2) that the defendant violated the copyright  
13 owner’s exclusive rights under the Copyright Act.” *Ellison v. Robertson*, 357 F.3d 1072,  
14 1076 (9th Cir. 2004) (citing 17 U.S.C. § 501(a) (2003)). “In addition, direct infringement  
15 requires the plaintiff to show causation (also referred to as ‘volitional conduct’) by the  
16 defendant.” *Perfect 10, Inc. v. Giganews, Inc.*, 847 F.3d 657, 666 (9th Cir. 2017).

17 In the Complaint, Plaintiff alleges to be the owner of the copyrighted movies or  
18 “works” at issue and asserts that each work was registered with the United States Copyright  
19 Office. (ECF No. 1 ¶¶ 2, 46.) Exhibit A to the Complaint shows the hash values of the  
20 purportedly infringed works and the copyright registration number for each of the works  
21 that correspond with those hash values. (ECF No. 1-2.) Plaintiff further alleges that  
22 Defendant is the user behind IP address 75.80.132.231 who used the BitTorrent file  
23 network to “illegally download and distribute Plaintiff’s copyrighted motion pictures” and  
24 that the infringement was “continuous and ongoing.” (ECF No. 1 ¶¶ 13, 29, 45.) Lastly,  
25 Plaintiff alleges that “[a]t no point in time did [it] authorize, permit or consent to  
26 Defendant’s copying, distribution, performance and/or display of its Works, expressly or  
27 otherwise.” (*Id.* ¶ 51.)

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1 The Court finds that Plaintiff has alleged a prima facie case of direct copyright  
2 infringement and therefore, its Complaint would likely withstand a motion to dismiss by  
3 Defendant.

#### 4 **D. Specific Discovery Request**

5 Finally, before the Court grants Plaintiff's Motion, Plaintiff "should file a request  
6 for discovery with the Court." *Columbia Ins. Co.*, 185 F.R.D. at 580. Plaintiff has not  
7 provided the Court with a proposed subpoena, but the Court has sufficient information to  
8 determine that "there is a reasonable likelihood that [a subpoena] will lead to identifying  
9 information about [D]efendant that would make service of process possible." *Id.* Plaintiff  
10 states that it plans to issue a subpoena upon Spectrum, Defendant's ISP, requesting only  
11 "the true name and address" of Defendant, the subscriber of IP address 75.80.132.231.  
12 (ECF No. 4-1 at 8.) Further, Plaintiff provides that Spectrum is the only entity that can  
13 identify Defendant by his, her, or its IP address. (Ex. B ¶ 28.) Accordingly, the Court  
14 finds that Plaintiff need not file the proposed subpoena with the Court.

#### 15 **IV. CONCLUSION**

16 For the reasons set forth above, the Court finds good cause to grant Plaintiff leave to  
17 serve a Rule 45 subpoena upon Spectrum in advance of the Rule 26(f) conference.  
18 However, despite Plaintiff's representations of good faith (ECF No. 4-1 at 9–10), the Court  
19 shares the concern noted by other courts in this District of "unscrupulous tactics [being]  
20 used by certain plaintiffs, especially in the adult film industry, to shake down the owners  
21 of IP addresses' to exact quick and quiet settlements from possibly innocent defendants  
22 who pay out only to avoid potential embarrassment." *Malibu Media, LLC v. John Doe*,  
23 No. 16-cv-00786-JLS-NLS, 2016 WL 9488778, at \*4 (S.D. Cal. May 6, 2016) (quoting  
24 *Malibu Media, LLC v. Does 1–5*, No. 12 Civ. 2950(JPO), 2012 WL 2001968, at \*1  
25 (S.D.N.Y. June 1, 2012)). The Court therefore finds that a limited protective order is  
26 necessary to protect Defendant's privacy. Further, Plaintiff has invited the Court to issue  
27 a protective order establishing procedural safeguards, "should the Court find such  
28

1 procedures to be appropriate.” (ECF No. 4-1 at 18.) Accordingly, the Court **GRANTS**  
2 Plaintiff’s *ex parte* motion (ECF No. 4) and **ORDERS** as follows:

3 1. Plaintiff may serve on Spectrum a subpoena, pursuant to and compliant with  
4 the procedures of Federal Rule of Civil Procedure 45, seeking only the name and address  
5 of the subscriber assigned IP address 75.80.132.231 for the relevant time period of the  
6 alleged infringement. Plaintiff shall not seek from Spectrum any other personally  
7 identifiable information about the subscriber.

8 2. Plaintiff’s subpoena to Spectrum must provide a **minimum of forty-five (45)**  
9 **calendar days’ notice** before any production responsive to the subpoena shall be made to  
10 Plaintiff.

11 3. At the time Plaintiff serves its subpoena on Spectrum, Plaintiff shall also serve  
12 on Spectrum a copy of this Order.

13 4. Within **fourteen (14) calendar days** after service of the subpoena, Spectrum  
14 shall notify the subscriber assigned IP address 75.80.132.231 that his, her, or its identity  
15 has been subpoenaed by Plaintiff and shall provide the subscriber a copy of this Order with  
16 the required notice.

17 5. The subscriber whose identity has been subpoenaed shall have **thirty (30)**  
18 **calendar days** from the date of such notice to challenge Spectrum’s disclosure of his, her,  
19 or its name and address by filing an appropriate pleading with this Court contesting the  
20 subpoena.

21 6. If Spectrum seeks to modify or quash the subpoena, it shall do so as provided  
22 by Federal Rule of Civil Procedure 45(d)(3).

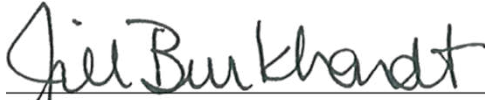
23 7. In the event a motion to quash, modify, or otherwise challenge the subpoena  
24 is brought properly before the Court, Spectrum shall preserve the information sought by  
25 the subpoena pending the resolution of any such motion.

26 8. Plaintiff may only use the information disclosed in response to a Rule 45  
27 subpoena served on Spectrum for the purpose of protecting and enforcing Plaintiff’s rights  
28 as set forth in the Complaint (ECF No. 1). If Defendant wishes to proceed anonymously,

1 Plaintiff may not release any identifying information without a court order allowing the  
2 release of the information.

3 **IT IS SO ORDERED.**

4 Dated: March 29, 2022

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6 Hon. Jill L. Burkhardt  
7 United States Magistrate Judge  
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