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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

DALLAS BUYERS CLUB, LLC, a Texas  
limited liability company,  
  
Plaintiff,  
  
v.  
  
DOE-72.197.35.160,  
  
Defendant.

Case No.: 15cv1614-BAS (DHB)

**ORDER GRANTING IN PART  
PLAINTIFF'S SECOND EX PARTE  
MOTION FOR LEAVE TO ISSUE  
TWO FRCP 45 SUBPOENAS AND  
MOTION FOR ADDITIONAL TIME  
TO SERVE COMPLAINT**

**[ECF No. 12]**

On July 21, 2015, Plaintiff filed a Complaint against Doe, a subscriber assigned IP address 72.197.35.160 (“Defendant”). (ECF No. 1.) Plaintiff alleges a single cause of action for direct copyright infringement of the motion picture *Dallas Buyers Club*. On August 20, 2015, the Court granted Plaintiff leave to subpoena records from Cox Communications in order to learn the identity of the account holder assigned to the IP address. (ECF No. 6.) The Court permitted the early discovery so that Plaintiff would be able to identify and serve Defendant. Plaintiff now requests leave to issue two additional Rule 45 subpoenas and for additional time to serve the complaint. (ECF No. 12.) Good cause appearing, Plaintiff’s motion is **GRANTED IN PART**.

1 **I. DISCUSSION**

2 The purpose of early discovery in an action such as this is “to permit the plaintiff to  
3 learn the identifying facts necessary to permit service on the defendant.” *Columbia Ins.*  
4 *Co. v. Seescandy.com*, 185 F.R.D. 573, 577 (N.D. Cal. 1999) (citing *Gillespie v. Civiletti*,  
5 629 F.2d 637, 642 (9th Cir. 1980)). Plaintiff has set forth the measures it has taken to date  
6 to identify Defendant. After obtaining the name and address of the subscriber associated  
7 with IP address 72.197.35.160, Plaintiff has determined that that the subscriber may not be  
8 the actual infringer. In particular, Plaintiff states that it has learned that at the time of the  
9 infringing activity, the subscriber shared a student apartment with other individuals.  
10 Plaintiff has been in contact with the subscriber’s father, who indicated that it was one of  
11 the other individuals, and not the subscriber, who was responsible for the copyright  
12 infringement alleged in this action. However, Plaintiff has been unsuccessful in learning  
13 the identity of the other individual or the current location of the subscriber. Therefore,  
14 Plaintiff seeks permission to subpoena the subscriber’s father for a deposition. Plaintiff  
15 also seeks permission to subpoena records from the subscriber’s former apartment complex  
16 in an attempt to learn the identity of the other individuals who resided with the subscriber  
17 during the time of the infringing activity. The Court finds that Plaintiff has demonstrated  
18 diligent efforts to identify the actual infringer, and that it is appropriate to permit Plaintiff  
19 to subpoena the apartment complex to assist in those efforts. However, the Court finds that  
20 it would be unduly burdensome to permit the third party deposition of the subscriber’s  
21 father at this time. Plaintiff should exhaust other less burdensome discovery methods  
22 before deposing non-party witnesses.

23 Plaintiff further requests leave for additional time to serve the summons and  
24 complaint. In light of the fact Plaintiff has been unable to identify and serve Defendant,  
25 the Court finds good cause to extend time for service of the summons and the complaint  
26 for an additional sixty (60) days.

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1 **II. CONCLUSION**

2 For the reasons set forth above, Plaintiff’s Second *Ex Parte* Motion for Leave to  
3 Issue Two FRCP 45 Subpoenas and Motion for Additional Time to Serve the Complaint is  
4 **GRANTED IN PART**, as follows:

5 1. At this time, the Court denies Plaintiff’s request to serve a Rule 45 deposition  
6 subpoena on Mike R. Ahmari.

7 2. Plaintiff may serve a Rule 45 subpoena on the Sterling Alvarado Apartments  
8 for rental records for 6625 Alvarado Road, Unit 4406, San Diego, California 92120. The  
9 subpoena shall only request records related to the time period associated with the alleged  
10 infringing activity.

11 3. Plaintiff is granted and additional sixty (60) days under Rule 4(m) to serve the  
12 summons and complaint.

13 **IT IS SO ORDERED.**

14 Dated: December 9, 2015

15 

16 Hon. David H. Bartick  
17 United States Magistrate Judge