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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

COBBLER NEVADA, LLC,
Plaintiff,
v.
DOE-68.7.61.76,
Defendant.

Case No. 15-CV-2031-GPC (JMA)
**ORDER GRANTING
PLAINTIFF'S EX PARTE
MOTION TO EXPEDITE
DISCOVERY**
[ECF No. 3]

Before the Court is an Ex Parte Motion to Expedite Discovery filed by Plaintiff Cobbler Nevada, LLC ("Plaintiff"). (ECF No. 3.) For the reasons discussed below, Plaintiff's application is **GRANTED**.

I. PROCEDURAL HISTORY

On September 11, 2015, Plaintiff filed a Complaint against Defendant Doe-68.7.61.76 ("Defendant"). (Compl., ECF No. 1). Plaintiff purports to be the registered owner of United States Copyright Registration Number PAu 3-744-688 for the motion picture entitled "The Cobbler." Compl., ¶¶ 5-6. The Complaint alleges a claim of copyright infringement. Plaintiff alleges that Defendant, using IP address 68.7.61.76, infringed Plaintiff's copyright by copying and distributing Plaintiff's motion picture through a public BitTorrent network without Plaintiff's permission or consent. Id., ¶

1 35. Plaintiff alleges Defendant engaged in infringement activity on over 95
2 occasions between May 27, 2015 and September 5, 2015. Id., ¶ 12 & Ex.
3 1.

4 Plaintiff seeks leave of court to serve a subpoena pursuant to Fed. R.
5 Civ. P. 45 on Defendant's internet service provider ("ISP"), Cox
6 Communications, in order to identify the subscriber and account holder
7 assigned to the IP address used by Defendant.

8 **II. LEGAL STANDARDS**

9 Generally, discovery is not permitted without a court order before the
10 parties have conferred pursuant to Federal Rule of Civil Procedure 26(f).
11 Fed. R. Civ. P. 26(d)(1). Yet, "in rare cases, courts have made exceptions,
12 permitting limited discovery to ensue after filing of the complaint to permit
13 the plaintiff to learn the identifying facts necessary to permit service on the
14 defendant." Columbia Ins. Co. v. Seescandy.com, 185 F.R.D. 573, 577
15 (N.D. Cal. 1999) (citing Gillespie v. Civiletti, 629 F.2d 637, 642 (9th Cir.
16 1980)). Courts grant these requests when the moving party shows good
17 cause for the early discovery. Semitool, Inc. v. Tokyo Elec. Am., Inc., 208
18 F.R.D. 273, 275-76 (N.D. Cal. 2002).

19 The Ninth Circuit has held that when the defendants' identities are
20 unknown at the time the complaint is filed, courts may grant plaintiffs leave
21 to take early discovery to determine the defendants' identities "unless it is
22 clear that discovery would not uncover the identities, or that the complaint
23 would be dismissed on other grounds." Gillespie, 629 F.2d at 642. A
24 district court's decision to grant discovery to determine jurisdictional facts is
25 a matter of discretion. Columbia Ins. Co., 185 F.R.D. at 578.

26 District courts apply a three-factor test when considering motions for
27 early discovery to identify certain defendants. Id. at 578-80. First, the
28 plaintiff should "identify the missing party with sufficient specificity such that

1 the Court can determine that defendant is a real person or entity who could
2 be sued in federal court.” Id. at 578. Second, the movant must describe
3 “all previous steps taken to locate the elusive defendant” to ensure that the
4 plaintiff has made a good faith effort to identify and serve process on the
5 defendant. Id. at 579. Third, the plaintiff should establish that its suit
6 against the defendant could withstand a motion to dismiss. Id. “[T]o
7 prevent abuse of this extraordinary application of the discovery process
8 and to ensure that the plaintiff has standing,” the plaintiff must show that
9 some act giving rise to liability actually occurred and that the discovery is
10 aimed at identifying the person who actually committed the act. Id. at 579-
11 80.

12 **III. DISCUSSION**

13 **A. Identification of Missing Parties with Sufficient Specificity**

14 First, Plaintiff must identify Defendant with enough specificity to
15 enable the Court to determine that the defendant is a real person or entity
16 who would be subject to the jurisdiction of this Court. Id. at 578. “[A]
17 plaintiff identifies Doe defendants with sufficient specificity by providing the
18 unique IP addresses assigned to an individual defendant on the day of the
19 allegedly infringing conduct, and by using “geolocation technology” to trace
20 the IP address to a physical point of origin. 808 Holdings, LLC v. Collective
21 of Dec. 29, 2011 Sharing Hash, 2012 WL 1648838, at *4 (S.D. Cal. May 4,
22 2012). Here, Defendant identified the IP address of the computer used by
23 Defendant, and used geolocation technology to trace each TCP/IP
24 connection made to IP address 68.7.61.76. Compl., ¶¶ 12-14 & Ex. 1.
25 Defendant determined the ISP that had provided the IP address associated
26 with Defendant was Cox Communications, and the point of origin for the IP
27 address was El Cajon, California and Santee, California, both located in
28 this district. Id., Ex. 1. Consequently, Plaintiff has identified Defendant

1 with sufficient specificity and has satisfied the first factor of the test for
2 permitting early discovery.

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

4 Next, Plaintiff must identify all previous steps taken to identify the
5 Doe Defendant in a good faith effort to locate and serve it. See Columbia
6 Ins. Co., 185 F.R.D. at 579. According to Plaintiff, “Plaintiff has no means
7 to readily identify the Doe defendant as a named individual.” Ex Parte
8 Motion at 5. This is the case because although publicly available data
9 allowed Plaintiff to identify the specific ISP used by Defendant as well as
10 the city(ies) associated with the IP address, it did not permit Plaintiff to
11 ascertain the identity of the subscriber or actual defendant. Id. at 2.
12 Accordingly, Plaintiff appears to have investigated and obtained the data
13 pertaining to the alleged infringement in a good faith effort to locate
14 Defendant. See, e.g., Digital Sin, Inc. v. Does 1-5698, No. C-11-04397 LB,
15 2011 U.S. Dist. LEXIS 128033, at *5 (N.D. Cal. Nov. 4, 2011).

16 **C. Ability to Withstand a Motion to Dismiss**

17 Lastly, to be entitled to early discovery, Plaintiff must demonstrate
18 that the Complaint can withstand a motion to dismiss. See Columbia Ins.
19 Co., 185 F.R.D. at 579.

20 1. Ability to State a Claim Upon Which Relief Can Be
21 Granted

22 Plaintiff alleges that it is the owner of the copyright for the work at
23 issue, a motion picture entitled “The Cobbler,” and that Defendant infringed
24 Plaintiff’s copyright by copying and distributing Plaintiff’s motion picture
25 through a public BitTorrent network without Plaintiff’s permission or
26 consent. Compl., ¶ 35. The Court finds Plaintiff has alleged a prima facie
27 case of copyright infringement against Defendant.

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1 2. Personal Jurisdiction

2 Plaintiff bears the burden of establishing jurisdictional facts. See
3 Columbia Ins. Co., 185 F.R.D. at 578. Plaintiff, using geolocation
4 technology, traced Defendant’s IP address to a point of origin within the
5 State of California. Compl., ¶ 14. Accordingly, Plaintiff has alleged
6 sufficient facts to show it can likely withstand a motion to dismiss for lack of
7 personal jurisdiction. See, e.g., Pink Lotus Entm’t, 2011 U.S. Dist. LEXIS
8 65614, at *6-7.

9 3. Venue

10 Plaintiff alleges that venue in this District is proper as to Defendant
11 under 28 U.S.C. §§ 1391(b) and 1400(a). Ex Parte Motion at 6. “The
12 venue of suits for infringement of copyright is not determined by the
13 general provision governing suits in the federal district courts, rather by the
14 venue provision of the Copyright Act.” Goldberg v. Cameron, 482 F. Supp.
15 2d 1136, 1143 (N.D. Cal. 2007). Civil actions for copyright infringement
16 “may be instituted in the district in which defendant or his agent resides or
17 may be found.” 28 U.S.C.A. § 1400(1) (West 2006). An individual
18 “resides” for venue purposes in the district of his domicile. 17 James Wm.
19 Moore, et al., Moore’s Federal Practice, § 110.39[2], at 110-76 (3d ed.
20 2011). A defendant is “found” for venue purposes where he is subject to
21 personal jurisdiction. Id. (footnote omitted); see also Brayton Purcell LLP v.
22 Recordon & Recordon, 606 F.3d 1124, 1126 (9th Cir. 2010) (“This circuit
23 interprets [28 U.S.C. § 1400(a)] to allow venue in any judicial district where,
24 if treated as a separate state, the defendant would be subject to personal
25 jurisdiction.”). Plaintiff alleges venue is proper because Defendant
26 allegedly committed the infringing acts complained of in this District.
27 Compl., ¶ 14 & Ex. 1; Ex Parte Motion at 6. Thus, venue appears to be
28 proper.

1 Accordingly, Plaintiff's Complaint can likely survive a motion to
2 dismiss.

3 **IV. CONCLUSION**

4 For the reasons set forth above, it is hereby ordered that Plaintiff's
5 Application is **GRANTED** as follows:

6 1. Plaintiff may serve a subpoena pursuant to Fed. R. Civ. P. 45
7 upon Cox Communications for the sole purpose of obtaining the *name and*
8 *address only* of Defendant Doe, based on the IP address listed for him in
9 the complaint -- 68.7.61.76. Cox Communications shall have fourteen (14)
10 calendar days after service of the subpoena upon it to notify its subscriber
11 that his/her identity has been subpoenaed by Plaintiff. The subscriber
12 whose identity has been subpoenaed shall have thirty (30) calendar days
13 from the date of such notice to challenge the disclosure to Plaintiff by filing
14 an appropriate pleading with this Court contesting the subpoena. If Cox
15 Communications intends to move to quash the subpoena, it must do so
16 prior to the return date of the subpoena. The return date of the subpoena
17 must allow for at least forty-five (45) days from service to production. If a
18 motion to quash or other customer challenge is brought, Cox
19 Communications must preserve the information sought by Plaintiff pending
20 resolution of the motion or challenge.

21 2. The subpoena shall not seek Defendant's telephone number,
22 email address, or Media Access Control (MAC) address, as this information
23 is not necessary for Plaintiff to identify and serve Defendant.

24 3. Plaintiff may use the information disclosed pursuant to the
25 subpoena only in pursuing this litigation.

26 4. Plaintiff shall serve a copy of this order with any subpoena
27 served upon Cox Communications pursuant to this Order. Cox
28 Communications, in turn, must provide a copy of this Order along with the

1 required notice to the subscriber whose identity is sought pursuant to this
2 Order.

3 5. No other discovery is authorized at this time.

4 **IT IS SO ORDERED.**

5 DATED: September 25, 2015

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7 Jan M. Adler
8 U.S. Magistrate Judge
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