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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 DALLAS BUYERS CLUB, LLC,  
12 Plaintiff,  
13 v.  
14 DOE-76.176.112.107,  
15 Defendant.

Case No.: 3:16-cv-00316-BEN-NLS

**ORDER GRANTING PLAINTIFF'S  
EX PARTE MOTION TO EXPEDITE  
DISCOVERY**

**(Dkt. No. 7)**

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17 Before the Court is Plaintiff Dallas Buyers Club, LLC's ("Plaintiff") *Ex Parte*  
18 Motion to Expedite Discovery. (Dkt. No. 7.) No Defendant has been named or served,  
19 and so no opposition or reply briefs have been filed. For the reasons discussed below, the  
20 Court **GRANTS** Plaintiff's motion.

21 **I. Background**

22 On February 9, 2016, Plaintiff filed the operative First Amended Complaint against  
23 "Doe," who is allegedly a subscriber of Time Warner and assigned Internet Protocol  
24 ("IP") address 76.176.112.107 ("Defendant"). (Dkt. No. 6.) Plaintiff alleges it is the  
25 registered copyright holder of the motion picture Dallas Buyers Club. (Id. at ¶ 1.)  
26 Plaintiff alleges "*Dallas Buyers Club* is an acclaimed motion picture nominated for six  
27 Academy Awards (Oscars), winning Best Actor, Best Supporting Actor, and Best  
28 Makeup. Plaintiff's motion also won numerous Screen Actors Guild Awards, Golden

1 Globes and other awards.” (Id. at ¶ 2.) Plaintiff alleges Defendant infringed its exclusive  
2 rights by utilizing BitTorrent to illegally copy and distribute Plaintiff’s motion picture  
3 without Plaintiff’s permission or consent. (Id. at ¶¶ 32-33.)

4 Plaintiff seeks leave to conduct early discovery to learn the identity of the  
5 subscriber of the IP address from the Internet Service Provider (“ISP”) who leased the  
6 address. (Dkt. No. 7 at 1.) Specifically, Plaintiff seeks an order permitting it to serve a  
7 third party subpoena under Federal Rule of Civil Procedure 45 on the ISP that would  
8 require it to supply information about the identity of the subscriber to Plaintiff.<sup>1</sup> (Dkt.  
9 No. 7 at 2.)

## 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 Federal Rule of Civil Procedure 26(f). Fed. R. Civ.  
13 P. 26(d)(1). However, courts have made exceptions to allow limited discovery after a  
14 complaint is filed to permit the plaintiff to learn the identifying information necessary to  
15 serve the defendant. *Columbia Ins. Co. v. Seescandy.com*, 185 F.R.D. 573, 577 (N.D.  
16 Cal. 1999). A party who requests early or expedited discovery must make a showing of  
17 good cause. *See Semitool, Inc. v. Tokyo Electron Am., Inc.*, 208 F.R.D. 273, 275-76  
18 (N.D. Cal. 2002) (applying “the conventional standard of good cause in evaluating  
19 Plaintiff’s request for expedited discovery”). Good cause exists “where the need for  
20 expedited discovery, in consideration of the administration of justice, outweighs the  
21 prejudice to the responding party.” *Id.* at 276.

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24 <sup>1</sup> In its *ex parte* motion, Plaintiff names Cox Communications and Time Warner as the  
25 ISP with the subscriber’s information. (Dkt. No. 7 at 2; Dkt. No. 7-1 at 2.) Yet  
26 Plaintiff’s First Amended Complaint and the exhibit attached to it indicate that the ISP  
27 who assigned the IP address to Defendant is Time Warner. (Dkt. No. 6 at 5; *see also* Dkt.  
28 No. 6-1 at 1.) Accordingly, the Court construes Plaintiff’s *ex parte* request as seeking to  
serve the subpoena on Time Warner because the reference to Cox Communications  
appears to be a scrivener’s error.

1 “The Ninth Circuit has held that when the defendants’ identities are unknown at  
2 the time the complaint is filed, courts may grant plaintiffs leave to take early discovery to  
3 determine the defendants’ identities ‘unless it is clear that discovery would not uncover  
4 the identities, or that the complaint would be dismissed on other grounds.’” 808  
5 *Holdings, LLC v. Collective of December 29, 2011 Sharing Hash*, 2012 WL 1648838, \*3  
6 (S.D. Cal. May 4, 2012) (quoting *Gillespie v. Civiletti*, 629 F.2d 637, 642 (9th Cir.  
7 1980)). “A district court’s decision to grant discovery to determine jurisdictional facts is  
8 a matter of discretion.” *Columbia Ins.*, 185 F.R.D. at 578 (citing *Wells Fargo & Co. v.*  
9 *Wells Fargo Express Co.*, 556 F.2d 406, 430 n.24 (9th Cir. 1977).

10 To determine whether “good cause” exists to permit expedited discovery to  
11 identify Doe defendants, district courts in this Circuit consider whether the plaintiff (1)  
12 “identif[ies] the missing party with sufficient specificity such that the Court can  
13 determine that the defendant is a real person or entity who could be sued in federal  
14 court”; (2) “identif[ies] all previous steps taken to locate the elusive defendant” to ensure  
15 that plaintiff has made a good faith effort to identify the defendant; and (3) “establish[es]  
16 to the Court’s satisfaction that plaintiff’s suit against defendant could withstand a motion  
17 to dismiss.” *Columbia Ins.*, 185 F.R.D. at 578-80. Additionally, the plaintiff should  
18 demonstrate the discovery will likely lead to identifying information that will permit  
19 service of process. *Id.* at 580. These factors are considered to ensure the expedited  
20 discovery procedure “will only be employed cases where the plaintiff has in good faith  
21 exhausted traditional avenues for identifying a civil defendant pre-service, and will  
22 prevent use of this method to harass or intimidate.” *Id.*

### 23 **III. Discussion**

#### 24 **a. Identification of Missing Party with Sufficient Specificity**

25 Plaintiff must identify Defendant with enough specificity to enable the Court to  
26 determine that Defendant is a real person or entity who would be subject to the  
27 jurisdiction of this Court. *Columbia Ins.*, 185 F.R.D. at 578. Some district courts in this  
28 Circuit have determined that “a plaintiff identifies Doe defendants with sufficient

1 specificity by providing the unique IP addresses assigned to an individual defendant on  
2 the day of the allegedly infringing conduct, and by using ‘geolocation technology’ to  
3 trace the IP addresses to a physical point of origin.” *808 Holdings*, 2012 WL 1648838, at  
4 \*4; *see Openmind Solutions, Inc. v. Does 1-39*, 2011 U.S. Dist. LEXIS 116552, at \*6,  
5 (concluding that plaintiff satisfied the first factor by identifying the defendants’ IP  
6 addresses and by tracing the IP addresses to a point of origin within the State of  
7 California); *see also Pink Lotus Entm’t v. Does 1-46*, 2011 U.S. Dist. LEXIS 65614, \*6  
8 (same). Others have concluded that merely identifying the IP addresses on the day of the  
9 alleged infringement satisfies this factor. *808 Holdings*, 2012 WL 1648838, at \*4 (citing  
10 cases).

11 Here, Plaintiff provided the Court with sufficient specificity that it seeks to sue a  
12 real person subject to this Court’s jurisdiction. In support of its identification of the  
13 missing party, Plaintiff filed a chart that lists the unique IP address corresponding to  
14 Defendant, and the dates and times of the purportedly infringing activity, as well as the  
15 city in which the IP address is located. (Dkt. No. 6-1 at 1.) Plaintiff’s First Amended  
16 Complaint also traces the IP address to this District. Plaintiff states in its First Amended  
17 Complaint that it used geolocation technology to confirm the IP address associated to the  
18 alleged infringement has been traced to this District. (Dkt. No. 6 at ¶ 11); *see also* Fed.  
19 R. Civ. P. 11(b)(3) (by presenting to the court a pleading, any attorney certifies that the  
20 “factual contentions have evidentiary support...”). Based on this information, the Court  
21 finds Plaintiff satisfied the “sufficient specificity” threshold. Accordingly, the Court  
22 concludes Plaintiff provided a sufficient showing that it seeks to sue a real person subject  
23 to the Court’s jurisdiction. Likewise, if Plaintiff obtains the identifying information from  
24 the ISP for the subscriber assigned the IP address at issue, the information sought in the  
25 subpoena would likely enable Plaintiff to serve the Defendant.

#### 26 **b. Previous Attempts to Locate Defendants**

27 Second, Plaintiff must describe all previous steps taken to locate the Defendant to  
28 ensure that Plaintiff made a good faith effort to identify the Defendant. *See Columbia*

1 *Ins.*, 185 F.R.D. at 579. Here, Plaintiff states that it identified the Defendant's ISP, where  
2 the Defendant is generally located, and the software Defendant used. Plaintiff avers,  
3 however, that it has no other practical means to identify the Defendant. Thus, the Court  
4 finds Plaintiff obtained and investigated the available data pertaining to the alleged  
5 infringement and made a good faith effort to locate Defendant.

### 6 **c. Whether Plaintiff Can Withstand a Motion to Dismiss**

7 To survive a motion to dismiss, Plaintiff must make a *prima facie* case of copyright  
8 infringement. A plaintiff must show: (1) ownership of a valid copyright; and (2) that  
9 Defendant violated the copyright owner's exclusive rights under the Copyright Act.

10 *Range Road Music, Inc. v. East Coast Foods, Inc.*, 668 F.3d 1148, 1153 (9th Cir. 2012).

11 Here, Plaintiff alleges it owns the registered copyright of the work that Defendant  
12 allegedly copied and distributed using the BitTorrent file distribution network. (Dkt. No.  
13 6 at ¶¶ 1, 8-10, 12-13.) Plaintiff also alleges it did not permit or consent to Defendant's  
14 copying or distribution of its work. (Id. at ¶ 32.) It appears Plaintiff has stated a *prima*  
15 *facie* claim for copyright infringement that can withstand a motion to dismiss.

16 Additionally, Plaintiff alleges sufficient facts to show it can withstand a motion to  
17 dismiss for lack of personal jurisdiction and withstand a motion for improper venue  
18 because Defendant's IP address was traced to a location in this District. (Dkt. No. 6 at ¶  
19 11.) Accordingly, the Court concludes Plaintiff has alleged a *prima facie* showing of  
20 copyright infringement that would likely withstand a motion to dismiss.

## 21 **IV. Conclusion**

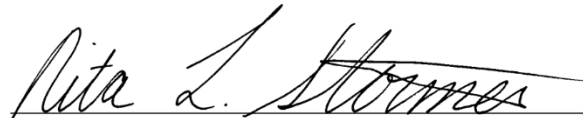
22 For good cause shown, the Court **GRANTS** Plaintiff's *ex parte* motion for  
23 expedited discovery. It is **ORDERED** that:

- 24 1. Plaintiff may serve a subpoena on Defendant's ISP, Time Warner Cable,  
25 seeking **only** the name and address of the subscriber assigned to Defendant's IP  
26 address. The ISP is **not** to release the Defendant's telephone number or email  
27 address.

- 1           2. Time Warner Cable shall have fourteen (14) calendar days after service of the  
2           subpoena to notify the subscriber that his or her identify has been subpoenaed  
3           by Plaintiff.
- 4           3. The subscriber whose identity has been subpoenaed shall then have thirty (30)  
5           calendar days from the date of the notice to seek a protective order or to file any  
6           other appropriate pleading with this Court contesting the subpoena.
- 7           4. If the ISP wishes to move to quash the subpoena, it shall do so before the return  
8           date of the subpoena. The return date of the subpoena must allow for at least  
9           forty-five (45) days from service to production. If a motion to quash or other  
10          challenge is brought, the ISP shall preserve the information sought by Plaintiff  
11          in the subpoena pending resolution of such motion or challenge.
- 12          5. Plaintiff shall serve a copy of this Order with any subpoena obtained and served  
13          pursuant to this Order to Time Warner Cable. Time Warner Cable, in turn,  
14          must provide a copy of this Order along with the required notice to the  
15          subscriber whose identity is sought pursuant to this Order.
- 16          6. Plaintiff may only use the information disclosed in response to a Rule 45  
17          subpoena served on the ISP for the purpose of protecting and enforcing  
18          Plaintiff's rights as set forth in its amended complaint. No other discovery is  
19          authorized at this time.

20           **IT IS SO ORDERED.**

21   Dated: March 29, 2016



Hon. Nita L. Stormes  
United States Magistrate Judge