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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 STRIKE 3 HOLDINGS, LLC,

12 Plaintiff,

13 v.

14 DOE 162.239.161.102,

15 Defendant.
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Case No.: 18-CV-1354-MMA(WVG)

**ORDER GRANTING PLAINTIFF'S
MOTION FOR LEAVE TO
CONDUCT EXPEDITED
DISCOVERY**

[ECF No. 4.]

18 Plaintiff claims to hold copyrights to the movies *Tushy*, *Blacked*, and *Vixen*. Plaintiff
19 now moves *ex parte* for an order permitting it to conduct discovery prior to the Rule 26(f)
20 conference and serve a subpoena on AT&T Inc. to ascertain the identity of an unknown
21 individual who allegedly has infringed its copyrights. For the reasons that follow, and on
22 the terms specified in this Order, the Court GRANTS the motion.

23 Plaintiff filed this lawsuit on June 20, 2018 asserting a single claim for copyright
24 infringement under 17 U.S.C. § 101 *et seq.* The instant motion was filed on July 27, 2018.
25 No defendant has been served. In the Complaint, Plaintiff alleges that between April 15,
26 2017 and May 12, 2018 the Doe defendant used the BitTorrent peer-to-peer distribution
27 network to copy and distribute the subject works over the internet without Plaintiff's
28 authorization. Data provided by an investigator identified the Internet Protocol ("IP")

1 address associated with the infringing activity as 162.239.161.102 and San Diego as the
2 location of the infringing activity.¹ However, Plaintiff cannot proceed further in this case
3 without the identity of the person associated with the IP address above.

4 A party ordinarily may not seek discovery from any source prior to the Rule 26(f)
5 conference. Fed. R. Civ. P. 26(d)(1). However, the Court may order expedited discovery,
6 and courts within this Circuit issue such orders on a showing of good cause. *See Semitol,*
7 *Inc. v. Tokyo Electron America, Inc.*, 208 F.R.D. 273, 276 (N.D. Cal. 2002); *Cobbler*
8 *Nevada, LLC v. Doe-68.8.213.203*, 2015 WL 9026554, at *1 (S.D. Cal. Dec. 15, 2015).
9 One situation in which early discovery may be necessary appears in cases in which the
10 defendant's identity cannot be determined at the time the action is commenced. The Ninth
11 Circuit has held that “[i]n such circumstances, the plaintiff should be given an opportunity
12 through discovery to identify the unknown defendants, unless it is clear that discovery
13 would not uncover the identities, or that the complaint would be dismissed on other
14 grounds.” *Gillespie v. Civiletti*, 629 F.2d 637, 642 (9th Cir. 1980). Courts accordingly have
15 required a party to meet four requirements before granting leave to use expedited discovery
16 to uncover the identity of an unknown defendant: (1) The party must “identify the missing
17 party with sufficient specificity such that the Court can determine that the defendant is a
18 real person or entity who could be sued in federal court”; (2) the party must demonstrate
19 that it has made good faith attempts to identify and serve the defendant; (3) the party must
20 show that the lawsuit could withstand a motion to dismiss; and (4) the party must show that
21 the discovery is reasonably likely to lead to identifying information that will permit service
22 of process. *Columbia Ins. Co. v. seescandy.com*, 185 F.R.D. 573, 578-80 (N.D. Cal. 1999);
23 *Dallas Buyers Club LLC v. Doe-73.202.228.252*, 2016 WL 1138960, at *3 (N.D. Cal.
24 March 23, 2016); *Uber Techs., Inc. v. Doe*, 2015 WL 4451372, at *3 (N.D. Cal. July 20,
25 2015). Plaintiff has met each of these requirements.

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28 ¹ The Court has confirmed that San Diego is this IP address's location via
www.iplocation.net.

1 Plaintiff must first identify the missing defendant with sufficient specificity so that
2 the Court can determine whether the defendant is a real person or entity who can be sued
3 in federal court. “[A] plaintiff identifies Doe defendants with sufficient specificity by
4 providing the unique IP addresses assigned to an individual defendant on the day of the
5 allegedly infringing conduct, and by using ‘geolocation technology’ to trace the IP
6 addresses to a physical point of origin.” *Dallas Buyers Club, LLC v. Doe-68.101.166.122*,
7 2016 WL 2343912, at *2 (S.D. Cal. May 4, 2016). Here, Plaintiff has identified the unique
8 IP address associated with the allegedly infringing conduct and has identified the dates of
9 the infringing conduct. Plaintiff has also used “IP address geolocation technology by
10 Maxmind Inc., an industry-leading provider of IP address intelligence and online fraud
11 detection tools, to determine that Defendant’s IP address traced to a physical address in
12 this District.” (ECF No. 1 ¶ 9.)² Plaintiff has therefore provided the Court sufficient basis
13 to conclude that the defendant is a real person or entity who may be sued in federal court.

14 Plaintiff must also demonstrate that it has made good faith efforts to identify and
15 serve the defendant. Plaintiff has explained the steps that it has taken to uncover the IP
16 address allegedly used to infringe its copyrights, and the requested discovery is the only
17 means available to it of obtaining information that may lead to the identification of the Doe
18 defendant. Although not discussed in Plaintiff’s moving papers, the Court notes that the
19 Cable Privacy Act generally prohibits cable operators from disclosing personally
20 identifiable information concerning subscribers without the prior consent of the subscriber
21 unless the disclosure is made pursuant to a court order and the cable operator provides the
22 subscriber with notice of the order. 47 U.S.C. § 551(c); see *QOTD Film Invest. Ltd. v. Doe-*
23 *72.220.214.236*, 2016 WL 1324424, at *4 (S.D. Cal. April 5, 2016). Plaintiff accordingly
24 is unlikely to be able to obtain the information it seeks without assistance from the Court.

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27 ² By signing the Complaint, counsel for Strike 3 Holdings LLC has represented that the
28 factual contentions therein, including Plaintiff’s use of geolocation technology to link the
IP address to this District, “have evidentiary support.” Fed. R. Civ. P. 11(b)(2).

1 Plaintiff is also required to show that the Complaint could survive a motion to
2 dismiss. The Complaint in this case asserts a single claim of direct copyright infringement.
3 To establish a prima facie case, Plaintiff must demonstrate (1) ownership of a valid
4 copyright and (2) that Defendant violated the copyright owner's exclusive rights under the
5 Copyright Act. *See Ellison v. Robertson*, 357 F.3d 1072, 1076 (9th Cir. 2004) (citing 17
6 U.S.C. § 501(a)). Plaintiff purports to hold rights to the copyrighted works at issue and
7 alleges that between April 15, 2017 and May 12, 2018, an individual or entity using IP
8 address 162.239.161.102 infringed its copyright by copying and distributing the work over
9 the internet without its permission or consent. The Court therefore finds that Plaintiff has
10 alleged the prima facie elements of direct copyright infringement. Further, by alleging that
11 the defendant is believed to reside and to have committed the infringing acts in this District,
12 Plaintiff has made a plausible showing that this Court may establish personal jurisdiction
13 and that venue is proper. The Court finds that Plaintiff would likely survive a motion to
14 dismiss.

15 Finally, Plaintiff must show that the discovery sought is reasonably likely to lead to
16 information that will permit Plaintiff to identify and serve the Doe defendant. Plaintiff
17 requests permission to use a Rule 45 subpoena to ascertain the identity of the subscriber
18 associated with the subject IP address during the period of the allegedly infringing conduct.
19 Plaintiff contends that the "Defendant's name and address can be provided by Defendant's
20 Internet Service Provider." (ECF No. 1 ¶ 13.) Plaintiff has shown that the discovery sought
21 is reasonably likely to lead to the missing defendant.

22 CONCLUSION AND ORDER

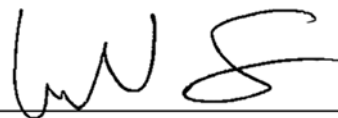
23 Finding good cause, the Court grants Plaintiff's motion for expedited discovery and
24 orders that:

- 25 a. Plaintiff may serve a Rule 45 subpoena on AT&T Inc. seeking only the true
26 name and address of the subscriber associated with the IP address
27 162.239.161.102 during the time period of the allegedly infringing conduct
28 described in Plaintiff's Complaint.

- 1 b. Plaintiff may not use information disclosed in response to the subpoena for
2 any purpose other than the protection of its rights in this litigation.
- 3 c. Within fourteen calendar days after service of the subpoena, AT&T Inc. shall
4 notify the subscriber that its identifying information has been subpoenaed by
5 Plaintiff. The subscriber whose identity has been subpoenaed shall have thirty
6 calendar days from the date of such notice to challenge the disclosure of its
7 information.
- 8 d. If AT&T Inc. wishes to move to quash the subpoena, it shall do so before the
9 return date of the subpoena. The return date of the subpoena must allow for
10 at least forty-five days between service and production. If a motion to quash
11 or other customer challenge is brought, AT&T Inc. shall preserve the
12 information sought by Plaintiff in the subpoena pending resolution of such
13 motion or challenge.
- 14 e. Plaintiff shall serve a copy of this order on AT&T Inc. along with its
15 subpoena. AT&T Inc., in turn, must provide a copy of this order along with
16 the required notice to the subscriber whose identity is sought.

17 **IT IS SO ORDERED.**

18 Dated: July 30, 2018

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20 Hon. William V. Gallo
21 United States Magistrate Judge

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