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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 70.95.96.208,

15 Defendant.
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Case No.: 18-CV-2720-GPC(WVG)

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

[ECF No. 5.]

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

23 Plaintiff filed this lawsuit on November 30, 2018 asserting a single claim for
24 copyright infringement under 17 U.S.C. § 101 *et seq.* The instant motion was filed on
25 December 6, 2018. No defendant has been served. In the Complaint, Plaintiff alleges that
26 between April 1, 2018 and October 10, 2018 the Doe defendant used the BitTorrent peer-
27 to-peer distribution network to copy and distribute the subject works over the internet
28 without Plaintiff's authorization. Data provided by an investigator identified the Internet

1 Protocol (“IP”) address associated with the infringing activity as 70.95.96.208 and San
2 Diego as the location of the infringing activity.¹ However, Plaintiff cannot proceed further
3 in this case 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. (“Maxmind”), an industry-leading provider of IP address intelligence and
11 online fraud detection tools, to determine that Defendant’s IP address traced to a physical
12 address in this District.” (ECF No. 1 ¶ 9.)² Plaintiff has therefore provided the Court
13 sufficient basis to conclude that the defendant is a real person or entity who may be sued
14 in federal court.

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

3 Plaintiff is also required to show that the Complaint could survive a motion to
4 dismiss. The Complaint in this case asserts a single claim of direct copyright infringement.
5 To establish a prima facie case, Plaintiff must demonstrate (1) ownership of a valid
6 copyright and (2) that Defendant violated the copyright owner's exclusive rights under the
7 Copyright Act. *See Ellison v. Robertson*, 357 F.3d 1072, 1076 (9th Cir. 2004) (citing 17
8 U.S.C. § 501(a)). Plaintiff purports to hold rights to the copyrighted works at issue and
9 alleges that between April 1, 2018 and October 10, 2018, an individual or entity using IP
10 address 70.95.96.208 infringed its copyright by copying and distributing the work over the
11 internet without its permission or consent. The Court therefore finds that Plaintiff has
12 alleged the prima facie elements of direct copyright infringement. Further, by alleging that
13 the defendant is believed to reside and to have committed the infringing acts in this District,
14 Plaintiff has made a plausible showing that this Court may establish personal jurisdiction
15 and that venue is proper. The Court finds that Plaintiff would likely survive a motion to
16 dismiss.

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

24 **CONCLUSION AND ORDER**

25 Once Strike 3 learns the subscriber's identity, it cannot rely on a bare allegation that
26 he or she is the registered subscriber of an IP address associated with infringing activity to
27 state a plausible claim for direct or contributory copyright infringement. *Cobbler Nevada,*
28 *LLC v. Gonzales*, 901 F.3d 1142, 1144 (9th Cir. 2018). However, at this stage of these

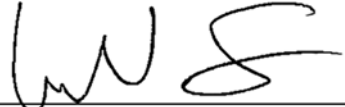
1 proceedings, and upon the record presented, Strike 3 properly may serve discovery to
2 ascertain the potential defendant’s identity. *See generally Glacier Films (USA), Inc. v.*
3 *Turchin*, 896 F.3d 1033, 1036, 1038 (9th Cir. 2018) (observing that the district court’s case
4 management order permitting “limited discovery from an Internet Service Provider to
5 establish a potential infringer’s identity” was “a sensible way to manage its dockets . . .”).
6 Thus, finding good cause, the Court grants Plaintiff’s motion for expedited discovery and
7 orders that:

- 8 a. Plaintiff may serve a Rule 45 subpoena on Spectrum seeking only the true
9 name and address of the subscriber associated with the IP address
10 70.95.96.208 during the time period of the allegedly infringing conduct
11 described in Plaintiff’s Complaint.
- 12 b. Plaintiff may not use information disclosed in response to the subpoena for
13 any purpose other than the protection of its rights in this litigation.
- 14 c. Within fourteen calendar days after service of the subpoena, Spectrum shall
15 notify the subscriber that its identifying information has been subpoenaed by
16 Plaintiff. The subscriber whose identity has been subpoenaed shall have thirty
17 calendar days from the date of such notice to challenge the disclosure of its
18 information.
- 19 d. If Spectrum wishes to move to quash the subpoena, it shall do so before the
20 return date of the subpoena. The return date of the subpoena must allow for
21 at least forty-five days between service and production. If a motion to quash
22 or other customer challenge is brought, Spectrum shall preserve the
23 information sought by Plaintiff in the subpoena pending resolution of such
24 motion or challenge.
- 25 e. Plaintiff shall serve a copy of this order on Spectrum along with its subpoena.
26 Spectrum, in turn, must provide a copy of this order along with the required
27 notice to the subscriber whose identity is sought.

- 1 f. Once Plaintiff learns the identity of the subscriber(s), Plaintiff shall provide a
2 copy of this Order to that person or those persons when Plaintiff first makes
3 contact with the subscriber regarding this case. At that same time, Plaintiff
4 shall also provide the subscriber(s) a copy of the Ninth Circuit’s opinion in
5 *Cobbler Nevada, LLC v. Gonzales*, 901 F.3d 1142 (9th Cir. 2018). Once both
6 have been provided to the subscriber(s), counsel for Plaintiff shall
7 immediately file a declaration that confirms these have been provided to the
8 subscriber.
- 9 g. Plaintiff and Spectrum shall henceforth refer to the subscriber as “John/Jane
10 Doe” and shall redact and omit from all future filings all information that
11 identifies the subscriber personally. Such identifying information includes the
12 subscriber’s name and address, unless and until the subscriber becomes a
13 defendant in the above-captioned case. Plaintiff and Spectrum shall refer to
14 the subscriber generically in any filings and attach—under seal—a separate
15 exhibit that includes the subscriber’s identifying information
- 16 h. The subscriber may initially proceed anonymously as “John/Jane Doe” until
17 such time that there is sufficient proof before the Court that the subscriber is
18 connected with the alleged infringement.
- 19 i. Plaintiff may not engage in any settlement discussions with the subscriber
20 unless and until the subscriber has been served with the Complaint and the
21 documents set forth in paragraph (f), above.

22 **IT IS SO ORDERED.**

23 Dated: December 18, 2018

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26 Hon. William V. Gallo
27 United States Magistrate Judge
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