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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 JOHN DOE subscriber assigned IP
15 address 75.80.1.11,
16 Defendant.

Case No.: 21-cv-00232-GPC-KSC

**ORDER GRANTING EX PARTE
APPLICATION FOR LEAVE TO
SERVE A THIRD-PARTY
SUBPOENA PRIOR TO A RULE
26(f) CONFERENCE**

[Doc. No. 5]

17
18 Before the Court is plaintiff Strike 3 Holdings, LLC's ("plaintiff") Ex Parte
19 Application for Leave to Serve a Third-Party Subpoena Prior to a Rule 26(f) Conference.
20 Doc. No. 5. For the reasons stated below, plaintiff's application is **GRANTED**.

21 **I. BACKGROUND**

22 On February 5, 2021, plaintiff filed a Complaint against defendant John Doe
23 subscriber assigned IP address 75.80.1.11 ("defendant"), asserting a claim for copyright
24 infringement. *See* Doc. No. 1. Plaintiff alleges it is the owner of certain adult-content
25 films that defendant is "stealing ... on a grand scale" by downloading these films and
26 distributing them to others without plaintiff's authorization, permission or consent. *Id.* at
27 ¶¶2-7. Defendant's identity is known only to plaintiff by defendant's IP address:
28 75.80.1.11. Doc. No. 5-1 at 7-8. Plaintiff therefore seeks the Court's leave to serve a

1 subpoena pursuant to Fed. R. Civ. P. 45 on defendant’s internet service provider (“ISP”),
2 Spectrum, to learn defendant’s identity. *Id.* at 7. Plaintiff asserts that “[w]ithout this
3 information,” it cannot serve defendant, “nor pursue this lawsuit and protect its
4 copyrights.” *Id.* at 8.

5 II. LEGAL STANDARDS

6 Generally, discovery is not permitted without a court order before the parties have
7 conferred pursuant to Federal Rule of Civil Procedure 26(f). Fed. R. Civ. P. 26(d)(1). Yet,
8 “in rare cases, courts have made exceptions, permitting limited discovery to ensue after
9 filing of the complaint to permit the plaintiff to learn the identifying facts necessary to
10 permit service on the defendant.” *Columbia Ins. Co. v. Seescandy.com*, 185 F.R.D. 573,
11 577 (N.D. Cal. 1999) (citing *Gillespie v. Civiletti*, 629 F.2d 637, 642 (9th Cir. 1980)).
12 Courts permit early discovery “where the need for expedited discovery, in consideration of
13 the administration of justice, outweighs the prejudice to the responding party.” *Semitool,*
14 *Inc. v. Tokyo Elec. Am., Inc.*, 208 F.R.D. 273, 276 (N.D. Cal. 2002) (applying “the
15 conventional standard of good cause in evaluating [a] request for expedited discovery”).

16 The Ninth Circuit has held that when the defendant’s identity is unknown at the time
17 the complaint is filed, courts may grant plaintiffs leave to take early discovery to determine
18 the defendant’s identity “unless it is clear that discovery would not uncover the identit[y],
19 or that the complaint would be dismissed on other grounds.” *Gillespie*, 629 F.2d at 642.
20 “A district court’s decision to grant discovery to determine jurisdictional facts is a matter
21 of discretion.” *Columbia Ins. Co.*, 185 F.R.D. at 578 (citations omitted). “[T]o prevent
22 abuse of this extraordinary application of the discovery process and to ensure that the
23 plaintiff has standing,” the plaintiff must show “that an act giving rise to civil liability
24 actually occurred,” and that the requested discovery is aimed at identifying the person who
25 committed the act. *Id.* at 579-80.

26 III. DISCUSSION

27 District Courts apply a three-factor test when considering motions for early
28 discovery to identify the defendant. *Id.* at 578-80. First, the plaintiff should “identify the

1 missing party with sufficient specificity such that the Court can determine that defendant
2 is a real person or entity who could be sued in federal court.” *Id.* at 578. Second, the
3 movant must describe “all previous steps taken to locate the elusive defendant” to ensure
4 that the plaintiff has made a good faith effort to identify and serve process on the defendant.
5 *Id.* at 579. Third, the plaintiff should establish that its suit against the defendant could
6 withstand a motion to dismiss. *Id.*

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

8 A plaintiff can satisfy its burden of identifying the missing party with specificity by
9 “identify[ing] the unique IP addresses” of the allegedly infringing individuals and then
10 “us[ing] geolocation technology to trace these IP addresses to a point of origin.” *Pink*
11 *Lotus Entm’t, LLC v. Does 1-46*, No. C-11-02263 HRL, 2011 WL 2470986, at *3 (N.D.
12 Cal. June 21, 2011). Here, plaintiff determined that Spectrum provided the subject IP
13 address associated with defendant and used geolocation technology to trace the IP address
14 to an address located within this District. *See* Doc. No. 5-1 at 12-13; Doc. No. 5-2 at 29-
15 30, 32. Plaintiff confirmed the information before filing its Complaint and again before
16 filing the instant *ex parte* application. Doc. No. 5-2 at 29. The Court finds plaintiff has
17 “sufficiently shown” that defendant is a “real person[] likely residing in California who
18 may be sued in this Court.” *Pink Lotus*, 2011 WL 2470986, at *3.

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

20 Next, plaintiff must identify all previous steps taken to identify the Doe defendant
21 in a good faith effort to locate and serve it. *See Columbia Ins. Co.*, 185 F.R.D. at 579.
22 Plaintiff first sought to uncover defendant’s identity by means of a state court procedure in
23 Florida, where plaintiff’s “infringement detection servers” are located. Doc. No. 5-1 at 14.
24 However, defendant, through counsel, objected in that forum and has not responded to any
25 of plaintiff’s efforts to obtain defendant’s identity without the Court’s intervention. *Id.* at
26 14-15. Plaintiff has also conducted its own independent research and consulted with
27 forensic and cybersecurity experts. *Id.* Despite these efforts, plaintiff has been unable to
28 identify defendant and represents it cannot do so without the requested discovery. *Id.* at

1 14. Accordingly, the Court finds that plaintiff has made a good-faith effort to identify and
2 locate defendant before filing the instant applications. *See Strike 3 Holdings, LLC v. Doe*,
3 No. 20-cv-00068-BAS-JLB, 2020 WL 1029011, at *4 (S.D. Cal. Mar. 3, 2020).

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

5 Plaintiff's Complaint alleges a single cause of action against defendant for direct
6 copyright infringement. *See* Doc. No. 1 at ¶¶49-54. Plaintiff alleges it owns the subject
7 intellectual property, which defendant copied and distributed without plaintiff's
8 authorization, permission or consent. *See* Doc. No. 5-1 at 17; Doc. No. 1 at ¶¶19-48. The
9 Court finds plaintiff has alleged a *prima facie* case of direct copyright infringement against
10 defendant that would likely withstand a motion to dismiss for failure to state a claim.

11 Plaintiff also bears the burden of establishing jurisdictional facts. *See Columbia Ins.*
12 *Co.*, 185 F.R.D. at 578. Plaintiff, using geolocation technology, traced defendant's IP
13 address to a point of origin within this District before filing its Complaint and again before
14 filing the instant *ex parte* application. *See* Doc. No. 5-1 at 12-13; Doc. No. 5-2 at 29-30,
15 32; Doc. No. 1 at ¶¶9-11. These facts are sufficient to show "that it is likely that the
16 [d]efendant is located within the Southern District of California and is subject to the
17 personal jurisdiction of the Court." *Criminal Prods., Inc. v. Doe*, No. 16-cv-02353-DMS-
18 MDD, 2016 WL 6070355, at *3 (S.D. Cal. Oct. 17, 2016). The Court therefore finds
19 plaintiff has alleged enough facts to show it can likely withstand a motion to dismiss for
20 lack of personal jurisdiction.

21 For the same reason, venue appears proper. Civil actions for copyright infringement
22 "may be instituted in the district in which defendant or his agent resides or may be found."
23 28 U.S.C.A. § 1400(1). A defendant is "found" for venue purposes where he is subject to
24 personal jurisdiction. *Id.* (footnote omitted). Further, plaintiff alleges venue is proper
25 because defendant allegedly committed the infringing acts complained of in this District.
26 Doc. No. 1 at ¶12. The Court finds that the Complaint could likely withstand a motion to
27 dismiss for improper venue.

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1 4. Plaintiff shall serve a copy of this Order with any subpoena served upon
2 Spectrum pursuant to this Order. Spectrum, in turn, must provide a copy
3 of this Order along with the required notice to the subscriber whose
4 identity is sought pursuant to this Order.

5 5. Plaintiff may use the information disclosed pursuant to the subpoena only
6 in pursuing this litigation.

7 6. No other discovery is authorized at this time.

8 **IT IS SO ORDERED.**

9 Dated: May 11, 2021



Hon. Karen S. Crawford
United States Magistrate Judge

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