

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

STRIKE 3 HOLDINGS, LLC,
Plaintiff,

v.

JOHN DOE SUBSCRIBER ASSIGNED IP
ADDRESS 24.4.124.129,
Defendant.

Case No. [23-cv-03768-PHK](#)

**ORDER (1) GRANTING STRIKE 3
HOLDINGS, LLC'S *EX PARTE*
APPLICATION FOR LEAVE TO
SERVE THIRD-PARTY SUBPOENA
AND (2) ISSUING PROTECTIVE
ORDER**

Re: Dkt. No. 9

Now before the Court is Plaintiff Strike 3 Holdings, LLC's ("Strike 3") *Ex Parte* Application for Leave to Serve a Third-Party Subpoena Prior to a Rule 26(f) Conference. [Dkt. 9]. Because Defendant John Doe, subscriber assigned IP address number 24.4.124.129, ("Defendant Doe") has not been identified or served, no opposition has been filed. Having reviewed Strike 3's application and all supporting documents, the Court **GRANTS** the *ex parte* application. Further, on the Court's own motion, the Court additionally **ISSUES** a limited Protective Order for the reasons set forth below.

BACKGROUND

Strike 3 alleges that it is the assignee of copyrights registered with the U.S. Copyright Office to certain adult motion pictures distributed through various adult websites and DVD sales. *See* Dkt. 1 at 1, 6. Strike 3 indicates it is a Delaware corporation located in Camden, Delaware. *Id.* at ¶ 12.

Defendant Doe was named in the Complaint solely in connection with a specific Internet

Protocol (“IP”) address. [Dkt. 1]. “An IP address is a ‘unique numerical address’ assigned to every computer and can serve as its identifying characteristic.” *United States v. Henderson*, 906 F.3d 1109, 1111 n.1 (9th Cir. 2018). An IP address is not a physical address but instead is a unique identifier for every computer or server connected to the Internet. *United States v. Forrester*, 512 F.3d 500, 510 n.5 (9th Cir. 2008). As is well-known, consumers and households connect their home computers and other devices to the Internet by subscribing to such service through a vendor called an internet service provider (“ISP”), often a cable company, telecommunications company, or other similar service provider. *Nat’l Cable & Telecommunications Ass’n v. Brand X Internet Servs.*, 545 U.S. 967, 974 (2005) (“The traditional means by which consumers in the United States access the network of interconnected computers that make up the Internet is through “dial-up” connections provided over local telephone facilities. Using these connections, consumers access the Internet by making calls with computer modems through the telephone wires owned by local phone companies. Internet service providers (ISPs), in turn, link those calls to the Internet network, not only by providing a physical connection, but also by offering consumers the ability to translate raw Internet data into information they may both view on their personal computers and transmit to other computers connected to the Internet.”) (citations omitted).

When a subscriber (or consumer) signs up for Internet service, the ISP assigns an IP address to that subscriber – essentially renting out the IP address to the consumer for the duration of their subscription service period. *Columbia Ins. Co. v. seescandy.com*, 185 F.R.D. 573, 575 (N.D. Cal. 1999) (“On the Internet, computers find each other by reference to Internet Protocol (IP) addresses, which are a series of numbers that are used to specify the address of a particular machine connected to the Internet. Domain names are alphanumeric strings that are associated with particular IP addresses. Thus to find the computer at 129.99.135.66, a user might type in uscourts.gov, and would never need to know the actual IP address.”). The consumer does not own the IP address – it is controlled by the ISP and designated to subscribers as they sign up for service. *UMG Recordings, Inc. v. Doe*, No. 08-cv-1193-SBA, 2008 WL 4104214, at *2 (N.D. Cal. Sept. 3, 2008) (“[W]hen an ISP is given a defendant’s IP address and the date and time of infringement, it quickly and easily

information is contained in the ISP’s subscriber activity log files.”) (citation omitted). Because the ISP sends monthly or regular bills to the subscriber and has the original service application documents from each subscriber, and because the ISP knows which of its IP addresses were assigned to which customers, it follows that an ISP’s internal records should typically include information sufficient to link a customer with the account corresponding to a particular IP address. *Id.*

Here, Strike 3 avers that it traced the IP address used by Defendant Doe’s device to a physical address in the Northern District of California using a geolocation tool developed by a vendor called Maxmind, Inc. (“Maxmind”). [Dkt. 1 at ¶ 9; Dkt. 9 at 17]. Using Maxmind, Strike 3 avers that it identified Defendant Doe in this case as a subscriber using assigned IP address 24.4.124.129. *See* Dkt. 1 at ¶ 9; Dkt. 9 at 17. Further, Strike 3 alleges, from information obtained by Maxmind, that Comcast Cable, Inc. (“Comcast Cable”) is the ISP for and owner of the IP address to which Defendant Doe here subscribes. [Dkt. 9 at 20].

Defendant Doe is accused of using an internet-connected device and a file distribution network called BitTorrent to download and distribute, through the internet, copies of Strike 3’s copyrighted motion pictures without license or authorization. *See* Dkt. 1 at ¶¶ 18–44. BitTorrent is a protocol for sharing electronic files (such as digitized film files) directly between individuals’ internet-connected devices. *UMG Recordings*, 2008 WL 4104214 at *1 (“The Internet and peer-to-peer (P2P) networks have spawned an illegal trade in copyrighted works. By downloading P2P software, and logging onto a P2P network, an individual may upload (distribute) or download (copy), without authorization, countless copyrighted music and video files to or from any other P2P network user worldwide. [. . .] [S]imilar online media distribution systems emerged that have attempted to capitalize on the growing illegal market that Napster fostered. These include Ares, KaZaA, eDonkey, BitTorrent, DirectConnect, and Gnutella, among others.”) (citations and footnote omitted). Strike 3 alleges that Defendant Doe used BitTorrent for “downloading Strike 3’s motion pictures as well as distributing them to others[]” and “has been recorded infringing 26 movies over an extended period of time.” *See* Dkt. 1 at ¶ 4.

As a further part of its investigation, Strike 3 alleges it is the owner and operator of an

investigative technology tool called “VXN Scan.” *Id.* at ¶ 28. Using VXN Scan, Strike 3 allegedly

1 established direct communication connections over the internet (using a “TCP/IP” (or Transmission
2 Control Protocol/Internet Protocol) connection) between Strike 3’s investigators’ computers and
3 Defendant Doe’s device (which was connected to the internet at the IP address named in the
4 Complaint) during a time period when Defendant Doe’s device was connected to the internet and
5 was using BitTorrent. *Id.* at ¶ 30. According to the Complaint, VXN Scan searches for and obtains
6 “.torrent” files from the target device and then downloads complete copies of the digital media files
7 that correlate to those “.torrent” files to determine whether those downloaded files are infringing
8 copies of one of Strike 3’s copyrighted works. *Id.* at ¶¶ 25–33. Strike 3 further alleges that VXN
9 Scan used metadata called the “Info Hash” value from a .torrent file downloaded from Defendant
10 Doe’s device to download a portion of the same digital media file directly from Defendant Doe’s
11 device via the BitTorrent network (thus essentially emulating the distribution of digital film files
12 from Defendant Doe to another BitTorrent user via the internet). *Id.* at ¶ 36. A comparison of the
13 digital media files apparently revealed that Defendant Doe downloaded and distributed copies of
14 portions of Strike 3’s copyrighted works without authorization. *Id.* at ¶¶ 35–44.

15 Based on these forgoing allegations, on July 27, 2023, Strike 3 filed its Complaint against
16 Defendant Doe alleging copyright infringement under the Copyright Act. *See* Dkt. 1. On August
17 15, 2023, Strike 3 filed the instant *ex parte* application requesting leave to serve Comcast Cable
18 with a subpoena under Fed. R. Civ. P. 45. [Dkt. 9]. Strike 3 alleges that Comcast Cable has the
19 ability to identify Defendant Doe through the IP address discovered by the investigation discussed
20 herein, because Maxmind’s geolocation service has identified, and the American Registry for
21 Internet Numbers has allegedly confirmed, Comcast Cable as the owner of the IP address named in
22 the Complaint. *Id.* at 20. Strike 3 represents that the requested subpoena will be limited to seeking
23 from Comcast Cable the name and physical address of the individual(s) having the account
24 associated with Defendant Doe’s IP address of 24.4.124.129. *Id.*

DISCUSSION

I. LEAVE TO SERVE AN EARLY, LIMITED SUBPOENA ON COMCAST CABLE.

28 Pursuant to Rule 26(d)(1), a party may not seek discovery from any source prior to the

parties' conference required by Rule 26(f). However, per Rule 26(d)(1), the Court has authority to allow discovery prior to the Rule 26(f) conference and thus outside this timing limitation. *See also* Fed. R. Civ. P. 26 advisory committee's note (1993) ("Discovery can begin earlier if authorized . . . by local rule, order, or stipulation. This will be appropriate in some cases[.]").

The Court may authorize early discovery before the Rule 26(f) conference if the requesting party establishes "good cause" for the early discovery. *Semitool, Inc. v. Tokyo Electron Am. Inc.*, 208 F.R.D. 273, 276 (N.D. Cal. 2002). "Good cause may be found where the need for expedited discovery, in consideration of the administration of justice, outweighs prejudice to the responding party." *Id.*

As with all discovery matters, "Rule 26 vests the trial judge with broad discretion to tailor discovery narrowly and to dictate the sequence of discovery." *Crawford-El v. Britton*, 523 U.S. 574, 598 (1998). "And the court may also set the timing and sequence of discovery." *Id.* at 599 (citing Fed. R. Civ. P. 26(d)). Thus, the decision whether or not to grant early discovery under Rule 26(d) is within the Court's discretion. *Quinn v. Anvil Corp.*, 620 F.3d 1005, 1015 (9th Cir. 2010) ("We review district court rulings on discovery matters for abuse of discretion."). Further, a decision to deny early discovery under Rule 26(d) "will not be disturbed except upon the clearest showing that denial of discovery results in actual and substantial prejudice to the complaining litigant." *Med Vets, Inc. v. VIP Petcare Holdings, Inc.*, 811 F. App'x 422, 424 (9th Cir. 2020) (quoting *Hallett v. Morgan*, 296 F.3d 732, 751 (9th Cir. 2002)). In evaluating a motion for expedited discovery, the District Court in *Med Vets* considered the following factors to determine whether good cause exists to justify the requested early discovery: (1) whether a preliminary injunction is pending; (2) the breadth of the discovery request; (3) the purpose for requesting the expedited discovery; (4) the burden on the defendants to comply with the requests; and (5) how far in advance of the typical discovery process the request was made. *Med Vets, Inc. v. VIP Petcare Holdings, Inc.*, No. 18-CV-02054-MMC, [Dkt. 45] at *3 (N.D. Cal. Nov. 28, 2018) (quoting *Rovio Ent. Ltd. v. Royal Plush Toys, Inc.*, 907 F. Supp. 1086, 1099 (N.D. Cal. 2012)). The Ninth Circuit affirmed the District Court's decision on the request for expedited discovery. *Med Vets*, 811 F. App'x at 424.

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