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United States District Court
Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DALLAS BUYERS CLUB LLC,
Plaintiff,
v.
DOE-73.202.228.252,
Defendant.

Case No. [16-cv-00858-PSG](#)

**ORDER GRANTING EX PARTE
MOTION FOR LEAVE TO TAKE
LIMITED DISCOVERY**

(Re: Docket No. 4)

Plaintiff Dallas Buyers Club LLC, which owns the copyright for the movie of a similar name, alleges that an unnamed Defendant has infringed that copyright by copying and distributing the film without authorization.¹ Ordinarily, Fed. R. Civ. P. 26(d)(1) precludes discovery before the conference required under the Fed. R. Civ. P. 26(f). “[I]n rare cases, courts have made exceptions, permitting limited discovery to ensue after the filing of the complaint to permit the plaintiff to learn the identifying facts necessary to permit service on the defendant.”²

Arguing that this is one of those rare cases, DBC moves ex parte for leave to take early discovery.³ In particular, DBC seeks to serve a subpoena on Defendant’s Internet Service Provider, Comcast Cable, to ascertain Defendant’s identity in order to serve him or her in accordance with Rule 4. For the reasons set forth below, the motion is GRANTED.

¹ See Docket No. 1 at ¶¶ 4-23, 35-41.

² *Columbia Ins. Co. v. SeesCandy.com*, 185 F.R.D. 573, 577 (N.D. Cal. 1999).

³ See Docket No. 4.

I.

1 DBC is the registered copyright holder for the motion picture *Dallas Buyers Club*.⁴
2 According to DBC's complaint, Defendant, using the IP address 73.202.228.252, distributed
3 hundreds of copies of the film through the BitTorrent peer-to-peer file sharing protocol.⁵ Over the
4 course of a month, other BitTorrent users made over 300 connections to a computer located at
5 Defendant's IP address to download the same copy of *Dallas Buyers Club*.⁶ Through geolocation
6 technology, DBC has traced each of those connections to this district.⁷ DBC also has observed
7 Defendant exchange a number of other copyrighted works over BitTorrent, so it infers that
8 Defendant is an authorized user of the computer located at that IP address.⁸ At the time of the
9 infringement, Comcast managed the IP address at issue.⁹ Since Comcast generally assigns IP
10 addresses to the same user for long periods of time, DBC believes that Comcast's records can help
11 DBC identify the subscriber, who in turn can likely name Defendant.¹⁰

12 DBC filed this complaint on February 20, 2016, alleging a single count of copyright
13 infringement under the Copyright Act against a Doe defendant, identified only by his or her IP
14 address.¹¹ While IP addresses provide a form of identification, "[t]raditionally, the default

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16 ⁴ See Docket No. 1 at ¶¶ 4, 6. The work is registered under Registration Number PA 1-873-195.
17 See *id.* at ¶ 6.

18 ⁵ See *id.* at ¶¶ 12, 14-15, 17. BitTorrent is called a "peer-to-peer" network because, instead of
19 relying on a central server to distribute data directly to individual users, the BitTorrent protocol
20 allows individual users to distribute data among themselves by exchanging pieces of the file with
21 each other to eventually obtain a whole copy of the file. When using the BitTorrent protocol,
every user simultaneously receives information from and transfers information to others. See
generally Columbia Pictures Indus., Inc. v. Fung, 710 F.3d 1020, 1024-28 (9th Cir. 2013).

22 ⁶ See Docket No. 1 at ¶¶ 12-13, 15; Docket No. 1-1.

23 ⁷ See Docket No. 1 at ¶ 14.

24 ⁸ See *id.* at ¶¶ 17-20.

25 ⁹ See *id.* at ¶ 21.

26 ¹⁰ See *id.* at ¶¶ 21-22.

27 ¹¹ See *id.* at ¶¶ 35-41.

1 requirement in federal court is that the plaintiff must be able to identify the defendant sufficiently
 2 that a summons can be served on the defendant. This requires that the plaintiff be able to ascertain
 3 the defendant's name and address."¹² Accordingly, DBC filed the instant motion two days later.¹³
 4 The requested subpoena will be limited to the name and address of the individual or individuals
 5 associated with Defendant's IP address.¹⁴

6 II.

7 This court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331. DBC has
 8 consented to the jurisdiction of the undersigned magistrate judge under 28 U.S.C. § 636(c) and
 9 Fed. R. Civ. P. 72(a).¹⁵

10 III.

11 In the Ninth Circuit, exceptions to the general rule against expedited discovery are
 12 disfavored.¹⁶ In general, courts in this district have required a plaintiff to show "good cause"
 13 before permitting early discovery.¹⁷ But a district court always has jurisdiction to determine facts

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 15 ¹² *Columbia Ins. Co.*, 185 F.R.D. at 577 (citing Fed. R. Civ. P. 4).

16 ¹³ See Docket No. 4.

17 ¹⁴ See Docket No. 4-1 at 2.

18 ¹⁵ See Docket Nos. 28, 31. Because Defendant has not yet been served, he or she is not yet a party
 19 under Section 636, and Defendant's consent is not required. See *Travelers Cas. & Sur. Co. of Am.*
 20 *v. Brenneke*, 551 F.3d 1132, 1135 (9th Cir. 2009) (quoting *Benny v. Pipes*, 799 F.2d 489, 492 (9th
 21 Cir. 1986)); *Neals v. Norwood*, 59 F.3d 530, 532 (5th Cir. 1995); *Third World Media, LLC v. Does*
 22 *I-1568*, Case No. 10-cv-04470, 2011 WL 4344160, at *3 (N.D. Cal. Sept. 15, 2011) (citing
Ornelas v. De Frantz, Case No. 00-cv-01067, 2000 WL 973684, at *2 n.2 (N.D. Cal. June 29,
 2000)).

23 ¹⁶ See *Wakefield v. Thompson*, 177 F.3d 1160, 1162 (9th Cir. 1999) (citing *Gillespie v. Civiletti*,
 24 629 F.2d 637, 642 (9th Cir. 1980)); see also *Gomez v. Serv. Employees Int'l Local 87*, Case No.
 10-cv-01888, 2010 WL 4704407, at *3 (N.D. Cal. Nov. 12, 2010).

25 ¹⁷ E.g., *Apple Inc. v. Samsung Elecs. Co., Ltd.*, Case No. 11-cv-01846, 2011 WL 1938154, at *1
 26 (N.D. Cal. May 18, 2011); *IO Grp., Inc. v. Does I-65*, Case No. 10-cv-04377, 2010 WL 4055667,
 27 at *2 (N.D. Cal. Oct. 15, 2010); *Semitool, Inc. v. Tokyo Electron Am., Inc.*, 280 F.R.D. 273, 275-
 77 (N.D. Cal. 2002).

1 relevant to whether or not it has personal jurisdiction.¹⁸ As a result, “where the identity of alleged
 2 defendants will not be known prior to the filing of a complaint . . . the plaintiff should be given an
 3 opportunity through discovery to identify the unknown defendants, unless it is clear” that one of
 4 two conditions applies.¹⁹ The first is where discovery would not uncover the identities sought.²⁰
 5 The second is where the claim against the defendant could be dismissed on other grounds.²¹ These
 6 conditions are imposed because “[p]eople who have committed no wrong should be able to
 7 participate online without fear that someone who wishes to harass or embarrass them can file a
 8 frivolous lawsuit and thereby gain the power of the court’s order to discover their identity.”²²

9 In light of this guidance from the Ninth Circuit, this district has examined four factors in
 10 deciding whether a plaintiff has established good cause for discovery to ascertain a Doe
 11 defendant’s identity.²³ First, the plaintiff must identify the missing party with enough specificity
 12 that the court can decide whether the defendant is a real person or entity who can be sued in a
 13 federal court.²⁴ Second, the plaintiff must name all previous steps it has taken to locate the

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 16 ¹⁸ See *Wells Fargo & Co. v. Wells Fargo Express Co.*, 556 F.2d 406, 430 n.24 (9th Cir. 1977).

17 ¹⁹ *Gillespie*, 629 F.2d at 642; see also *Columbia Ins. Co.*, 185 F.R.D. at 573 (“With the rise of the
 18 Internet has come the ability to commit certain tortious acts, such as defamation, copyright
 19 infringement, and trademark infringement, entirely on-line. The tortfeasor can act
 20 pseudonymously or anonymously and may give fictitious or incomplete identifying information.
 21 Parties who have been injured by these acts are likely to find themselves chasing the tortfeasor
 22 from [ISP] to ISP, with little or no hope of actually discovering the identity of the tortfeasor. In
 23 such cases the traditional reluctance for permitting filings against John Doe defendants or
 24 fictitious names and the traditional enforcement of strict compliance with service requirements
 25 should be tempered by the need to provide injured parties with an forum in which they may seek
 26 redress for grievances.”).

27 ²⁰ See *Gillespie*, 629 F.2d at 642.

²¹ See *id.*

²² *Columbia Ins. Co.*, 185 F.R.D. at 578.

²³ See *id.* at 578-80.

²⁴ See *id.* at 578.

1 defendant to assure the court that the plaintiff has made a good-faith effort to identify the elusive
 2 defendant without court intervention.²⁵ Third, the plaintiff must satisfy the court that the suit
 3 could withstand a motion to dismiss.²⁶ Fourth, the plaintiff must state the reasons justifying the
 4 specific discovery requested and identify a limited number of persons or entities that will be
 5 affected by that discovery, including those on whom discovery process might be served and those
 6 whose identifying information the discovery is reasonably likely to uncover.²⁷

7 DBC has satisfied each of these elements. The IP address is specific enough to identify a
 8 single Defendant and to confirm that the court has jurisdiction over the Defendant because he or
 9 she is located in this district.²⁸ DBC also has listed each step it has taken to track down Defendant
 10 and explained why the data it has gathered is insufficient to identify Defendant.²⁹ Next, DBC has
 11 shown that its complaint is likely to withstand a motion to dismiss. “Plaintiffs must satisfy two
 12 requirements to present a prima facie case of direct infringement: (1) they must show ownership of
 13 the allegedly infringed material and (2) they must demonstrate that the alleged infringers violate at
 14 least one exclusive right granted to copyright holders under 17 U.S.C. § 106.”³⁰ DBC has alleged
 15 that it owns the copyright to *Dallas Buyers Club*, and it has alleged that Defendant distributed the
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18 ²⁵ *See id.* at 579.

19 ²⁶ *See id.*

20 ²⁷ *See id.* at 580.

21 ²⁸ *See 808 Holdings, LLC v. Collective of Dec. 29, 2011 Sharing Hash*
 22 *E37917C8EEB4585E6421358FF32F29CD63C23C91*, Case No. 12-cv-00186, 2012 WL
 23 1648838, at *4 (S.D. Cal. May 4, 2012) (“[A] plaintiff identifies Doe defendants with sufficient
 24 specificity by providing the unique IP addresses assigned to an individual defendant on the day of
 the allegedly infringing conduct, and by using ‘geolocation technology’ to trace the IP addresses
 to a physical point of origin.”).

25 ²⁹ *See* Docket No. 1 at ¶¶ 12-22.

26 ³⁰ *Perfect 10, Inc. v. Amazon.com, Inc.*, 508 F.3d 1146, 1159 (9th Cir. 2007) (quoting *A&M*
 27 *Records, Inc. v. Napster, Inc.*, 239 F.3d 1004, 1013 (9th Cir. 2001)); *see* 17 U.S.C. § 501(a).

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