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UNITED STATES DISTRICT COURT
For the Northern District of California

UNITED STATES DISTRICT COURT

Northern District of California

Oakland Division

FIRST TIME VIDEOS, LLC,

No. C 11-01675 LB

Plaintiff,

**ORDER GRANTING PLAINTIFF'S
EX PARTE MOTION FOR
EXPEDITED DISCOVERY**

v.

DOES 1-37,

[ECF No. 6]

Defendants.

I. INTRODUCTION

Plaintiff First Time Videos, LLC asserts claims for copyright infringement pursuant to 17 U.S.C. § 101 *et seq.* and for civil conspiracy. Complaint, ECF No. 1. It seeks permission to take limited, expedited discovery to identify and name the Doe defendants in this case. *Ex Parte* Motion for Expedited Discovery, ECF No. 6. In its motion, First Time Videos requests that the court allow it to serve subpoenas on certain Internet Service Providers (“ISPs”) to obtain information identifying the Doe defendants so that it can complete service of process on them. *Id.* at 12.

As discussed below, First Time Videos has demonstrated that: (1) the Doe defendants are real people who may be sued in federal court; (2) it has unsuccessfully attempted to identify the Doe defendants prior to filing this motion; (3) its infringement and civil conspiracy claims against the Doe defendants could survive a motion to dismiss; and (4) there is a reasonable likelihood that service of the proposed subpoenas on the ISPs will lead to information identifying the Doe defendants. The court therefore finds that good cause exists to allow First Time Videos to engage in

1 this preliminary discovery. Accordingly, the court **GRANTS** First Time Videos' motion.

2 **II. BACKGROUND**

3 First Time Videos is a Nevada based limited liability company that produced adult content
4 within a variety of adult entertainment niches. Complaint, ECF No. 1 at 4, ¶ 6. First Time Videos'
5 most prominent site is "ftvgirls.com" which features over 2,500 videos and over 100,000 high
6 resolution photographs. *Id.* As part of this venture, First Time Videos produced a copyrighted work
7 titled "FTV Girls - Ella." *Id.* at ¶ 7. According to First Time Videos, the Doe defendants, without
8 its permission, reproduced and distributed "FTV Girls - Ella" to numerous third parties through a
9 peer-to-peer file sharing network. *Id.* at 7, ¶ 23. It alleges that reproduction and distribution of this
10 work violated the Copyright Act of 1976, 17 U.S.C. § 101 *et seq.*, thereby causing it economic and
11 reputation damages. *Id.* at 8, ¶ 29. It also claims that the Doe defendants participated in a common-
12 plan civil conspiracy to unlawfully reproduce and distribute the work, which caused economic and
13 reputation damage to First Time Videos. *Id.* at ¶¶ 32-39.

14 Because the peer-to-peer file sharing network that the Doe defendants utilized is partially
15 anonymous, First Time Videos does not know the defendants' names and addresses, and, as a result,
16 is unable to complete service of process on them. Motion, ECF No. 6 at 4. However, it has been
17 able to identify the Internet Protocol ("IP") assigned to each of the Doe defendants and the date and
18 time that each defendant allegedly infringed on its copyrighted work. *Id.*; Complaint, ECF No. 1-2
19 at 2, Exh. A. Additionally, First Time Videos has identified the Internet Service Provider ("ISP")
20 for each of the IP addresses. Motion, ECF No. 6 at 5. First Time Videos therefore requests that,
21 pursuant to Federal Rule of Civil Procedure 26(d), the court grant it leave to serve a Rule 45 third-
22 party subpoena on each ISP listed in Exhibit A of the Complaint that assigned an IP addresses to the
23 Doe defendants so that it may obtain the names and contact information of the Doe defendants to
24 effect service of process on them. *Id.* at 14-16.

25 **III. DISCUSSION**

26 **A. Legal Standard for Leave to Take Early Discovery**

27 A court may authorize early discovery before the Rule 26(f) conference for the parties' and
28 witnesses' convenience and in the interests of justice. Fed. R. Civ. P. 26(d). Courts within the

1 Ninth Circuit generally consider whether a plaintiff has shown “good cause” for the early discovery.
2 *See, e.g., IO Group, Inc. v. Does 1-65*, No. C 10-4377 SC, 2010 WL 4055667, at *2 (N.D. Cal. Oct.
3 15, 2010); *Semitoool, Inc. v. Tokyo Electron America, Inc.*, 208 F.R.D. 273, 275-277 (N.D. Cal.
4 2002); *Texas Guaranteed Student Loan Corp. v. Dhindsa*, No. C 10-0035, 2010 WL 2353520, at * 2
5 (E.D. Cal. June 9, 2010); *Yokohama Tire Crop. v. Dealers Tire Supply, Inc.*, 202 F.R.D. 612, 613-14
6 (D. Ariz. 2001) (collecting cases and standards).

7 When the identities of defendants are not known before a complaint is filed, a plaintiff “should
8 be given an opportunity through discovery to identify the unknown defendants, unless it is clear that
9 discovery would not uncover the identities, or that the complaint would be dismissed on other
10 grounds.” *Gillespie v. Civiletti*, 629 F.2d 637, 642 (9th Cir. 1980). In evaluating whether a plaintiff
11 establishes good cause to learn the identity of Doe defendants through early discovery, courts
12 examine whether the plaintiff (1) identifies the Doe defendant with sufficient specificity that the
13 court can determine that the defendant is a real person who can be sued in federal court, (2) recounts
14 the steps taken to locate and identify the defendant, (3) demonstrates that the action can withstand a
15 motion to dismiss, and (4) proves that the discovery is likely to lead to identifying information that
16 will permit service of process. *Columbia Ins. Co. v. seescandy.com*, 185 F.R.D. 573, 578-80 (N.D.
17 Cal. 1999).

18 **B. Plaintiff Has Shown Good Cause**

19 Here, First Time Videos has made a sufficient showing under each of the four factors listed
20 above to establish good cause to permit it to engage in early discovery to identify the Doe
21 defendants.

22 First, First Time Videos has identified the Doe defendants with sufficient specificity by
23 submitting a chart listing each of the defendants by the IP address assigned to them on the day it
24 alleges the particular defendant engaged in the infringing conduct. *See* Exh. A, ECF No. 1-2 at 2;
25 Hansmeier Decl., ECF No. 6-1 at 5-8, ¶¶ 12-20.

26 Second, First Time Videos has adequately described the steps it took to locate and identify the
27 Doe defendants. Specifically, it investigated and collected data on unaApril 11, 2011 authorized
28 distribution of copies of “FTV Girls - Ella” on BitTorrent-based peer-to-peer networks. Hansmeier

1 Decl., ECF No. 6-1 at 5-8, ¶¶ 12-20. The data that First Time Videos gathered, separated out by
2 Doe defendant, is listed in Exhibit A to the complaint and includes each defendant's IP address, the
3 ISP that assigned that IP address, and the date and time the defendant infringed on its copyrighted
4 work. Exh. A, ECF No. 1-2. at 2. However, First Time Videos has been unable to further identify
5 the Doe defendants.

6 Third, First Time Videos has pled the essential elements to state a claim for copyright
7 infringement and a claim for civil conspiracy against the Doe defendants. Complaint, ECF No. 1 at
8 7-9, ¶¶ 25-39.

9 Fourth, First Time Videos has demonstrated that the proposed subpoena seeks information likely
10 to lead to identifying information that will allow it to effect service of process on the Doe
11 defendants. Specifically, the proposed subpoena requests that each ISP produce information
12 sufficient to identify the Doe defendant who subscribed to its service, including the defendant's
13 name, address, telephone number, email address, and media access control address. Motion, ECF
14 No. 6 at 15.

15 Taken together, the court finds that the foregoing factors demonstrate good cause exists to grant
16 First Time Videos leave to conduct early discovery to identify the Doe defendants. *See Semitool*,
17 208 F.R.D. at 276. Further, the court finds that early discovery furthers the interests of justice and
18 poses little, if any, inconvenience to the subpoena recipients. Permitting First Time Videos to
19 engage in this limited, early discovery is therefore consistent with Rule 26(d).

20 In First Time Videos' proposed order, it requests that the court permit it to serve the subpoena on
21 "any other entity later identified." The court denies this request. If it identifies new entities, First
22 Time Videos may submit a declaration detailing the four requirements discussed above along with a
23 proposed order mimicking the language in the following section.

24 IV. CONCLUSION

25 For the reasons stated above, the court **GRANTS** First Time Videos' *Ex Parte* Motion for
26 Expedited Discovery as follows.

27 1. **IT IS HEREBY ORDERED** that Plaintiff may immediately serve Rule 45 subpoenas on the
28 Internet Service Providers (ISPs) listed in Exhibit A to the Complaint to obtain information to

1 identify each Doe Defendant, including the name, address, telephone numbers, email addresses, and
2 media access control addresses. Each subpoena shall have a copy of this Order attached.

3 2. **IT IS FURTHER ORDERED** that the ISPs will have 30 days from the date of service upon
4 them to serve the subscribers of the IP addresses with a copy of the subpoena and a copy of this
5 order. The ISPs may serve the subscribers using any reasonable means, including written notice sent
6 to the subscriber's last known address, transmitted either by first-class mail or via overnight service.

7 3. **IT IS FURTHER ORDERED** that subscribers shall have 30 days from the date of service
8 upon them to file any motions in this court contesting the subpoena (including a motion to quash or
9 modify the subpoena). If that 30-day period lapses without a subscriber contesting the subpoena, the
10 ISPs shall have 10 days to produce the information responsive to the subpoena to Plaintiff.

11 4. **IT IS FURTHER ORDERED** that the subpoenaed entity shall preserve any subpoenaed
12 information pending the resolution of any timely-filed motion to quash.

13 5. **IT IS FURTHER ORDERED** that any ISP that receives a subpoena pursuant to this Order
14 shall confer with Plaintiff and shall not assess any charge in advance of providing the information
15 requested in the subpoena. Any ISP that receives a subpoena and elects to charge for the costs of
16 production shall provide a billing summary and cost reports that serve as a basis for such billing
17 summary and any costs claimed by such ISP.

18 6. **IT IS FURTHER ORDERED** that Plaintiff shall serve a copy of this order along with any
19 subpoenas issued pursuant to this order to the necessary entities.

20 7. **IT IS FURTHER ORDERED** that any information disclosed to Plaintiff in response to a
21 Rule 45 subpoena may be used by Plaintiff solely for the purpose of protecting Plaintiff's rights as
22 set forth in its complaint.

23 This disposes of ECF No. 6.

24 **IT IS SO ORDERED.**

25 Dated: April 14, 2011



26 LAUREL BEELER
27 United States Magistrate Judge
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