IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 25-cv-03564-JLK-CYC

CAPSTONE STUDIOS, CORP.,

Plaintiff,

v.

DOES 1-7,

Defendants.

MINUTE ORDER

Entered by Cyrus Y. Chung, United States Magistrate Judge, on June 3, 2026.

This matter is before the Court on the Plaintiff's Second Motion for Leave to Take Limited Expedited Discovery of Information Prior to Rule 26(f) Conference, ECF No. 24, which asks the Court to grant it "leave to serve a second third party subpoena prior to a Rule 26(f) conference to the ISP Comcast." *Id*. at 1. The Court initially notes that the motion is improperly denominated as the "second" motion for leave to take limited early discovery when it is actually the third such motion. *See* ECF No. 21 (Second Motion for Leave to Take Limited Expedited Discovery of Information Prior to Rule 26(f) Conference). However, the improper denomination does not prevent the Court from ruling on the merits of the motion.

The Court previously allowed the plaintiff to serve a third-party subpoena on the ISP seeking information relating to defendant Doe 1, who allegedly accessed the plaintiff's copyrighted material via a piracy website, ECF No. 1 ¶¶ 14–23, on December 12, 2023. ECF No. 1-1. According to the plaintiff, the ISP responded to that subpoena by informing the plaintiff that the requested date was "outside of Comcast's 180 day period for retained logs," ECF No. 21-1 ¶ 5, and, as a result, "it could not respond [to the subpoena] because it only retains logs for dynamically assigned IP addresses for 180 days." *Id*. ¶ 3.

Counsel for the plaintiff identified a different case in which the same IP address was involved in a similar lawsuit and in which the plaintiff there appears to have asked the ISP to produce identifying information related to that IP address, but the ISP "asserted that the subscriber identification information it produced for the same IP address" in the other case "is outside the scope of the Order" entered in this case allowing for issuance of the third-party subpoena. *Id.* ¶ 12. Plaintiff then filed a Second Motion for Leave to Take Expedited Discovery of Information Prior to Rule 26(f) Conference, ECF No. 21, requesting to serve a subpoena on the ISP to produce "the same identification information" it produced in the other case "so that Plaintiff can amend its complaint to proceed against Defendant." *Id.* at 3. The Court denied this motion without prejudice, finding that the plaintiff had failed to demonstrate that the ISP retained

the information related to the IP address, and therefore, the subpoena would be an undue burden. ECF No. 23 at 2.

In the instant motion, the plaintiff now asserts that the ISP "has indicated that the date of the information requested is within its retention period for litigation documents" and that it will produce the records if the Court orders a subpoena. ECF No. 24 at 3 (citing ECF No. 24-1 ¶¶ 2–3, 7). Furthermore, the plaintiff states that it will pay the ISP's production fee. ECF No. 24-1 at ¶¶ 5–6.

Rule 26(b)(1) allows parties to obtain discovery "regarding any nonprivileged matter that is relevant to any party's claim or defense" with certain limitations. Fed. R. Civ. P. 26(b)(1). "In establishing the scope of discovery, Rule 26(b)(1) does not distinguish between parties and non-parties." *W. Convenience Stores, Inc. v. Suncor Energy (U.S.A.) Inc*., No. 11-cv-01611-MSK-CBS, 2014 WL 1257762, at *21 (D. Colo. Mar. 27, 2014) (citing *United States v. Blue Cross Blue Shield of Mich*., No. 10-CV-14155, 2012 WL 4838987, at *2 (E.D. Mich. Oct. 11, 2012)). But "[i]t is generally recognized that a non-party involuntarily embroiled in civil litigation should not be subjected to undue burden or significant expense merely by virtue of having received a subpoena." *Id*. (citing *Exxon Shipping Co. v. U.S. Dep't of Interior*, 34 F.3d 774, 779 (9th Cir. 1994)). And the Court should "closely regulate[ ]" third-party discovery, *Premier Election Sols., Inc. v. Systest Labs Inc*., Civ. No. 09-cv-01822-WDM-KMT, 2009 WL 3075597, at *3 (D. Colo. Sep. 22, 2009), to ensure that third parties are not unduly burdened. In furtherance of this goal, Rule 45(d)(1) requires the issuing court to enforce the party's and attorney's duty to "take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena" and requires the court to impose sanctions "on a party or attorney who fails to comply."

Here, the plaintiff has shown that the third-party ISP possesses information relevant to its claim and that the limited discovery sought will not impose an undue burden or significant expense. The plaintiff has remedied the deficiency in its second motion that caused the Court to deny it without prejudice. ECF No. 23 at 2 ("It may be that there is some reason to believe that the requested records still exist, but if there is, the Court does not have that information."). Importantly, courts have enforced third-party subpoenas requiring disclosure of information or documents produced in a different litigation. *See Gotham Holdings, LP v. Health Grades, Inc.*, 580 F.3d 664, 665 (7th Cir. 2009) (affirming district court's enforcement of a subpoena compelling a third party to produce documents from an arbitrated case); *see also Gudelj v. Vitality Works, Inc.*, Civ. No. 19-14 KG/JFR, 2019 WL 13318138, at *3–5 (D.N.M. Dec. 16, 2019) (finding that subpoenaed third party could be deposed notwithstanding non-disparagement clause in her separate settlement with defendant). The Court therefore finds that the plaintiff may subpoena the ISP for the limited information for Defendant 1 granted in the first Order, ECF No. 19 at 2.

Accordingly, it is hereby ORDERED that the Plaintiff's third motion for leave to take limited expedited discovery, ECF No. 24, is **GRANTED as follows**. Plaintiff may serve a third-party subpoena pursuant to Fed. R. Civ. P. 45 on the ISP with the limited purpose of ascertaining the identity of the defendant identified by IP address 98.43.70.250 (Defendant 1) as produced to Strike 3 Holdings, LLC in *Strike 3 Holdings, LLC v. John Doe Subscriber assigned IP Address 98.43.70.250*, 24-cv-00168-CMA-MEH (D. Colo. 2024). The subpoena shall be limited to providing Plaintiff with the name and address of the subscriber (Defendant 1) to whom the ISP

has assigned an IP address. With the subpoena, Plaintiff shall also serve a copy of this Order. The ISP shall notify the subscriber that his/her identity has been subpoenaed by Plaintiff. Finally, the Court emphasizes that Plaintiff may use the information disclosed in response to the subpoena only for the purpose of protecting and enforcing its rights as set forth in its Complaint, ECF No. 1. The Court cautions Plaintiff that improper use of this information may result in sanctions.