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11 **UNITED STATES DISTRICT COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA**

13 **Originating Case:** *After II Movie LLC., et al., v. Grande Communications Networks LLC,*
14 *No. 1:21-cv-709 (W.D.TX)*

15 In re Subpoena to:

16 Reddit, Inc.

Case No.: 3:23-mc-80173

Hearing Date: TBD

Time: TBD

**PLAINTIFFS' MOTION TO COMPEL NON-
PARTY REDDIT TO RESPOND TO
SUBPOENA**

21 **PLAINTIFFS' MOTION TO COMPEL NON-PARTY REDDIT**
22 **TO RESPOND TO SUBPOENA**

23 Plaintiffs AFTER II MOVIE, LLC, BODYGUARD PRODUCTIONS, INC., HITMAN 2
24 PRODUCTIONS, INC., LHF PRODUCTIONS, INC., MILLENNIUM FUNDING, INC.,
25 MILLENNIUM IP, INC., MON, LLC, NIKOLA PRODUCTIONS, INC., OUTPOST
26 PRODUCTIONS, INC., RAMBO V PRODUCTIONS, INC., VENICE PI, LLC, VOLTAGE
27 HOLDINGS, LLC, WONDER ONE, LLC, DALLAS BUYERS CLUB, LLC; HANNIBAL MEDIA,
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1 INC.; BADHOUSE STUDIOS, LLC; THE GUARD PRODUCTIONS, LTD; JOLT
2 PRODUCTIONS, INC.; TIL PRODUCTIONS, INC.; and SCREEN MEDIA VENTURES, LLC
3 (“Plaintiffs”), by and through their counsel, move this Court to grant an order: compelling non-party
4 REDDIT, INC. (“Reddit”) to fully produce documents in response to Plaintiffs’ subpoena. This
5 Motion is pursuant to Fed. R. Civ. P. 26(b)(1), 34(c), 45(d)(2)(i) and Civ L.R. 37. Plaintiffs’ counsel
6 Kerry Culpepper certifies that he met and conferred with counsel for Reddit in a good faith effort to
7 resolve this dispute pursuant to Civ L.R. 37-1(a).
8

9 **MEMORANDUM**

10 **I. BRIEF RELEVANT FACTUAL AND PROCEDURAL HISTORY**

11 1. On Aug. 13, 2021, Plaintiffs filed a Complaint against Defendant GRANDE
12 COMMUNICATIONS NETWORKS, LLC (“Defendant”) in the Western District of Texas alleging
13 *inter alia* that Defendant is secondarily liable for Defendant’s subscribers’ infringements of
14 copyrights in Plaintiffs’ motion pictures (“Works”). The case caption is *After II Movie LLC., et al.,*
15 *v. Grande Communications Networks LLC*, No. 1:21-cv-709 (W.D.Tx) (“*After II*”).
16

17 2. On Feb. 18, 2022, counsels for Plaintiffs and Defendant submitted their report for the Rule
18 26(f) conference they conducted on Feb. 17, 2022. *After II*, Doc. #27. Accordingly, discovery
19 opened on Feb. 18, 2022. *See* Decl. of Culpepper at ¶8.
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21 3. On May 18, 2022, Plaintiffs filed a Second Amended Complaint (“SAC”) which is the
22 operative pleading. *After II*, Doc. #45. The SAC alleges that Defendant’s subscribers pirated
23 Plaintiffs’ Works thousands of times by sharing illegitimate file copies of the Works with CMI
24 modified to refer to notorious movie piracy websites in violation of Plaintiffs’ copyrights and their
25 right to integrity of CMI in digital copies of Plaintiffs’ Works (“DMCA violations”). The SAC
26 further alleges that Plaintiffs’ agents as well as agents of other copyright holders sent Defendant
27 thousands of notices informing of its subscribers’ ongoing piracy but Defendant took no meaningful
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1 action in response. The SAC asserts counts of secondary liability for Defendant’s subscribers’
2 copyright infringements and DMCA violations. *See* Decl. of Culpepper at ¶9.

3 4. On Jun. 1, 2022, Defendant filed a motion to dismiss the SAC.

4 5. On Oct. 6, 2022, the Court issued an Order authorizing Defendant to disclose identities of
5 subscribers assigned 125 Internet Protocol (“IP”) addresses subject to the confidentiality provisions
6 of the protective order pursuant to the Cable Act. *See After II*, Docs. ##33 (Protective Order) and 53
7 (Cable Act Order).

8 6. On Oct. 7, 2022, Plaintiffs served a Second Request for Production of Documents
9 (“2RPOD”) on Defendant requesting identification information for the subscribers assigned the top
10 125 pirating IP addresses (out of thousands). *See* Decl. of Culpepper at ¶11.

11 7. On Nov. 11, 2022, Plaintiffs served a Fourth Request for Production of Documents
12 (“4RPOD”) on Defendant requesting *inter alia*: RFP #29 requesting “Each document that mentions,
13 refers to, or constitutes any report, analysis, commentary, or summary regarding copyright
14 infringement at Grande user accounts”; RFP #38 requesting “Each document that mentions or relates
15 to how suspension or termination of user accounts related to copyright infringement, or any other
16 actions or efforts Grande may take to prevent copyright infringement, may lead to the loss of current
17 Grande customers”; and RFP #39 requesting “Each document that mentions or relates to how
18 Grande’s policy or practices on copyright infringement at user accounts may relate to Grande’s
19 ability to attract potential customers or retain current customers.”. *See* Decl. of Culpepper at ¶12.

20 8. On Jan. 31, 2023, Magistrate Judge Howell issued a Report and Recommendation [Doc. #74]
21 (“R&R”) recommending that Defendant’s motion to dismiss the counts for secondarily liable for
22 Defendant’s subscribers’ copyright infringements and DMCA violations be denied. *See After II*,
23 2023 U.S. Dist. LEXIS 15772 (W.D. Tex. Jan. 31, 2023). The District Court issued an Order [Doc.
24 #91] adopting the R&R over Defendant’s objections on March 28, 2023. *See After II*, 2023 U.S.
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1 Dist. LEXIS 52462 (W.D. Tex. Mar. 28, 2023).

2 9. On April 11, 2023, Defendant filed its Answer [Doc. #96] to the SAC denying *inter alia* that
3 its subscribers are motivated to use its service for pirating content efficiently (¶33) and that it knew
4 its subscribers were using its service to pirate copyright protected content (¶36). *See After II*, Doc.
5 #96.

6
7 10. On April 24, 2023, Plaintiffs served a subpoena to Reddit requesting “Basic account
8 information including IP address registration and logs from 1/1/2016 to present, name, email address
9 and other account registration information for users: "robowiener"; "SquirtyBottoms"; "Aikidi";
10 "kelsoATX"; "xBROKEx"; and "Schadenfreude_Taco". *See Ex. “1”*. The subpoena was noticed to
11 Defendant prior to service.

12
13 11. On May 8, 2023, Reddit’s counsel served objections to the subpoena on Plaintiffs’ counsel.
14 *See Ex. “2”*.

15 12. On May 9, 2023, Plaintiffs’ counsel and Reddit’s counsels met and conferred by video
16 conference and thereafter by emails but were unable to resolve any of Reddit’s objections. *See Decl.*
17 *of Culpepper at ¶15.*

18 13. On May 26, 2023, Plaintiffs received identification information from Defendant for 118 of
19 the 125 IP addresses. *See id.* at ¶16.

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21 14. On June 16, 2023, the Court entered an Amended Scheduling Order [Doc. #111] that sets a
22 deadline for Plaintiffs to serve their expert reports of Aug. 7, 2023, a discovery cut-off of Nov. 3,
23 2023 and a trial date of April 15, 2024. *See After II*, Doc. #111.

24 15. On June 16, 2023, Plaintiffs received substantive documents from Defendant in response to
25 discovery requests such as 4RPOD. Plaintiffs have not received any marketing studies from
26 Defendant discussing its subscribers’ motivation to use its service for piracy. *See Decl. of*
27 *Culpepper at ¶18.*
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1 16. Further, Plaintiffs have sent letters to most of the subscribers of the 118 IP addresses but
2 have had limited success establishing dialogue with most of them due to time constraints and
3 refusals to respond to Plaintiffs’ counsel’s communications. It is unlikely that Plaintiffs will get
4 substantive response from the subscribers in time to include this information in the expert reports.

5 *See id.* at ¶19.

6
7 17. Reddit and Plaintiffs’ counsels agreed that this dispute should be filed in the Northern
8 District of California.

9 **II. LEGAL STANDARD**

10 18. Fed. R. Civ. P. 26(b)(1) states “Parties may obtain discovery regarding any nonprivileged
11 matter that is relevant to any party’s claim or defense and proportional to the needs of the
12 case...Information within this scope of discovery need not be admissible in evidence to be
13 discoverable.”

14
15 19. Fed. R. Civ. P. 34(c) states “As provided in Rule 45, a nonparty may be compelled to
16 produce documents...”

17 20. Fed. R. Civ. P. 45(a)(1)(D) provides for a party to serve subpoenas to produce documents on
18 nonparties. Fed. R. Civ. P. 45(d)(2)(i) provides that “At any time, on notice to the commanded
19 person, the serving party may move the court for the district where compliance is required for an
20 order compelling production or inspection.”

21
22 21. On a motion to compel compliance with a Rule 45 subpoena, the Local Rules require a party
23 to “detail the basis for the party’s contention that it is entitled to the requested discovery and show
24 how the proportionality and other requirements of Fed. R. Civ. P. 26(b)(2) are satisfied.” N.D. Cal.
25 Civ. L.R. 37-2. The court has discretion to determine whether to grant a motion to compel. *See*
26 *Garrett v. City & Cnty. of San Francisco*, 818 F.2d 1515, 1519 (9th Cir. 1987).

27
28 22. In “evaluating the First Amendment rights of anonymous Internet users in the context of a

1 third-party civil subpoena,” district courts have followed the approach taken in *Doe v.*
2 *TheMart.com*, 140 F. Supp. 2d 1088 (W.D. Wash. 2001). *In re Reddit, Inc.*, No. 3:23-mc-80037-
3 LB, 2023 U.S. Dist. LEXIS 74338 (N.D. Cal. Apr. 28, 2023) (“*Reddit P*”).

4 **III. ARGUMENT**

5 ***A. The discovery requested is relevant and proportional to the needs of the case.***

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7 23. The evidence Plaintiff requests from Reddit in the Rule 45 subpoena is clearly relevant and
8 proportional to the needs of the case. The Reddit user comments can be placed within two
9 categories of relevant evidence: (i) Comments that establish that Defendant has not reasonably
10 implemented a policy for terminating repeat infringers sufficient for a safe harbor affirmative
11 defense as required by 17 U.S.C. §512; and (ii) Comments that establish that the ability to freely
12 pirate without consequence was a draw to becoming a subscriber of Defendant and/or subscribers are
13 motivated to use its service for pirating content efficiently.

14
15 24. In a 2018 Reddit discussion thread about a news article “Texas ISP slams music biz for
16 trying to turn it into a 'copyright cop”
17 [https://www.reddit.com/r/Austin/comments/99azto/texas_isp_grande_communications_slams_musi
18 [c_biz/](#) last accessed on 6/17/2023] discussing a similar copyright infringement lawsuit asserted
19 against Defendant by music copyright holders, “roboweiner” states “I have Grande and torrent a lot.
20 Always thought it was a pretty cool of them to not snitch”. Ex. “1” at p.4. roboweiner’s statement
21 fits into category (i) and (ii) because it supports Plaintiffs’ assertion in the SAC that the ability to
22 pirate copyrighted content without any consequences is a draw for becoming a subscriber and that
23 Defendant does not have an effective policy for terminating repeat infringers. Likewise for
24 “SquirtyBottoms” who makes a comment emphasizing how much he/she wishes she/he could return
25 to Grande because Spectrum (in comparison to Grande) turned his/her connection off in response to
26 Notices. *See id.*

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1 25. In a 2011 Reddit discussion thread entitled “Anyone use Grande Communications instead of
2 Time Warner?”
3 [[https://www.reddit.com/r/Austin/comments/hxrw1/anyone_use_grande_communications_instead_o
4 f_time/](https://www.reddit.com/r/Austin/comments/hxrw1/anyone_use_grande_communications_instead_of_time/) last accessed on 6/17/2023], Reddit commentators “Aikidi”; “kelsoATX”; “xBROKEx; and
5 “Schadenfreude_Taco” make comments emphatically stating that they prefer Defendant because
6 they can use Defendant’s service to pirate copyright protected content without any consequences.
7 “Schadenfreude_Taco” admits to having “downloaded about 1tb...from torrents and uploaded just
8 under 2tb...”. Aikido states that “I have torrented like a motherf*cker all over grande and never
9 seen anything.” All these comments fit into categories (i) and (ii) because they support Plaintiffs’
10 assertion in the SAC that the ability to pirate content efficiently without any consequences is a draw
11 for becoming a subscriber and that Defendant does not have an effective policy for terminating
12 repeat infringers.
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14
15 26. Moreover, xBROKEx even admits to pirating the movie *Expendables* owned by an affiliate
16 of Plaintiff Millennium Funding, Inc. See Decl. of Culpepper at ¶6. In addition to categories i and
17 ii, xBROKEx’s comment is further relevant to establishing direct infringement of another one of the
18 Plaintiffs’ Works. Plaintiffs do not have any other reasonable way to prove that Defendant’s
19 subscriber pirated *Expendables* because the data provider that provided the evidence did not track
20 this film.
21

22 ***B. The statute of limitations is irrelevant to the issue of whether the comments are relevant***
23 ***evidence.***

24 27. Reddit’s third objection is that the requested time frame starting at 2016 concerning
25 comments made more than 3 years from the filing date of the underlying action are not directly and
26 materially relevant to Plaintiffs’ claims. See Ex. “3”. However, the Fifth Circuit recently
27 reaffirmed the validity of the discovery rule wherein the limitation period only starts to run once the
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1 Plaintiff “knows or has reason to know of the injury upon which the claim is based.” *Martinelli v.*
2 *Hearst Newspapers, LLC*, 65 F.4th 231, 233 (5th Cir. 2023) (quoting *Graper v. Mid-Continent*
3 *Casualty Co.*, 756 F.3d 388, 393 (5th Cir. 2014)). Plaintiffs assert claims based upon piracy that
4 begins in 2015. Further, Plaintiffs’ counsel just discovered xBROKEx’s comment admitting to
5 pirating the movie *Expendable* recently before serving the subpoena on Reddit. *See Decl. of*
6 *Culpepper* at ¶¶22-23.

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8 28. Moreover, even for comments made more than 3 years from the filing date of the underlying
9 action, Plaintiffs can use the information requested in the subpoena to contact the commentators and
10 authenticate her/his post to obtain admissible evidence. Further, Rule 26(b)(1) provides that
11 “Information within this scope of discovery need not be admissible in evidence to be discoverable.”
12 Finally, in similar ISP lawsuits, Courts have found that information on how an ISP handled DMCA
13 notices even *prior* to the applicable three year period is relevant. *See UMG Recordings, Inc. v.*
14 *Grande Communs. Networks, LLC*, 2018 U.S. Dist. LEXIS 164761, at *9 (W.D. Tex. Sep. 26, 2018)
15 (“[i]nformation on how Grande handled DMCA issues prior to 2013 could be relevant to
16 demonstrating Grande’s knowledge of its obligations under the statute, and could be circumstantial
17 evidence that Grande was aware of infringing conduct on its system, and actually had taken action
18 on it before the time frame at issue here.”).

19
20 ***C. The information Plaintiffs request from Reddit does not implicate the First Amendment Right***
21 ***to Anonymous Speech.***
22

23 29. Reddit asserts that the information Plaintiffs request is not permissible under the First
24 Amendment. This Court’s decision of *In re Reddit, Inc.*, No. 3:23-mc-80037-LB, 2023 U.S. Dist.
25 LEXIS 74338 (N.D. Cal. Apr. 28, 2023) (“*Reddit I*”) applying the *2TheMart.com* test to a similar
26 subpoena where some of the same Plaintiffs sought similar discovery from Reddit concerning a
27 different ISP Defendant (RCN) is highly instructive on the First Amendment issue.
28

1 ***i. The 2TheMart.com test does not apply to xBROKEx’s comment.***

2 30. Firstly, in *Reddit I* the Court noted that the applicable standard when the target of the
3 subpoena was accused of copyright infringement is *In re DMCA § 512(h) Subpoena to Twitter, Inc.*,
4 608 F. Supp. 3d 868, 876 (N.D. Cal. 2022) that recognizes that copyright law includes built in First
5 Amendment accommodations. *See Reddit I*, 2023 U.S. Dist. LEXIS 74338, at *6 (N.D. Cal. Apr. 28,
6 2023). Such is the case here with respect to xBROKEx who admits to pirating the movie
7 *Expendables* owned by affiliate of Plaintiff Millennium Funding, Inc. Applying the *Twitter*
8 standard, the Court should compel Reddit to provide the identification information for xBROKEx
9 since he directly infringed the Work *Expendables*.

11 ***ii. The comments are directly and materially relevant to the core claims or defenses.***

12 31. In *Reddit I* the Court concluded that the Plaintiffs had failed to show that the comments at
13 issue were directly and materially relevant to the core claims or defenses because the comments
14 mentioned Comcast and not RCN (the ISP at issue). *See id.* at *8-9. In comparison, here there is no
15 question that the comments are referring to Defendant as they directly mention Defendant’s name
16 and are comments to a thread discussing Defendant. *See Ex. “1”* at pp. 6-7.

18 ***iii. The information Plaintiffs seek is not available from another source before the
19 discovery cut-off.***

20 32. In *Reddit I* the Court concluded that Plaintiffs had failed to show that the information sought
21 was not available from another source such as from Defendant. *See id.* at *9. In comparison to
22 *Reddit I* where the Plaintiff sought discovery from Reddit on the beginning of discovery, here
23 Plaintiffs have already propounded nearly a hundred RFPs on Defendant and have not received
24 information from Defendant concerning their subscribers choosing its service for the ability to pirate
25 without consequence. *See Decl. of Culpepper* at ¶¶12, 17-18.
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1 *iv. The comments here are more relevant than the comment of ChikaraFan that the Reddit*
2 *I Court found to be “the closest call.”*

3 33. In *Reddit I* the Court noted that a comment from a user ChikaraFan stating “Seems extremely
4 rare if ever. RCN seems fairly lax...no data caps. I looked up before I switched and had little trouble”
5 in response to a question about whether RCN sends notices to customers was “the closest call.” *Id.*
6 at p. 10. However, the Court declined to compel Reddit to disclose ChikaraFan’s identity since
7 information on data caps was available from other sources such as the Defendant. Here, all the
8 comments at issue directly refer to Defendant just like the closest call comment of ChikaraFan but
9 explicitly refer to using Defendant’s service for piracy. Moreover, Plaintiffs have already received
10 substantive discovery from Defendant and Defendant’s subscribers but have not received
11 information from Defendant concerning its subscribers choosing its service for the ability to pirate
12 without consequence. *See* Decl. of Culpepper at ¶19. Accordingly, the information Plaintiffs seek
13 here satisfies the *2TheMart.com* test as discussed in *Reddit I*.

14
15
16 ***D. There is no burden on Reddit to disclose the requested information.***

17 34. The only burden Reddit complains of is that it “...should not be subjected to the burden of
18 searching for and producing such documents or information unless and until all reasonable means of
19 obtaining that information directly from such other sources have been exhausted.” Ex. “2”.
20 However, as discussed above, Plaintiffs have exhausted all reasonable means of obtaining that
21 information directly from such other sources. Discovery has been open for over a year but Plaintiffs
22 have been unable to obtain the information they seek from Defendant.

23
24 **IV. CONCLUSION**

25 35. Accordingly, Plaintiffs pray that this Court grant its motion to compel Reddit to fully respond
26 to the subpoena and for such other and further relief to which they may be justly entitled to receive.

27 DATED: June 20, 2023.

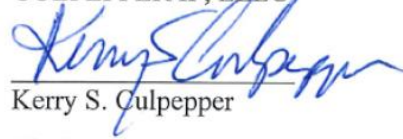
Respectfully submitted,

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/s/ Jonah Grossbardt
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