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15 **UNITED STATES DISTRICT COURT**
16 **NORTHERN DISTRICT OF CALIFORNIA**

17 **Originating Case:** *In re: Frontier Commc'ns Corp.*, Case No. 20-22476-MG (Bankr.
18 S.D.N.Y.)

19 In re Subpoena to:

20 Reddit, Inc.

Case No.: 3:24-mc-80005-TSH

**MOTION FOR DE NOVO
DETERMINATION OF DISPOSITIVE
MATTER REFERRED TO MAGISTRATE
JUDGE AND/OR RELIEF FROM
NONDISPOSITIVE PRETRIAL ORDER
OF MAGISTRATE JUDGE**

21 **MOTION FOR DE NOVO DETERMINATION OF DISPOSITIVE MATTER**
22 **REFERRED TO MAGISTRATE JUDGE AND/OR RELIEF FROM NONDISPOSITIVE**
23 **PRETRIAL ORDER OF MAGISTRATE JUDGE**

1 Movants Voltage Holdings, LLC; Screen Media Ventures, LLC; Killing Link Distribution,
2 LLC; Family of the Year Productions, LLC; and Laundry Films, Inc., by and through their counsel,
3 file their motion for de novo determination of Magistrate Judge Hixson’s Order [Doc. #26]
4 (“Order”) denying their motion to compel non-party Reddit, Inc. (“Reddit”) to fully produce
5 documents in response to their Rule 45 subpoena pursuant to Civ L.R. 72-2. This motion is
6 alternatively filed as seeking Relief from Nondispositive Pretrial Order of Magistrate Judge pursuant
7 to Civ L.R. 72-3 should the Court deem the Order Nondispositive.
8

9 **I. Specific Statement of the Portions of the Order to which an Objection is Made.**

10 1. Movants object to the Order’s decision to treat disclosure of Internet Protocol (“IP”)
11 addresses as unmasking based merely upon “the Court find no reasons to believe provision of an
12 IP address is not unmasking subject to First Amendment Scrutiny.” Order, p.8.

13 2. Movants object to the Order’s conclusion that the information they seek is available from
14 Frontier’s pirating subscribers. *See* Order, p.8.

15 3. Movants object to the Order’s application of the *2Mart* test without examining the nature
16 of the speech and balancing any rights of the anonymous speakers versus the information
17 requested. *See* Order, pp. 5-6.
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19 **II. A statement of the Court action requested.**

20 4. Movants requests that the Court sustain their Objections, reject or reverse Judge Hixson’s
21 Order, and order Reddit to disclose the information requested in the subpoena.
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23 **III. A statement of the reasons and authority supporting the motion.**

24 ***A. The standard of review is de novo.***

25 5. Movants filed their motion to compel [Doc. #1] by opening a miscellaneous action with
26 this Court. The Order [Doc. #26] denying Movants’ motion disposes of the miscellaneous action
27 and thus the entire matter before this Court. Accordingly, the de novo standard of Civ L.R. 72-2
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1 is applicable. *See Ross v. Pioneer Life Ins. Co.*, No. 07-MC-18-TCK-FHM, 2007 U.S. Dist. LEXIS
2 85406, at *11 (N.D. Okla. Nov. 16, 2007) (Concluding based upon *United Nuclear Corporation*
3 *v. Cranford Insurance Company*, 905 F.2d 1424 (10th Cir. 1990) that Magistrate Judge’s Order
4 is dispositive because it disposed of the entire matter before this Court). Nonetheless, some Courts
5 have considered orders in miscellaneous actions concerning compliance with subpoenas issued in
6 other districts non-dispositive pretrial orders because even though the order terminates the
7 miscellaneous action, the underlying case in the other Court continues. *See Highfields Capital*
8 *Mgmt. L.P. v. Doe*, 385 F. Supp. 2d 969, 971 (N.D. Cal. 2005). Under either legal standard the
9 District Judge reviews the Magistrate Judge’s legal conclusions de novo. *See Perry v.*
10 *Schwarzenegger*, 268 F.R.D. 344, 348 (N.D. Cal. 2010). For the avoidance of doubt, Movants
11 have limited their objections to the five pages limit of Civ L.R. 72-2(b).
12

13
14 ***B. An IP address does not unmask a subscriber.***

15 6. The Order’s treatment of Movants’ request for Reddit to disclose merely IP addresses as
16 an unmasking request subject to First Amendment analysis has no support in caselaw. The Order
17 ignored Movants’ citation to multiple decisions such as *United States v. Forrester*, 512 F.3d 500
18 (9th Cir. 2008) establishing that users have no privacy rights in IP addresses in the Fourth
19 Amendment context. *See Reply [Doc. #21]*, ¶3. Notably, this Court rejected privacy and First
20 Amendment objections to disclosures of IP addresses of anonymous speakers like those made by
21 Reddit and concluded that disclosure of an IP address is not disclosure of personal identifying
22 information while citing *Forrester* in support of this conclusion. *See Dig. Shape Techs., Inc. v.*
23 *Glassdoor, Inc.*, No. 16-mc-80150-JSC, 2016 U.S. Dist. LEXIS 141534, at *14 (N.D. Cal. Oct.
24 12, 2016) (“...an IP address alone does not provide any personal identifying information. It may
25 be used to obtain such information, but the IP address itself is not private...”). The Order
26 concedes that Movants cannot obtain the identifications from IP addresses alone. *See Order*, p.9,
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1 lines 2-4 (stating that Movants would have to subpoena the ISP to obtain the subscriber
2 identification). The Order’s conclusion that an IP address is unmasking information was contrary
3 to law and erroneous.

4 ***C. The Order’s conclusion that Claimants can obtain information they seek from***
5 ***Frontier’s subscribers is premature.***
6

7 7. Movants have not yet obtained subscriber information from Frontier. Although it is true
8 that Bankruptcy Court issued a Cable Act Order authorizing disclosure of a limited number of
9 subscribers, unlike *In re Reddit, Inc.*, 023 WL 4849434 (N.D. Cal. July 29, 2023) (“*Reddit IP*”)
10 where the copyright holders had received the identifications of the top infringing subscribers at
11 the time of the motion, Movants have not yet received the identifications from Frontier. Rather,
12 Frontier has stated its intent to seek legal relief from the Order and at least two subscribers have
13 filed objections to disclosure. *See* Docs. ##27-2, 27-3, 27-4. Accordingly, the Order’s conclusion
14 that the Frontier subscribers are an alternative source for obtaining the information Movants seek
15 is premature. And the Order’s statement that, “If Movants sought further information, they need
16 only subpoena the ISP for the subscriber information associated with that IP address”, order, p.9,
17 is an incorrect reading of the Cable Act Order which only permits Claimants to obtain subscriber
18 identifications of IP addresses from where their movies were pirated. The Cable Act Order does
19 not permit Movants to serve a subpoena for any IP address just because a pro-piracy comment
20 was made on Reddit from the IP address. If Movants sought a broader Cable Act Order, Frontier
21 (or Reddit) can raise the objections made here concerning First Amendment right to anonymous
22 speech in opposition to the broader Cable Act Order or any subpoena issued therefrom. *See In re*
23 *Rule 45 Subpoena Issued to Cablevision Sys. Corp.*, No. 08-MC-347(Arr)(MDG), 2010 U.S.
24 Dist. LEXIS 71061 (E.D.N.Y. Apr. 23, 2010) (Order quashing subpoena to unmask anonymous
25 subscriber). But because no such subpoena is before this Court or the Bankruptcy Court in the
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1 underlying case, the Court’s conclusion that Movants can obtain information from Frontier’s
2 subscribers was contrary to law and erroneous.

3 ***D. The Court failed to examine the nature of the speech.***

4 8. Besides paying brief lip service to the Ninth Circuit’s instructions of *Anonymous Online*
5 *Speakers v. United States Dist. Court (In re Anonymous Online Speakers)*, 661 F.3d 1168, 1177
6 (9th Cir. 2011), the Order failed to conduct any examination of the nature of the speech as required
7 by *Anonymous Online Speakers*. Movants previously pointed out that the comments at issue are
8 boasts of criminal conduct. Order, pp. 9-10. Accordingly, the speech concerns unlawful activity
9 subject to no First Amendment protection. See *Junior Sports Magazines Inc. v. Bonta*, 80 F.4th
10 1109, 1116 (9th Cir. 2023) (speech concerning unlawful activity “receives no First Amendment
11 protection”). And this is not a case of Movants making unsupported allegations of wrongdoing
12 to nullify the Reddit users’ First Amendment rights. See *Doe v. 2themart.com Inc.*, 140 F. Supp.
13 2d 1088, 1097 (W.D. Wash. 2001). The allegations of unlawful conduct are supported by the
14 speech itself. Assuming *arguendo* that comments boasting of piracy are commercial speech, such
15 speech is still subject to the lowest protection. The Order’s application of the *2themart.com* test
16 without considering the nature of the speech was contrary to the law and clearly erroneous.

17 **IV. CONCLUSION**

18 9. Accordingly, Plaintiffs pray that this Court sustain their objections, reject or reverse
19 Magistrate Judge Hixson’s Order and grant their motion to compel Reddit to fully respond to the
20 subpoena and such other relief they are justly due.

21 DATED: Kailua Kona, Hawaii, Feb. 20, 2024.

22 Respectfully submitted,

23 **CULPEPPER IP, LLLC**

24 /s/ Kerry S. Culpepper
25 Kerry S. Culpepper
26 Attorney for Movants

Admitted *Pro Hac Vice*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was filed via ECF and therefore served to parties on the NEF list and to the following at their last known address:

Feb. 20, 2024 Via First Class Mail
John P. Campo, Counsel for Frontier
Akerman LLP
1251 Avenue of the Americas, 37th Floor
New York, NY 10020

DATED: Kailua Kona, Hawaii, Feb. 20, 2024

Respectfully submitted,

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