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

17 **Originating Case:** *Bodyguard Productions, Inc., et al., v. RCN Telecom Services of*
18 *Massachusetts, LLC, et al.*, No. 3:21-cv-15310 (D.N.J.)

19 In re Subpoena to:

20 Reddit, Inc.

21 Case No.:
22 Hearing Date: TBD
23 Time: TBD

24 **PLAINTIFFS' MOTION TO COMPEL**
25 **THIRD-PARTY REDDIT TO RESPOND**
26 **TO SUBPOENA**

27 **PLAINTIFFS' MOTION TO COMPEL THIRD-PARTY REDDIT**
28 **TO RESPOND TO SUBPOENA**

29 Plaintiffs AFTER II MOVIE, LLC, BODYGUARD PRODUCTIONS, INC., HITMAN
30 TWO PRODUCTIONS, INC., KILLING LINK DISTRIBUTION, LLC, LHF PRODUCTIONS,
31 INC., MILLENNIUM FUNDING, INC., MILLENNIUM IP, INC., MILLENNIUM MEDIA,
32 INC., MON, LLC, NIKOLA PRODUCTIONS, INC., OUTPOST PRODUCTIONS, INC.,
33 RAMBO V PRODUCTIONS, INC., VENICE PI, LLC, VOLTAGE HOLDINGS, LLC, and
34 WONDER ONE, LLC ("Plaintiffs"), by and through their counsel, move this Court to grant an

1 order: compelling third-party REDDIT, INC. (“Reddit”) to fully produce documents in response to
2 Plaintiffs’ subpoena. This Motion is pursuant to Fed. R. Civ. P. 26(b)(1), 34(c), 45(d)(2)(i) and
3 Civ L.R. 37. Plaintiffs’ counsel Kerry Culpepper certifies that he met and conferred with counsel
4 for Reddit in a good faith effort to resolve this dispute pursuant to Civ L.R. 37-1(a).

5
6 **MEMORANDUM**

7 **I. BRIEF FACTUAL AND PROCEDURAL HISTORY**

8 1. On Nov. 15, 2022, Plaintiffs filed a First Amended Complaint (“FAC”) against
9 Defendants RCN TELECOM SERVICES, LLC and RCN TELECOM SERVICES OF
10 MASSACHUSETTS, LLC (collectively, “RCN”) alleging *inter alia* that RCN is secondarily
11 liable for RCN’s subscribers’ infringements of copyrights in Plaintiffs’ motion pictures (“Works”)
12 and violations of the integrity of copyright management information (“CMI”) in digital copies of
13 Plaintiffs’ Works (“DMCA violations”). The FAC is the operative pleading.

14
15 2. The FAC alleges that RCN’s subscribers pirated Plaintiffs’ Works thousands of times by
16 sharing illegitimate file copies of the Works with CMI modified to refer to notorious movie piracy
17 websites. The FAC further alleges that Plaintiffs’ agents as well as agents of other copyright
18 holders sent RCN thousands of notices informing of its subscribers’ ongoing piracy but RCN took
19 no meaningful action in response to the notices.

20
21 3. On Nov. 29, 2022, RCN filed a motion to dismiss in which it asserted: “Plaintiffs do not
22 allege that RCN has any ability to determine what files are stored on the computers and devices
23 people use on its network, or whether there are any file-sharing programs running on those
24 devices.”

25 4. In an opinion date Oct. 11, 2022, the Court denied RCN’s motion to dismiss Plaintiffs’
26 secondary liability claims against RCN. In the opinion, the Court noted that Plaintiffs’ allegations
27 that the ability of RCN’s subscribers to use the service for infringement without consequence acts
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1 as a powerful draw for subscribers of RCN’s service support the direct interest prong for vicarious
2 copyright infringement. *See Bodyguard Prods. v. RCN Telecom Servs., LLC*, Civ. A. 3:21-cv-
3 15310 (GC) (TJB), 2022 U.S. Dist. LEXIS 185965, at *30 (D.N.J. Oct. 11, 2022).

4 5. On Oct. 25, 2022, RCN filed an Answer and Affirmative Defenses to the FAC where it
5 *inter alia*: (i) denied that it could control the conduct of its subscribers or that it monitored or
6 controlled the conduct of its subscribers; and (ii) asserted that Plaintiffs’ claims were barred
7 because “it adopted and reasonably implemented...subscribers...of a policy that provides for the
8 termination of internet service in appropriate circumstances of subscribers and account holders
9 alleged to be repeat copyright infringers.” (RCN Answer at 132-137 and 7).

10 11 6. On Jan. 7, 2023, Plaintiffs sent a subpoena to Reddit requesting “Basic account
12 information including IP address registration and logs from 1/1/2016 to present, name, email
13 address and other account registration information for users: "ben125125"; "SquattingCroat";
14 "Griffdog21"; "aromaticbotanist"; "ChikaraFan"; "compypaq"; "dotsamantha"; "ilikepie96mng";
15 and "matt3324"." *See* Ex. “2”. The subpoena was noticed to RCN that same day.

16 17 7. On Jan. 17, 2023, Reddit’s counsel served objections to the subpoena on Plaintiffs’
18 counsel. In the objections, Reddit stated that it would notify the users at issue to give them an
19 opportunity to object to the subpoena. *See* Ex. “2”.

20 21 8. On Jan. 18, 2023, Plaintiffs’ counsel and Reddit’s counsel conferred on Reddit’s
22 objections by telephone. Plaintiffs’ counsel shared screenshots of comments made by the Reddit
23 users with Reddit’s counsel ahead of the conference. *See* Ex. “3”.

24 25 9. On Feb. 3, 2023, Reddit provided a response that only included basic subscriber
26 information for “ben125125” and asserted that “...the requests for identifying information
27 associated with the additional eight accounts are more in the nature of a fishing expedition and
28 are neither relevant nor permissible under the First Amendment.” Ex. “4”.

1 10. Reddit and Plaintiffs’ counsel agreed that this dispute should be filed in the Northern
2 District of California.

3 **II. LEGAL STANDARD**

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

8 12. Fed. R. Civ. P. 34(c) states “As provided in Rule 45, a nonparty may be compelled to
9 produce documents...”

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

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

19 **III. ARGUMENT**

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

21 15. The evidence Plaintiff requests from Reddit in the Rule 45 subpoena is clearly relevant
22 and proportional to the needs of the case. The Reddit user comments can be placed within three
23 categories of relevant evidence: (i) Comments that establish that RCN has not reasonably
24 implemented a policy for terminating repeat infringers sufficient for a safe harbor affirmative
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1 defense as required by 17 U.S.C. §512; (ii) Comments that establish that RCN controls the
2 conduct of its subscribers and monitors its subscribers' access; and (iii) Comments that establish
3 that the ability to freely pirate without consequence was a draw to becoming a subscriber of RCN.

4 16. In a discussion thread about RCN's DMCA policy, ChikaraFan states that "RCN seems
5 fairly lax...I looked up before I switched and had little trouble". Ex. "3" at p.4. ChikaraFan's
6 statement fits into category (iii) because it supports Plaintiffs' assertion in the FAC that the ability
7 to pirate copyrighted content without any consequences is a draw for becoming an RCN
8 subscriber. ChikaraFan's statement also fits into category (i) because it supports Plaintiffs'
9 position that RCN does not have an effective policy for terminating repeat infringers.

10 17. Reddit argues that "The post from "ChikaraFan" mentions RCN, but is eight years old and
11 therefore well beyond the three-year statute of limitations we understand applies in this matter.
12 See 17 U.S.C. § 507(b)." Ex. "4". This argument misses the point. Plaintiffs do not wish to hold
13 ChikaraFan liable for copyright infringement. Rather, Plaintiffs wish to use ChikaraFan's
14 statement as evidence of RCN's "fairly lax" policy for terminating repeat infringers and that this
15 "fairly lax" policy was a draw for becoming a customer. Even though the statement was made
16 eight years ago, Plaintiffs can use the information requested in the subpoena to contact ChikaraFan
17 and authenticate her/his post to obtain evidence to support their claims. Further, Rule 26(b)(1)
18 provides that "Information within this scope of discovery need not be admissible in evidence to
19 be discoverable." Finally, in similar ISP lawsuits, Courts have found that information on how an
20 ISP handled DMCA notices even *prior* to the applicable three year period is relevant. *See UMG*
21 *Recordings, Inc. v. Grande Communs. Networks, LLC*, 2018 U.S. Dist. LEXIS 164761, at *9
22 (W.D. Tex. Sep. 26, 2018) ("[i]nformation on how Grande handled DMCA issues prior to 2013
23 could be relevant to demonstrating Grande's knowledge of its obligations under the statute, and
24 could be circumstantial evidence that Grande was aware of infringing conduct on its system, and
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1 actually had taken action on it before the time frame at issue here.”).

2 18. Reddit User “SquattingCroat” boasts that “I have received 20 [notices]...from my
3 provider...” without suffering any consequences. Ex. “3” at p.2. Reddit argues that this post is
4 not relevant because it does not mention RCN. Although SquattingCroat does not say the name
5 of her/his Internet service provider (“ISP”), this comment is made among a thread that mentions
6 RCN (from “ben125125” which Reddit concedes is relevant). Accordingly, it is likely that
7 SquattingCroat is referring to RCN. Further, RCN is part of a group of ISPs (Grande, Wave,
8 RCN) across the nation that are managed by the same group in Princeton, NJ under the brand
9 Astound. Therefore, if SquattingCroat is referring to any of the ISPs in the Astound group,
10 Plaintiffs can likely use this evidence to rebut RCN’s assertion that it has the appropriate policy
11 [category (ii)].
12

13 19. Reddit User “aromaticbotanist” boasts of being an employee of an ISP and advises the
14 other users of a script: “tell them you changed your WiFi...” to say to their ISP in response to a
15 Notice. Ex. “3” at p.3. aromaticbotanist’s post demonstrates that the ISP he/she works for has not
16 reasonably implemented a policy for terminating repeat infringers. Further, aromaticbotanist even
17 encourages others to use a VPN to pirate. Therefore, if “aromaticbotanist” works for any of the
18 ISPs in the Astound group, Plaintiffs can likely use this evidence to rebut RCN’s assertion that it
19 has the appropriate policy [category (ii)].
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21 20. “ilikepie96mng” also boasts of working for an ISP and admits that his ISP does not take
22 notices seriously: “...so long as you don’t get more than 3-5...in a short time span, you can
23 effectively throw it in the rubbish...please use a VPN...”. Ex. “3” at p.6. Therefore, if
24 “ilikepie96mng” works for any of the ISPs in the Astound group, Plaintiffs can likely use this
25 evidence to rebut RCN’s assertion that it has the appropriate policy [category (ii)].
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27 21. Although “Griffdog21” does not say the name of the ISP, he also shares his experience
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1 confirming that his ISP does not take notice seriously in his user post: “They bluff all the
2 time...I’ve had about 4 of these and nothing has happened...” Ex. “3” at p.7. Therefore, if
3 “Griffdog21” is referring to any of the ISPs in the Astound group, Plaintiffs can likely use this
4 evidence to rebut RCN’s assertion that it has the appropriate policy [category (ii)].

5 22. Reddit asserts that the requests for identification information for “SquattingCroat”,
6 “aromaticbotanist”, “ilikepie96mng” and “Griffdog21” are not relevant because they do not
7 appear to mention RCN at all. However, as discussed above, each of these posts are made either
8 within a discussion thread of RCN’s policies or about an ISP with “lax policies” that is very likely
9 an ISP that is a member of the Astound group that manages RCN. Further, Plaintiffs again
10 reiterate that Rule 26(b)(1) provides that discoverable information does not need to be admissible
11 in evidence.
12

13 23. The post from “matt3324” is highly relevant. As stated above, RCN asserts that it does
14 not monitor subscriber access or have any ability control subscriber conduct. However, the post
15 of “matt3324” clearly states that RCN monitored his/her Internet service (determined that he had
16 navigated to a non-existent domain) and controlled his service by redirecting him to RCN’s own
17 branded search results. *See* Ex. “3” at p.8. Similarly, “compypaq” discusses his/her modem
18 needing to be reset from time to time. *See Id.* at p.5. It appears that RCN would remotely reset
19 the modem, thus further establishing that RCN monitors and controls its subscribers’ conduct.
20 Plaintiffs withdraw their request for identification information for Reddit user “dotsamantha”.
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22 24. Reddit asserts that the post from “matt3324” is not relevant because it is 13 years old and
23 that the posts from “compypaq” and “matt3324” are not relevant because they do not have
24 anything to do with RCN’s copyright enforcement. As discussed above, these user posts clearly
25 establish that RCN has the ability to monitor and control subscriber conduct and does indeed do
26 it. Even though the post from “matt3324” is 13 years ago, it still establishes that RCN has the
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1 technical ability. If RCN had the ability 13 years ago, it certainly still has the ability now.

2 ***B. The information Plaintiffs request from Reddit does not implicate the First Amendment***
3 ***Right to Anonymous Speech.***

4 25. Reddit asserts that the information Plaintiffs request is not permissible under the First
5 Amendment. However, Reddit provided its users with notification of the subpoena and an
6 opportunity to make objections yet none of its users made an objection. Further, Reddit has not
7 identified any potential harm to these users by disclosing the information. Plaintiffs are not
8 seeking to retaliate economically or officially against these subscribers. Rather, Plaintiffs just
9 wish to discuss the comments the subscribers made and use their comments as evidence that RCN
10 monitors and controls the conduct of its subscribers, RCN has no meaningful policy for
11 terminating repeat infringers and this lax or no policy was a draw for using RCN's service.
12

13 ***C. There is no burden to Reddit to disclose the requested information.***

14 26. Reddit does not even argue that it has any burden disclosing this information.
15

16 **IV. CONCLUSION**

17 27. Accordingly, Plaintiffs pray that this Court grant its motion to compel Reddit to fully
18 respond to the subpoena with the exception of Reddit user "dotsamantha".

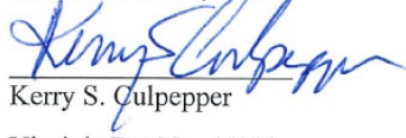
19 DATED: Feb. 5, 2023.

20 /s/ Tobi Clinton
21 Tobi Clinton

22 And
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CERTIFICATE OF SERVICE

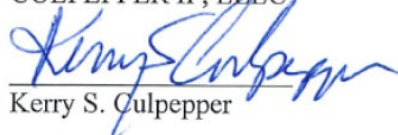
The undersigned hereby certifies that by the methods of service noted below, a true and correct copy of the foregoing was served to the following at their last known address:

Feb. 6, 2023 Via First Class Mail

John K. Roche, Counsel for Reddit
700 13th Street, NW
Suite 800
Washington, DC 20005-3960

Feb. 5, 2023 via email to: JRoche@perkinscoie.com

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