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24
25 **UNITED STATES DISTRICT COURT**
26 **NORTHERN DISTRICT OF CALIFORNIA**
27 **SAN FRANCISCO COUNTY**
28

29 *In re Subpoena to:*
30 *Reddit, Inc.,*

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

**REDDIT, INC.'S OPPOSITION TO
MOTION FOR DE NOVO
DETERMINATION OF MATTER
REFERRED TO MAGISTRATE
JUDGE**

Date: May 16, 2024

Time: 10:00 a.m.

Judge: Hon. James Donato

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1 Reddit, Inc. (“Reddit”) files this Opposition to the Motion for De Novo
2 Determination of Dispositive Matter Referred to Magistrate Judge and/or Relief
3 from Nondispositive Pretrial Order of Magistrate Judge [Doc. 29] (“Motion”) filed by
4 Voltage Holdings, LLC et al.¹ (“Movants”), wherein Movants seek de novo review of
5 Magistrate Judge Thomas S. Hixson’s order denying Movants’ motion to compel
6 Reddit to unmask six anonymous Reddit users (the “Order”).

7 **I. INTRODUCTION**

8 For over a year, a group of copyright holders—all represented by Culpepper
9 IP—has been unsuccessfully attempting to enforce a series of unconstitutional and
10 unnecessary subpoenas they issued to Reddit. These copyright holders have thrice
11 moved to compel Reddit’s compliance with three substantively identical subpoenas
12 and thrice failed. Magistrate Judge Laurel Beeler denied the first two motions;
13 Magistrate Judge Hixson denied the third. Unhappy with those results, they now
14 seek de novo review here in the hopes that this Court will be more receptive to their
15 unfounded arguments than the Magistrate Judges. This Court should decline that
16 invitation.

17 The copyright holders move to compel Reddit to unmask a number of
18 anonymous Reddit posters. The copyright holders allege that they need to identify
19 these posters because they might have evidence relevant to their pending lawsuit
20 against Frontier, a defendant internet service provider (“ISP”). Specifically, they
21 argue that based on these Reddit users’ random posts about torrenting on Frontier’s
22 networks, the users might have evidence that would help the copyright holders
23 prove that Frontier had weak repeat-infringer policies under the Digital Millennium
24 Copyright Act (DMCA) such that Frontier cannot assert the DMCA’s safe harbor
25 defense.

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27

¹ The complete list of Movants includes: Voltage Holdings, LLC and Screen Media
28 Ventures, LLC, Killing Link Distribution, LLC, Family of the Year Productions,
LLC, and Laundry Films, Inc.

1 But, as three court orders have now recognized under these circumstances, a
2 well-recognized standard has developed to weigh litigants' discovery desires against
3 the First Amendment anonymity rights of the witnesses whom those litigants hope
4 to unmask. That standard requires the litigants to establish that evidence in
5 support of their claim is "unavailable from any other source." *In re Reddit, Inc.*, — F.
6 Supp. 3d —, No. 3:23-mc-80037, 2023 WL 3163455, at *3 (N.D. Cal. Apr. 28, 2023)
7 (Beeler, M.J.) ("*Reddit I*"). And that standard cannot be met here because there are
8 countless ways that these copyright holders can prove that the ISP's repeat infringer
9 policies were ill-enforced. An obvious one, recognized in *Reddit I* over a year ago,
10 would be for the copyright holders to seek evidence about the ISP's repeat infringer
11 policies that would not rely on any third parties at all, but instead on the ISP's own
12 documents and deponents. Another source of evidence for the copyright holders is
13 one that they are already pursuing—obtaining identifying information about
14 copyright infringers on the ISP's network directly from the ISP. Undeterred by this
15 consistent fatal flaw in their efforts, Movants now file this Motion, raising three
16 objections that were already rightly dismissed in the Order.

17 First, Movants argue that providing the IP address of an anonymous speaker
18 does not violate their First Amendment right to anonymous speech because an IP
19 address does not "identify" a user. At best, the argument is misguided—Reddit does
20 not require its users to give their real name or addresses, and so the *only* identifying
21 information Reddit may maintain on its users is their IP address, which is precisely
22 why the Movants here seek the users' IP addresses. If IP addresses were not
23 identifying, Movants would not be seeking them. At worst, the Movants' argument is
24 disingenuous. The lone case that Movants cite for this theory is one in which the
25 subpoenaing party represented to the court that "they [would] not take the further
26 step of seeking the user's identity" upon obtaining an IP address from Glassdoor.²

27 _____
28 ² *Dig. Shape Techs., Inc. v. Glassdoor, Inc.*, No. 16-mc-80150-JSC, 2016 WL 5930275,
at *4 (N.D. Cal. Oct. 12, 2016).

1 But, as detailed below, Movants here intend the exact opposite—after Reddit
2 provided Movants with IP address data for a single Reddit user last year, the
3 Movants immediately identified that IP address by subpoenaing T-Mobile, and they
4 have been harassing that user with motions practice ever since.

5 Second, Movants object that they have not yet obtained substitute evidence
6 from the defendant ISP. That is entirely irrelevant. As described above, the Movants
7 can obtain evidence about the ISP’s repeat infringer policy in a number of ways that
8 do not involve unmasking random Reddit users. That Movants may have to file a
9 motion against the defendant ISP with respect to *one* of those ways does not in any
10 way affect the relevant First Amendment analysis.

11 Finally, in a single paragraph, Movants seek to gut the First Amendment by
12 arguing either that the Reddit users here deserve “the lowest protection” available
13 under the Constitution because the users are discussing copyright infringement, or
14 that they deserve no First Amendment protection at all because Movants have
15 unilaterally deemed those users’ communications to be “unlawful activity.” The first
16 theory has been rejected by every court to evaluate it in this context where the
17 targeted users are witnesses rather than potential defendants. The latter theory was
18 not raised before the Magistrate Judge and has therefore been waived. But the
19 Court can easily reject it anyway as wholly inconsistent with fundamental First
20 Amendment jurisprudence. Free speech in America is not so flimsy that it
21 evaporates at the faintest whisper of illegality.

22 Because the Order was properly decided, the Court should deny the Motion.

23 **II. BACKGROUND**

24 Reddit assumes familiarity with the briefing and record in this matter. L.R.
25 72-3(c) (review and determination of a motion for de novo determination is upon the
26 record of the proceedings before the Magistrate Judge). Reddit’s prior brief in this
27 case also describes the two prior subpoenas that the copyright holders
28

1 unsuccessfully sought to enforce against Reddit in their cases against different ISPs.
2 Doc. 20, at 2–3 (describing *Reddit I* and *In re Reddit, Inc.*, No. 3:23-mc-80173, 2023
3 WL 4849434 (N.D. Cal. July 29, 2023) (Beeler, M.J.) (“*Reddit II*”). Critically, across
4 the three cases, two Magistrate Judges in this District applied the only First
5 Amendment standard known to have been applied in situations like this where a
6 litigant seeks to unmask a potential *witness* instead of a potential *defendant*. That
7 standard was originally recognized in *Doe v. 2TheMart.com*, 140 F. Supp. 2d 1088
8 (W.D. Wash. 2001) (“*2TheMart*”) and then later in this Court in *Rich v. Butowsky*,
9 2020 WL 5910069, at *5 (N.D. Cal. Oct. 6, 2020). Under that standard:

10 disclosure of anonymous users’ identities is appropriate only “in the
11 exceptional case where the compelling need for the discovery sought
12 outweighs the First Amendment rights of the anonymous speaker.” Courts
13 consider four factors: whether “(1) the subpoena seeking the information was
14 issued in good faith and not for any improper purpose, (2) the information
sought relates to a core claim or defense, (3) the identifying information is
directly and materially relevant to that claim or defense, and (4) information
sufficient to establish or to disprove that claim or defense is unavailable from
any other source.”

15 *Reddit II*, 2023 WL 4849434, at *3 (internal citations omitted).

16 There is a higher standard for unmasking a non-party witness than for
17 unmasking a potential defendant because—unlike the need to identify a potential
18 defendant—litigation can often continue without invading a non-party witness’s First
19 Amendment right to anonymity. *2TheMart*, 140 F. Supp. 2d at 1095. Consequently,
20 *Reddit I* recognized that a dispositive “question here is whether the information is
21 available from ‘any’ other source,” (*Reddit I*, 2023 WL 3163455, at *4) and in *Reddit*
22 *II* reiterated that bar and labeled it “a high standard.” *Reddit II*, 2023 WL 4849434,
23 at *4; *see also Rich v. Butowsky*, No. 20-mc-80081-DMR, 2020 WL 5910069, at *5
24 (N.D. Cal. Oct. 6, 2020) (subpoena only enforced because the anonymous account was
25 a singularly “essential witness” for the litigants). Applying that standard, the
26 Magistrate Judge in this case correctly denied Movants’ motion to compel Reddit’s
27 compliance with their unmasking subpoena and this Motion followed.

28

1 **III. STANDARD**

2 In reviewing a Magistrate Judge ruling, the standard of review differs
3 depending on whether that ruling is dispositive or non-dispositive. For dispositive
4 motions, review is de novo. Fed. R. Civ. P. 72(b)(3). When reviewing objections to
5 non-dispositive motions, the Court only sets aside a Magistrate Judge's order if it is
6 "clearly erroneous or contrary to law." Fed. R. Civ. P. 72(a). Although there does not
7 appear to be binding Ninth Circuit authority on this point, some district courts in
8 the Ninth Circuit have held that an order on a motion to compel discovery from a
9 non-party is a dispositive motion for the purposes of Rule 72. *See, e.g., In re DMCA*
10 *Subpoena to Reddit*, 441 F. Supp. 3d 875 (N.D. Cal. 2020) (Donato, J). Because the
11 Order here was correct under either standard, Reddit addresses the issues as though
12 the Order is being reviewed de novo.

13 Even on de novo review, the Court must only consider aspects of the Order to
14 which Movants actually objected. *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121
15 (9th Cir. 2003) ("[T]he district judge must review the magistrate judge's findings and
16 recommendations de novo if objection is made, but not otherwise.") (citing 28 U.S.C.
17 § 636(b)(1)(C) ("A judge of the court shall make a de novo determination of those
18 portions of the [magistrate judge's] report or specified proposed findings or
19 recommendations to which objection is made")). And it would be improper to
20 consider new arguments not properly raised before the Magistrate Judge because, as
21 the Ninth Circuit has warned, "allowing parties to litigate fully their case before the
22 magistrate and, if unsuccessful, to change their strategy and present a different
23 theory to the district court would frustrate the purpose of the Magistrates Act."
24 *Sundby v. Marquee Funding Grp., Inc.*, No. 19-CV-00390-GPC-AHG, 2020 WL
25 1674417, at *3 (S.D. Cal. Apr. 6, 2020) (citing *Greenhow v. Sec'y of Health & Human*
26 *Servs.*, 863 F.2d 633, 638 (9th Cir. 1988) ("Appellant tells us that Rule72(b)'s
27 requirement of a 'de novo determination' by the district judge means that an entirely
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1 new hand is dealt when objection is lodged to a recommendation. That is not so. . . .
2 The rule does not permit a litigant to present new initiatives to the district judge.”),
3 *overruled on other grounds by United States v. Hardesty*, 977 F.2d 1347, 1348 (9th
4 Cir. 1992)); *see also United States v. Howell*, 231 F.3d 615, 622 (9th Cir. 2000) (“it
5 would be fundamentally unfair to permit a litigant to set its case in motion before
6 the magistrate, wait to see which way the wind was blowing, and—having received
7 an unfavorable recommendation—shift gears before the district judge”).

8 **IV. ARGUMENT**

9 Movants raise only three objections to the Order. First, they object that the
10 Order was wrong in joining every other court in recognizing the disclosure of IP
11 addresses to be unmasking subject to First Amendment scrutiny. Second, they object
12 that the Order was “premature” in concluding that Movants would have alternate
13 ways of obtaining evidence related to the question of the defendant ISP’s repeat
14 infringer policy. And third, they object that the Order was wrong in applying the
15 *2TheMart* test “without examining the nature of the speech and balancing any rights
16 of the anonymous speakers versus the information requested.” Mot. at 2. Each of
17 those objections is easily dismissed.

18 **A. The provision of users’ IP addresses is identification subject to** 19 **First Amendment scrutiny.**

20 The issue of whether the disclosure of IP addresses constitutes identification
21 subject to First Amendment scrutiny was fully briefed for the Magistrate Judge and,
22 for brevity, Reddit will not repeat all of its arguments here. But Movants are wrong
23 that the Order “has no support in caselaw.” Mot. at 3. First, the Magistrate Judge
24 correctly noted that it was *Movants* who lacked any authority for the proposition
25 that the revelation of IP addresses is not subject to application of First Amendment
26 unmasking standards. Order at 8. The Order then cited *Obi Pharma* in correctly
27 recognizing that IP addresses are identifying information because they “cannot be
28

1 made up in the same way that a poster may provide a false name and address.”
2 Order at 8 (quoting *Obi Pharma, Inc. v. Does 1-20*, No. 16-cv-2218, 2017 WL
3 1520085, at *5 (S.D. Cal. Apr. 27, 2017)).³ Consequently, the Order correctly
4 recognized that the mere existence of an intermediary step between Reddit
5 disclosing the IP addresses of users and Movants learning their legal names does not
6 mean that Reddit’s disclosure of their IP addresses would not implicate the First
7 Amendment right to anonymous speech because the IP addresses, as the *only*
8 *available identifiable information* on the user, are the critical key to unmasking the
9 user. *See* Order at 8 (stating that “other courts have recognized that IP addresses
10 are *essential to unmasking*”) (emphasis added). An intermediary ISP does not share
11 Reddit’s interest in protecting the First Amendment rights of Reddit’s users. *See,*
12 *e.g., In re Grand Jury Subpoena, No. 16-03-217*, 875 F.3d 1179, 1183 n.2 (9th Cir.
13 2017) (recognizing a platform’s unique third-party standing to assert the First
14 Amendment rights of its users because the platform has a “sufficiently close
15 relationship” to those users and because the platform would suffer its *own* injury to
16 its business if forced to identify its users).

17 The Motion cites one case that was not presented to the Magistrate Judge,
18 *Digital Shape*, 2016 WL 5930275. There, Digital Shape Technologies, Inc. (“DST”)
19 was pursuing a defamation action against an individual named Kelly Mikulec, who
20 had admitted to making the allegedly defamatory statements at issue. *Id.* at *1. DST
21 then subpoenaed Glassdoor for the IP address affiliated with that defamatory
22 statement. *Id.* Accordingly, unlike this case, *Digital Shape* “d[id] not involve
23 anonymous speech,” because the user at issue “admitted she authored the [] review
24

25 ³ In addition to *Obi Pharma*, Reddit also offered additional cases from this court
26 applying First Amendment unmasking standards to requests for IP addresses. *See*
27 *Doc. 20 at 6 (citing Castro v. Doe*, No. 23-mc-80198-TSH, 2023 WL 9232964, at *2–3
28 (N.D. Cal. Oct. 12, 2023) (applying First Amendment unmasking standards to
subpoena seeking a list of IP addresses used to access a Wikipedia account); *Wirt v.*
Twitter, Inc., 21-mc-80166-JSC, 2021 WL 5919846, at *1 (N.D. Cal. Dec. 15, 2021)
(engaging in First Amendment analysis concerning request from Twitter for IP
addresses of those who made tweets).

1 and thus no longer ha[d] an expectation of anonymity.” *Id.* at *4. That case is further
2 distinguished because the court there recognized that even if Ms. Mikulec were *not*
3 the author of the review, despite her admission, the First Amendment anonymity
4 issue would not need to be resolved because DST expressly “represented that they
5 [would] not take the further step of seeking the user’s identity” after obtaining the
6 IP address. *Id.* Movants have made no such representation here.

7 Movants are similarly wrong in saying that “[t]he Order ignored Movants’
8 citation to multiple decisions such as *United States v. Forrester*, 512 F.3d 500 (9th
9 Cir. 2008) establishing that users have no privacy rights in IP addresses in the
10 Fourth Amendment Context.” Mot. at 3. To the contrary, the Order addresses,
11 distinguishes, and rejects each of the Fourth Amendment cases Movants cited in
12 their Motion:

13 Movants also cite Fourth Amendment jurisprudence and
14 consumer privacy class action caselaw arguing ‘[t]he Ninth
15 Circuit has consistently held that a person has no
16 legitimate expectation of privacy in information they
17 voluntarily turn over to third parties.’ . . . [summarizing
18 cases cited by Movants] . . . These cases are not relevant
here, where the Reddit users’ First Amendment rights to
anonymity are at issue, and neither *Forrester* nor *Zynga*
suggest that IP addresses are excluded from First
Amendment review. Indeed, neither addresses the First
Amendment at all.

19 Order at 9 n.2.

20 The Order is also consistent with the well-reasoned decisions in *Reddit I* and
21 *Reddit II*, which likewise entailed requests for IP addresses, because Reddit does not
22 require its users to provide their real names or addresses. *See* Doc. 20 at 5–6. In
23 other words, whether the copyright holders stated it expressly or not, *Reddit I* and
24 *Reddit II* were also only about compelled IP addresses.

25 In fact, in *Reddit I*, the one previous instance where Reddit *did* provide the IP
26 address of a user to the copyright holders, the copyright holders immediately
27 proceeded to identify that user by subpoenaing T-Mobile. *See Bodyguard*
28 *Productions, Inc. v. RCN Telecom Serv’s., LLC*, Case No. 24-1321, Doc. 1, Pls’ Mot.

1 Compel at 3–4 (N.D. Ill., Feb. 15, 2024). The copyright holders then subpoenaed that
2 individual and later instituted motions practice against them over that subpoena.
3 *Id.* The copyright holders’ conduct in *Bodyguard* is proof that an IP address is
4 identifying information and shows precisely what Movants will do once they have
5 obtained the IP addresses targeted here: hound the unmasked users with needless
6 and exhaustive discovery in an effort to chill their speech.

7 **B. The information Movants seek is available from other sources.**

8 Again, the *2theMart* standard requires that the Movants establish that
9 evidence *needed* to disprove the ISP’s repeat-infringer defense is unavailable from
10 “any” other source. *Reddit II*, 2023 WL 4849434, at *3 (internal citations omitted). In
11 other words, they must show that this evidence is “essential” for their litigation to
12 continue. *Id.*; *see also Rich*, 2020 WL 5910069, at *5.

13 Given that Movants can obtain the IP addresses of top copyright infringers
14 over Frontier’s network directly from Frontier, the Order concluded that Movants
15 “cannot show that the information they seek here is *unavailable from other sources*”
16 and therefore it was “available and obtainable outside of these six targeted Reddit
17 users such that it is not ‘*essential*’ and fails *2TheMart*.” Order at 7–8 (emphases
18 added). But even that would not be the sole source of alternate evidence on the
19 question. Movants can obtain evidence of Frontier’s lax copyright infringement
20 enforcement directly from Frontier in run-of-the-mill party discovery (such as by
21 obtaining documents concerning Frontier’s policies, or by deposing the Frontier
22 employees affiliated with the monitoring and enforcement of Frontier’s repeat
23 infringement policies). *See, e.g., Reddit I*, at 7 (“[T]here is information available from
24 another source to establish or disprove the plaintiffs’ three alleged categories of
25 relevance. Specifically, [the ISP] is the party that (according to the plaintiffs) ‘has
26 not reasonably implemented a policy for terminating repeat infringers,’ ‘controls the
27 conduct of its subscribers,’ and allows its customers ‘to freely pirate without
28 consequence.’ The high likelihood that this information is available from [the ISP]

1 defeats the plaintiffs' subpoena.").

2 In fact, Movants all but concede this point, because they do not even argue
 3 that other sources do not possess the information they seek, or even that it is not
 4 "available and obtainable." Mot. at 4–5. Rather, Movants argue that "the Order's
 5 conclusion that Claimants can obtain information they seek from Frontier's
 6 subscribers is *premature*," apparently because, contrary to rulings from the
 7 bankruptcy court overseeing the underlying case against Frontier, "Movants *have*
 8 *not yet obtained* subscriber information from Frontier." *Id.* at 4 (emphases added).
 9 But the Order correctly recognized that the remedy, then, is for Movants "to seek
 10 redress from the court should Frontier fail to respond." Order at 10. The copyright
 11 holders should move to compel Frontier's compliance, not Reddit's. And, again, there
 12 are myriad alternate sources of evidence on the issue of Frontier's repeat infringer
 13 policy such that the availability of any one particular discovery tactic is not
 14 dispositive.

15 **C. 2TheMart supplies the relevant standard and was properly**
 16 **applied.**

17 Finally, Movants object that the Order applied the *2TheMart* standard at all,
 18 because that decision "failed to conduct any examination of the nature of the speech
 19 as required by *Anonymous Online Speakers*." Mot., at 5 (referring to *Anonymous*
 20 *Online Speakers v. United States Dist. Court*, 661 F.3d 1168, 1177 (9th Cir. 2011)).
 21 Movants then conflictingly assert that if the Magistrate Judge *had* reviewed the
 22 nature of the speech at issue,⁴ that speech: (1) would have been deemed "commercial

23 _____
 24 ⁴ It matters little under de novo review, but the Order certainly did not ignore the
 25 context of the speech at issue. To the contrary, the Order discusses *Anonymous*
 26 *Online Speakers* in several places, citing the case for the proposition that "the Ninth
 27 Circuit reviewed the developing tests in the area of anonymous online speech and
 28 left it to the discretion of district courts to choose the proper standard in a given
 case, based on the nature of the speech at issue." Order at 5. The Order even points
 out that *Anonymous Online Speakers* describes the *2TheMart.com* test; indeed the
 Ninth Circuit has recognized the application of that test to a subpoena seeking the
 identity of an anonymous user who is not a party to the underlying litigation. Order
 at 5. The Order also discusses the nature of the speech, and even addresses, and

1 speech” subject “to the lowest protection;” or (2) would have been deemed “unlawful
2 activity” receiving “no First Amendment protection,” at all. Mot. at 5. Movants do
3 not articulate an alternate First Amendment standard that would appropriately
4 weigh the users’ rights to anonymity here against their own discovery desires.

5 **1. Movants are wrong that speech *about* copyright**
6 **infringement warrants lessened First Amendment**
7 **protections.**

8 This Court should reject Movants’ arguments that these Reddit users receive
9 “the lowest” protection under the First Amendment. While that argument is
10 unexplained and unsupported in the Motion, Movants made a very similar argument
11 before in citing *In re DMCA Subpoena to Reddit, Inc.*, 441 F. Supp. 3d 875. *See* Doc.
12 1, at 11. They quoted that case to argue that “applying the anonymous speech
13 approach in the context of a copyright dispute would be ‘problematic’ because ‘the
14 doctrine of fair use provides everything needed to balance the competing interests of
15 the First Amendment and the copyright laws.’” Doc. 1 at 11 (quoting *In re DMCA*
16 *Subpoena to Reddit, Inc.*, 441 F. Supp. 3d at 882). But that argument was properly
17 rejected in both *Reddit I* and *Reddit II*, and should be rejected again here, because
18 “[t]he fair use defense is available only to those accused of copyright infringement,
19 and the Reddit users at issue here are uninvolved third parties.” Order at 10
20 (quoting *Reddit I*, 2023 WL 3163455, at *3).

21 Put differently, every case Movants have cited on the question of the
22 appropriate First Amendment protections in this context has focused on First
23 Amendment protections for speech *consisting* of copyright infringement and
24 involving the alleged infringer. *See* Doc. 1 at 11 (citing *Elder v. Ashcroft*, 537 U.S.
25 186, 219 (2003); *In re DMCA Subpoena to Reddit*, 441 F. Supp. 3d at 882).

26 Here, we are dealing with speech *about* copyright infringement made by non-party

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28 explicitly rejects, Movants’ argument that the Reddit users were “boasting of
criminal conduct violating [copyright law]” such that their speech should be afforded
less protection than that supplied by *2TheMart*. Order at 9–10.

1 witnesses to the underlying action. And no court has ever recognized lessened First
2 Amendment protections for speech *about* copyright infringement by “uninvolved
3 third parties.” *Reddit I*, 2023 WL 3163455, at *3.

4 **2. Movants waived any argument that the speech at issue**
5 **receives no First Amendment protections, and the**
6 **argument is wrong as a matter of law.**

7 As described above, a party cannot raise an argument on a Rule 72 motion
8 that was not raised before the Magistrate Judge. *Greenhow*, 863 at 638 (“Appellant
9 tells us that Rule 72(b)'s requirement of a ‘de novo determination’ by the district
10 judge means that an entirely new hand is dealt when objection is lodged to a
11 recommendation. That is not so. . . . The rule does not permit a litigant to present
12 new initiatives to the district judge.”). Movants never argued before the Magistrate
13 Judge that the Reddit users at issue receive no First Amendment protections
14 because their “speech concerns unlawful activity.” *See generally*, Doc. 1; Doc. 21. The
15 Court, therefore, need not consider Movants’ new argument on that basis alone. *See,*
16 *e.g., Howell*, 231 F.3d at 622.

17 Second, even if the Court chooses to consider this new argument, it is
18 fundamentally contrary to the First Amendment. Mere months ago, the Supreme
19 Court reaffirmed that speech advocating illegal acts “fall[s] within the First
20 Amendment’s core.” *Counterman v. Colorado*, 600 U.S. 66, 76 (2023) (citing
21 *Brandenburg v. Ohio*, 395 U.S. 444, 449 (1969)). Movants cannot strip the Reddit
22 users of First Amendment protections through mere hand-waiving about “unlawful
23 activity.” To the contrary, the First Amendment’s recognition of rights to anonymous
24 online speech were intended to prevent that very attempt to name-and-shame users
25 into suppressing otherwise protected speech. *2TheMart.com*, 1140 F. Supp. 2d at
26 1092 (“People who have committed no wrongdoing should be free to participate in
27 online forums without fear that their identity will be exposed under the authority of
28 the court.”) (citation omitted); *see also Music Grp. Macao Comm. Offshore Ltd. v.*
Does, 82 F. Supp. 3d 979, 986 (N.D. Cal. 2015) (“breaching the [user’s] anonymity for

1 this single remark would unduly chill speech”); *Perry v. Schwarzenegger*, 591 F.3d
2 1147, 1158 (9th Cir. 2010) (“One injury to Proponents’ First Amendment rights is
3 the disclosure itself...this injury will not be remedial on appeal...The potential
4 chilling effect...is [] substantial.”).

5 **V. CONCLUSION**

6 For the foregoing reasons, the Court should deny the Motion and quash the
7 subpoena issued to Reddit.

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9 Dated: March 5, 2024

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