

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

San Francisco Division

STRIKE 3 HOLDINGS, LLC,

Plaintiff,

v.

JOHN DOE SUBSCRIBER ASSIGNED IP
ADDRESS 24.7.72.54,

Defendant.

Case No. 17-cv-07006-LB

**ORDER GRANTING THE PLAINTIFF'S
EX PARTE MOTION TO TAKE EARLY
DISCOVERY**

Re: ECF No. 7

INTRODUCTION

The plaintiff Strike 3 Holdings owns the copyrights for several adult motion pictures.¹ It alleges that someone — the Doe defendant here — who uses the IP address 24.7.72.54 infringed on those copyrights.² Despite its own efforts, Strike 3 Holdings has not been able to identify the individual associated with that IP address.³ Strike 3 Holdings now asks the court to let it serve a subpoena on non-party Comcast Cable Communications LLC, the Doe defendant’s internet service provider, to learn the Doe defendant’s identity.⁴ Because Strike 3 Holdings has demonstrated that good cause exists to allow it to serve a subpoena, the court grants the motion.

¹ Mot. – ECF No. 7 at 7. Record citations are to material in the Electronic Case File (“ECF”); pinpoint

² *Id.* at 9.

³ *Id.* at 16–17.

1 **STATEMENT**

2 Strike 3 Holdings is the owner of several adult motion pictures distributed through its adult
3 brands *Blacked*, *Tushy*, and *Vixen*.⁵ The motion pictures are registered with the United States
4 Copyright Office or have complete applications pending.⁶

5 The Doe defendant, who uses the Comcast Cable-provided IP address 24.7.72.54, used the file
6 distribution network known as “BitTorrent” to illegally download and distribute Strike 3
7 Holdings’s copyrighted movies.⁷ Through well-accepted geolocation technology, Strike 3 has
8 traced each download made to the Doe defendant’s IP address to a physical address in the
9 Northern District of California.⁸ Strike 3 Holdings’s investigator established direct “TCP/IP”
10 connections with the defendant’s IP address while the defendant was using BitTorrent.⁹ The
11 investigator downloaded media files containing a digital copy of Strike 3’s copyrighted movies
12 from the defendant.¹⁰ “A full copy of each digital medial file was downloaded from the BitTorrent
13 file distribution network, and it was confirmed through independent calculation that the file has
14 correlating to each file matched the file has downloaded by the defendant.”¹¹ Strike 3 Holdings did
15 not give the defendant permission or authorization to distribute its copyrighted movies.¹² Strike 3
16 Holdings alleges that Comcast Cable can identify the defendant through his or her IP address.¹³

17 On December 7, 2017, Strike 3 Holdings filed a complaint against the Doe defendant alleging
18 one claim for copyright infringement under the Copyright Act.¹⁴ On December 20, 2017, Strike 3
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20

21 ⁵ Compl. – ECF No. 1 at 1 (¶¶ 2–3), 6 (¶¶ 35–37).

22 ⁶ *Id.* at 5 (¶¶ 31–33).

23 ⁷ *Id.* at 4 (¶ 23).

24 ⁸ *Id.* at 2 (¶ 9).

25 ⁹ *Id.* at 4–5 (¶ 24).

26 ¹⁰ *Id.* at 5 (¶ 25).

27 ¹¹ *Id.* (¶ 26).

28 ¹² *Id.* at 6 (¶ 37).

¹³ *Id.* at 2 (¶ 5).

¹⁴ *Id.* at 6 (¶ 37).

1 **ANALYSIS**

2 **1. Strike 3 Holdings Establishes Good Cause for Early Discovery**

3 Strike 3 Holdings has made a sufficient showing under each of the four *seesandy* factors
4 listed above to establish good cause to permit it to engage in early discovery to identify the Doe
5 defendant.

6 First, Strike 3 Holdings has identified the Doe defendant with sufficient specificity that the
7 court can determine that he or she is a real person who can be sued in federal court. It alleges that
8 the Doe defendant downloaded Strike 3 Holdings's copyrighted adult motion pictures and
9 distributed them over the BitTorrent network.¹⁶ To download the movie, Doe defendant had to
10 direct his or her BitTorrent client to download the media file.¹⁷ These facts indicate that the Doe
11 defendant is an identifiable adult who likely is the primary subscriber of the IP address or
12 someone who resides with and is known to the subscriber. Strike 3 Holdings also has traced each
13 download made to the Doe defendant's IP address to the Northern District of California, thus
14 giving the court jurisdiction over the defendant and Strike 3's federal claim.¹⁸

15 Second, Strike 3 Holdings has recounted the steps taken to locate and identify the Doe
16 defendant. The Doe defendant downloaded and distributed Strike 3 Holdings's movies through his
17 or her IP address, and his or her IP address was traced to this district.¹⁹ The IP address is not
18 sufficient for Strike 3 to identify the Doe defendant.

19 Third, Strike 3 Holdings has demonstrated that its copyright claim could withstand a motion to
20 dismiss. A plaintiff "must satisfy two requirements to present a prima facie case of direct
21 infringement: (1) [he or she] must show ownership of the allegedly infringed material and (2) [he
22 or she] must demonstrate that the alleged infringers violate at least one exclusive right granted to
23 copyright holders under 17 U.S.C. § 106." *Perfect 10, Inc. v. Amazon.com, Inc.*, 508 F.3d 1146,
24 1159 (9th Cir. 2007) (citing *A&M Records, Inc. v. Napster, Inc.*, 239 F.3d 1004, 1013 (9th Cir.

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26 ¹⁶ Compl. – ECF No. 1 at 4–5 (¶¶ 24–29).

27 ¹⁷ Mot. – ECF No. 7 at 15.

28 ¹⁸ Compl. – ECF No. 1 at 2 (¶ 9).

29 ¹⁹ Mot. – ECF No. 7 at 15.

2001)); *see* 17 U.S.C. § 501(a). Under Section 106, a copyright holder has the exclusive rights to reproduce, distribute, publicly display, perform, and create derivative works of the copyrighted work. Direct copyright infringement does not require intent or any particular state of mind. *Fox Broad. Co, Inc. v. Dish Network, LLC*, 905 F. Supp. 2d 1088, 1098-99 (C.D. Cal. 2012); *Religious Tech. Ctr. v. Netcom On-Line Commc'n Servs., Inc.*, 907 F. Supp. 1361, 1367 (N.D. Cal. 1995). Strike 3 Holdings alleges that it holds the copyrights for the adult motion pictures that the Doe defendant downloaded (and thus copied) and distributed the movies without its permission.²⁰ Strike 3 Holdings has sufficiently alleged a prima facie claim for copyright infringement.

Fourth, Strike 3 Holdings has shown that the discovery it seeks is reasonably likely to lead to identifying information that will permit service of process on the Doe defendant. Strike 3 Holdings alleges that Comcast Cable's records should identify the Doe defendant.²¹

2. Protective Order

"[U]nder Rule 26(c), the Court may *sua sponte* grant a protective order for good cause shown." *McCoy v. Southwest Airlines Co., Inc.*, 211 F.R.D. 381, 385 (C.D. Cal. 2002). The court issues the limited protective order described below because the ISP subscriber may be an innocent third party, the subject matter of the suit deals with sensitive and personal matters.

Here, as has been discussed by other courts in this district, the ISP subscribers may not be the individuals who infringed upon Strike 3 Holdings's copyright. *See, e.g., Pacific Century Intern. Ltd. v. Does 1-101*, No. C-11-02533 (DMR), 2011 WL 5117424, at *2 (N.D. Cal. Oct. 27, 2011); *see also IO Group, Inc. v. Does 1-19*, No. C 10-03851 SI, 2011 WL 772909, at *1 (N.D. Cal. Mar. 1, 2011) (granting the plaintiff additional time to identify and serve the true defendant where a subscriber asserted that he did not infringe plaintiff's work, suggesting that someone else used his IP address to infringe the plaintiff's work, and the plaintiff claimed that it needed to take third-

²⁰ Compl. – ECF No. 1 at 4–5 (¶¶ 24–31).

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