

United States District Court
Northern District of California

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
San Francisco Division

STRIKE 3 HOLDINGS, LLC,
Plaintiff,
v.
JOHN DOE SUBSCRIBER ASSIGNED IP
ADDRESS 73.202.101.43,
Defendant.

Case No. 18-cv-04998-LB

**ORDER GRANTING EX PARTE
APPLICATION TO SERVE THIRD
PARTY SUBPOENA**

Re: ECF No. 8

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 73.202.101.43 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 (Comcast Cable), the Doe defendant’s internet service provider, to learn the Doe defendant’s identity.⁴

¹ Mot. – ECF No. 8 at 9. Citations refer to material in the Electronic Case File (“ECF”); pinpoint citations are to the ECF-generated page numbers at the top of documents.

² *Id.*

³ *Id.* at 14–15.

⁴ *See generally id.*

1 Because Strike 3 Holdings has demonstrated that good cause exists to allow it to serve a subpoena,
2 the court grants the motion.

3 4 STATEMENT

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

8 The Doe defendant, who uses the Comcast Cable-provided IP address 73.202.101.43, used the
9 file distribution network known as “BitTorrent” to illegally download and distribute Strike 3
10 Holdings’s copyrighted movies.⁷ Through well-accepted geolocation technology, Strike 3 has
11 traced each download made to the Doe defendant’s IP address to a physical address in the
12 Northern District of California.⁸ Strike 3 Holdings’s investigator established direct “TCP/IP”
13 connections with the defendant’s IP address while the defendant was using BitTorrent.⁹ The
14 investigator downloaded media files containing a digital copy of Strike 3’s copyrighted movies
15 from the defendant.¹⁰ The “file hash” — a unique value that acts as a “fingerprint” identifying
16 media files — confirmed that the files the investigator downloaded were downloaded from the
17 defendant.¹¹ The defendant “has been recorded infringing 31 movies over an extended period of
18 time.”¹² Strike 3 Holdings did not give the defendant permission or authorization to distribute its
19
20
21

22 ⁵ Compl. – ECF No. 1 at 1 (¶ 3).

23 ⁶ *Id.* at 5–6 (¶¶ 32–33).

24 ⁷ *Id.* at 5 (¶ 24).

25 ⁸ *Id.* at 2 (¶ 9).

26 ⁹ *Id.* at 5 (¶ 25).

27 ¹⁰ *Id.* (¶ 26).

28 ¹¹ *Id.* (¶ 27).

¹² *Id.* at 2 (¶ 4).

1 copyrighted movies.¹³ Strike 3 Holdings alleges that Comcast Cable can identify the defendant
2 through his or her IP address.¹⁴

3 On August 15, 2018, Strike 3 Holdings filed a complaint against the Doe defendant alleging
4 one claim for copyright infringement under the Copyright Act.¹⁵ On September 21, 2018, Strike 3
5 Holdings filed an ex parte motion asking the court to allow it to serve Comcast Cable with a
6 subpoena under Federal Rule of Civil Procedure 45.¹⁶ Strike 3 Holdings says that the subpoena
7 will be limited to the name and address of the individual/individuals associated with the Doe
8 defendant's IP address.¹⁷

GOVERNING LAW

9
10
11 A court may authorize early discovery before the Rule 26(f) conference for the parties' and
12 witnesses' convenience and in the interests of justice. Fed. R. Civ. P. 26(d). Courts within the
13 Ninth Circuit generally consider whether a plaintiff has shown "good cause" for early discovery.
14 *See, e.g., IO Grp., Inc. v. Does 1–65*, No. 10-4377 SC, 2010 WL 4055667, at *2 (N.D. Cal. Oct.
15 15, 2010); *Semitoool, Inc. v. Tokyo Electron Am., Inc.*, 208 F.R.D. 273, 275–77 (N.D. Cal. 2002);
16 *Tex. Guaranteed Student Loan Corp. v. Dhindsa*, No. 1:10-cv-00335-LJO-SKO, 2010 WL
17 2353520, at *2 (E.D. Cal. June 9, 2010); *Yokohama Tire Corp. v. Dealers Tire Supply, Inc.*, 202
18 F.R.D. 612, 613–14 (D. Ariz. 2001) (collecting cases and standards). "Good cause may be found
19 where the need for expedited discovery, in consideration of the administration of justice,
20 outweighs the prejudice to the responding party." *Semitoool*, 208 F.R.D. at 276.

21 In evaluating whether a plaintiff establishes good cause to learn the identity of a Doe
22 defendant through early discovery, courts examine whether the plaintiff: (1) identifies the Doe

23
24
25 ¹³ *Id.* at 6 (¶ 38).

26 ¹⁴ *Id.* at 2 (¶ 5).

27 ¹⁵ *Id.* at 6–7 (¶¶ 35–40).

28 ¹⁶ Mot. – ECF No. 8 at 10.

¹⁷ *Id.*

1 defendant with sufficient specificity that the court can determine that the defendant is a real person
2 who can be sued in federal court, (2) recounts the steps taken to locate and identify the defendant,
3 (3) demonstrates that the action can withstand a motion to dismiss, and (4) shows that the
4 discovery is reasonably likely to lead to identifying information that will permit service of process.
5 *Columbia Ins. Co. v. seescandy.com*, 185 F.R.D. 573, 578–80 (N.D. Cal. 1999) (citations omitted).
6 “[W]here the identity of alleged defendants [is not] known prior to the filing of a complaint[,] the
7 plaintiff should be given an opportunity through discovery to identify the unknown defendants,
8 unless it is clear that discovery would not uncover the identities, or that the complaint would be
9 dismissed on other grounds.” *Wakefield v. Thompson*, 177 F.3d 1160, 1163 (9th Cir. 1999)
10 (quoting *Gillespie v. Civiletti*, 629 F.2d 637, 642 (9th Cir. 1980)).

11 12 ANALYSIS

13 1. Strike 3 Holdings Establishes Good Cause for Early Discovery

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

17 First, Strike 3 Holdings has identified the Doe defendant with sufficient specificity that the
18 court can determine that he or she is a real person who can be sued in federal court. It alleges that
19 the Doe defendant downloaded Strike 3 Holdings’s copyrighted adult motion pictures and
20 distributed them over the BitTorrent network.¹⁸ To download the movie, the Doe defendant had to
21 direct his or her BitTorrent client to download the media file.¹⁹ These facts indicate that the Doe
22 defendant is an identifiable adult who likely is the primary subscriber of the IP address or
23 someone who resides with and is known to the subscriber. Strike 3 Holdings also has traced each
24
25
26

27 ¹⁸ Compl. – ECF No. 1 at 5 (¶ 24), 6 (¶ 37).

28 ¹⁹ Mot. – ECF No. 8 at 17.

1 download made to the Doe defendant's IP address to the Northern District of California, thus
2 giving the court jurisdiction over the defendant and Strike 3's federal claim.²⁰

3 Second, Strike 3 Holdings has recounted the steps taken to locate and identify the Doe
4 defendant. The Doe defendant downloaded and distributed Strike 3 Holdings's movies through his
5 or her IP address, and his or her IP address was traced to this district.²¹ The IP address is not
6 sufficient for Strike 3 to identify the Doe defendant.

7 Third, Strike 3 Holdings has demonstrated that its copyright claim could withstand a motion to
8 dismiss. A plaintiff "must satisfy two requirements to present a prima facie case of direct
9 infringement: (1) [he or she] must show ownership of the allegedly infringed material and (2) [he
10 or she] must demonstrate that the alleged infringers violate at least one exclusive right granted to
11 copyright holders under 17 U.S.C. § 106." *Perfect 10, Inc. v. Amazon.com, Inc.*, 508 F.3d 1146,
12 1159 (9th Cir. 2007) (citing *A&M Records, Inc. v. Napster, Inc.*, 239 F.3d 1004, 1013 (9th Cir.
13 2001)); see 17 U.S.C. § 501(a). Under Section 106, a copyright holder has the exclusive rights to
14 reproduce, distribute, publicly display, perform, and create derivative works of the copyrighted
15 work. Direct copyright infringement does not require intent or any particular state of mind. *Fox*
16 *Broad. Co, Inc. v. Dish Network, LLC*, 905 F. Supp. 2d 1088, 1098–99 (C.D. Cal. 2012); *Religious*
17 *Tech. Ctr. v. Netcom On-Line Commc'n Servs., Inc.*, 907 F. Supp. 1361, 1367 (N.D. Cal. 1995).
18 Strike 3 Holdings alleges that it holds the copyrights for the adult motion pictures that the Doe
19 defendant downloaded (and thus copied) and distributed the movies without its permission.²²
20 Strike 3 Holdings has sufficiently alleged a prima facie claim for copyright infringement.

21 Fourth, Strike 3 Holdings has shown that the discovery it seeks is reasonably likely to lead to
22 identifying information that will permit service of process on the Doe defendant. Strike 3 Holdings
23 alleges that Comcast Cable records should identify the Doe defendant.²³

24
25 _____
²⁰ Compl. – ECF No. 1 at 2 (¶¶ 8–9).

26 ²¹ *Id.*

27 ²² *Id.* at 5 (¶¶ 28–32).

28 ²³ *Id.* at 2 (¶ 5).

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.