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4 UNITED STATES DISTRICT COURT  
5 NORTHERN DISTRICT OF CALIFORNIA  
6

7 STRIKE 3 HOLDINGS, LLC,

8 Plaintiff,

9 v.

10 JOHN DOE SUBSCRIBER ASSIGNED IP  
11 ADDRESS 67.188.117.219,

12 Defendant.

Case No. 18-cv-05994-EMC

**ORDER GRANTING PLAINTIFF'S EX  
PARTE APPLICATION FOR LEAVE  
TO SERVE THIRD PARTY  
SUBPOENA PRIOR TO RULE 26(F)  
CONFERENCE**

Docket No. 8

13  
14 Plaintiff Strike 3 Holdings produces and owns the copyrights for adult motion pictures  
15 featured on its subscription-based websites. Plaintiff alleges that Doe Defendant, currently  
16 identified only by his IP address 67.188.117.219, infringed on those copyrights by downloading  
17 and distributing Plaintiff's motion pictures. Plaintiff asks the Court for leave to serve a Rule 45  
18 subpoena on non-party Comcast Cable Communications, LLC ("Comcast Cable"), Defendant's  
19 internet service provider ("ISP"), to find out Defendant's identity. Because Plaintiff has  
20 demonstrated that good cause exists to allow it to serve the subpoena, the Court **GRANTS**  
21 Plaintiff's application.

22 **I. BACKGROUND**

23 Plaintiff produces adult motion pictures distributed through its *Blacked*, *Tushy*, *Vixen*, and  
24 *Blacked Raw* brands. Docket No. 1 ("Compl.") ¶ 3. Plaintiff owns the copyrights to the motion  
25 pictures, which have either been registered with the United States Copyright Office or have  
26 pending copyright registrations. *Id.* ¶ 32; *see* Compl., Exh. A (listing copyright registration  
27 numbers). Plaintiff alleges that Defendant is using BitTorrent, a file distribution network, to

1 pictures and distributing them to others over an extended period. *Id.* ¶¶ 4, 18. Plaintiff did not  
 2 give authorization to Defendant to download, copy, or distribute Plaintiff’s works. *Id.* ¶ 28.

3 Defendant can currently only be identified by his IP address of 67.188.117.219, provided  
 4 by his ISP Comcast Cable. *Id.* ¶ 13. Plaintiff’s forensic investigator, IPP International U.G.  
 5 (“IPP”), connected with Defendant’s IP address while Defendant was using BitTorrent and was  
 6 able to download digital media files containing Plaintiff’s copyrighted works from Defendant. *Id.*  
 7 ¶¶ 25–26. By reference to the “file hash” of the downloaded files, which uniquely identifies each  
 8 file distributed on BitTorrent, *id.* ¶¶ 21–23, IPP verified that the files distributed by Defendant are  
 9 Plaintiff’s works, *id.* ¶ 30. Further, Plaintiff used “geolocation technology” to trace Defendant’s  
 10 IP address to a physical address in this District. *Id.* ¶ 9. Plaintiff asserts that only Comcast Cable  
 11 can identify Defendant through his IP address. *Id.* ¶ 5.

12 Plaintiff filed a complaint against Defendant on September 28, 2018, bringing one cause of  
 13 action for direct copyright infringement under the Copyright Act. *Id.* ¶¶ 35–40. On October 30,  
 14 2018, Plaintiff filed the instant *ex parte* application for leave to serve a Rule 45 subpoena on  
 15 Comcast Cable. *See* Docket No. 8 (“Mot.”). Plaintiff represents that the subpoena “will only  
 16 demand the true name and address of Defendant,” which Plaintiff will use to serve Defendant and  
 17 prosecute the claims asserted in the complaint. Mot. at 2.

## 18 **II. ANALYSIS**

### 19 **A. Legal Standard**

20 A court may authorize early discovery before the parties have conferred as required by  
 21 Federal Rule of Civil Procedure 26(f). *See* Fed. R. Civ. P. 26(d). In the Ninth Circuit, courts use  
 22 the “good cause” standard to determine whether discovery should be allowed to proceed prior to a  
 23 Rule 26(f) conference. *UMG Recordings, Inc. v. Doe*, No. C 08-1193 SBA, 2008 WL 4104214, at  
 24 \*3 (N.D. Cal. Sept. 3, 2008). Good cause may be found where the need for expedited discovery,  
 25 in consideration of the administration of justice, outweighs the prejudice to the responding  
 26 party. *Id.*; *Semitoil, Inc. v. Tokyo Electron Am., Inc.*, 208 F.R.D. 273, 275–77 (N.D. Cal. 2002).

27 To determine whether a plaintiff has established good cause to learn the identity of a Doe

28 Defendant through early discovery, courts examine whether the plaintiff

- 1 (1) identifies the Doe defendant with sufficient specificity that the court can determine that  
 2 the defendant is a real person who can be sued in federal court,  
 3 (2) recounts the steps taken to locate and identify the defendant,  
 4 (3) demonstrates that the action can withstand a motion to dismiss, and  
 5 (4) shows that the discovery is reasonably likely to lead to identifying information that will  
 6 permit service of process.

7 *Columbia Ins. Co. v. seescandy.com*, 185 F.R.D. 573, 578–80 (N.D. Cal. 1999) (citations omitted  
 8 and line breaks added).

9 As a court in this District has explained:

10 In Internet infringement cases, courts routinely find good cause  
 11 exists to issue a Rule 45 subpoena to discover a Doe defendant’s  
 12 identity, prior to a Rule 26(f) conference, where a plaintiff makes a  
 13 prima facie showing of infringement, there is no other way to  
 14 identify the Doe defendant, and there is a risk an ISP will destroy its  
 15 logs prior to the conference. This is because, in considering “the  
 16 administration of justice,” early discovery avoids ongoing,  
 17 continuous harm to the infringed party and there is no other way to  
 18 advance the litigation. As for the defendant, there is no prejudice  
 19 where the discovery request is narrowly tailored to only seek their  
 20 identity. Thus, Courts routinely find the balance favors granting a  
 21 plaintiff leave to take early discovery.

22 *UMG Recordings*, 2008 WL 4104214, at \*3–4 (citations omitted).

23 B. Good Cause

24 Here, Plaintiff has established all four of the *seescandy* factors, and accordingly has  
 25 demonstrated good cause for the Court to allow early discovery of the Doe Defendant’s identity.

26 First, Plaintiff has identified the Doe Defendant with sufficient specificity that the Court  
 27 can determine that Defendant is a real person who can be sued in federal court. “A plaintiff may  
 28 show that a defendant is a real person or entity by providing evidence of specific acts of  
 29 misconduct that could only have been perpetrated by actual people, as opposed to a mechanical  
 30 process.” *Distinct Media Ltd. v. Doe Defendants 1-50*, No. CV 15- 03312 NC, 2015 WL  
 13389609, at \*2 (N.D. Cal. Sept. 29, 2015) (citation and internal quotation marks omitted). Here,  
 Plaintiff alleges that Defendant downloaded 42 of its copyrighted works without authorization and  
 distributed them over an extended period via BitTorrent. Compl. ¶ 4. “[B]ut for the Doe

1 Defendant directing his or her BitTorrent client to download the torrent file, the alleged  
 2 infringement would not have occurred.” Mot. at 9. In other words, it requires a real person to  
 3 initiate the act of downloading a file via BitTorrent, so Defendant is likely a real person who  
 4 perpetrated the alleged infringing acts at the identified IP address. Plaintiff has also used the  
 5 established “Maxmind” geolocation technology to twice trace Defendant’s IP address to a physical  
 6 location within this District. Compl. ¶ 9; see *Criminal Prods., Inc. v. Doe-72.192.163.220*, No.  
 7 16-CV-2589 WQH (JLB), 2016 WL 6822186, at \*3 (S.D. Cal. Nov. 18, 2016) (citing in part “the  
 8 documented success of the Maxmind geolocation service” to support the finding that plaintiff  
 9 showed that a particular IP address corresponds to a physical address). This gives the Court  
 10 personal jurisdiction over Defendant and over Plaintiff’s federal copyright claim. See *Strike 3*  
 11 *Holdings, LLC v. Doe*, No. 18-CV-4988-LB, 2018 WL 4587185, at \*2 (N.D. Cal. Sept. 24, 2018).

12 Second, Plaintiff has recounted the previous steps it has taken to locate and identify the  
 13 Doe Defendant. Plaintiff hired a forensic investigator, IPP, to verify using unique file hashes that  
 14 Defendant downloaded and distributed Plaintiff’s motion pictures through his IP address. Compl.  
 15 ¶¶ 21–26. Plaintiff then used geolocation technology to trace that IP address to this District. *Id.*  
 16 ¶ 9. However, Plaintiff cannot deduce Defendant’s true name and other identifying information  
 17 from his IP address alone. Only Comcast Cable, Defendant’s ISP, can provide that information.  
 18 *Id.* ¶ 5. Thus, Plaintiff has “made a good faith effort to identify and locate the Defendant.” *Strike*  
 19 *3 Holdings, LLC v. Doe*, No. 18CV47-WQH (RBB), 2018 WL 1427002, at \*4 (S.D. Cal. Mar. 22,  
 20 2018).

21 Third, Plaintiff has demonstrated that its copyright claim can withstand a motion to  
 22 dismiss. A plaintiff “must satisfy two requirements to present a prima facie case of direct  
 23 infringement: (1) [it] must show ownership of the allegedly infringed material and (2) [it] must  
 24 demonstrate that the alleged infringers violate at least one exclusive right granted to copyright  
 25 holders under 17 U.S.C. § 106.” *Perfect 10, Inc. v. Amazon.com, Inc.*, 508 F.3d 1146, 1159 (9th  
 26 Cir. 2007) (citing *A&M Records, Inc. v. Napster, Inc.*, 239 F.3d 1004, 1013 (9th Cir. 2001)); see  
 27 17 U.S.C. § 501(a). Under 17 U.S.C. § 106, a copyright holder has the exclusive rights to

28 reproduce, distribute, publicly display, perform, and create derivative works of the copyrighted

1 work. Here, Plaintiff alleges that it owns valid copyrights in the motion pictures, and that  
 2 Defendant reproduced and distributed the motion pictures without authorization. Compl. ¶¶ 4, 28,  
 3 32. Thus, Plaintiffs have sufficiently alleged a prima facie case of direct copyright infringement.  
 4 *See UMG Recordings*, 2008 WL 4104214, at \*5. Moreover, the Court has subject matter  
 5 jurisdiction over this copyright action under 28 U.S.C. 1338(a) as well as personal jurisdiction  
 6 over Defendant since his IP address is tied to a physical location in this District. *See Ballard v.*  
 7 *Savage*, 65 F.3d 1495, 1498 (9th Cir. 1995) (holding that a plaintiff need only make a “prima facie  
 8 showing of jurisdictional facts” to survive a motion to dismiss for lack of personal jurisdiction).  
 9 Venue is also proper. *See Brayton Purcell LLP v. Recordon & Recordon*, 606 F.3d 1124, 1126  
 10 (9th Cir. 2010) (holding that in copyright infringement actions, 28 U.S.C. § 1400(a) “allow[s]  
 11 venue in any judicial district where, if treated as a separate state, the defendant would be subject to  
 12 personal jurisdiction.”).

13 Fourth, Plaintiff has shown that the subpoena it seeks is reasonably likely to lead to  
 14 identifying information that will permit service of process on the Doe Defendant. Plaintiff has  
 15 used the American Registry for Internet Numbers to identify Comcast Cable as the ISP that owns  
 16 Defendant’s IP address. Docket No. 8-1, Exh. D (Declaration of Susan B. Stalzer) ¶ 11. Thus,  
 17 Comcast Cable is able to provide information regarding Defendant’s true identity based on his IP  
 18 address. Compl. ¶ 5. The subpoena will only seek Defendant’s name and address; with this  
 19 information, Plaintiff will be able to effectuate service on Defendant pursuant to Federal Rule of  
 20 Civil Procedure 4(a) and (e).

21 In addition to satisfying the *seesandy* factors, Plaintiff has also established that “there is  
 22 no other way to identify the Doe defendant, and there is a risk an ISP will destroy its logs prior to  
 23 the [Rule 26(f)] conference.” *UMG Recordings*, 2008 WL 4104214, at \*4. With respect to the  
 24 former, Plaintiff alleges that Defendant has been infringing on its copyrighted works  
 25 anonymously, and that only Comcast Cable can link Defendant’s IP address to his actual name  
 26 and physical address. Compl. ¶¶ 5, 13; Docket No. 8-1, Exh. C (Declaration of Philip Pasquale)  
 27 ¶ 10. With respect to the latter, Plaintiff asserts that ISPs tend to “only retain [IP address logs] for  
 28 a limited period of time.” *Met. et al.* This means that, without early discovery, Comcast Cable

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