

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
San Francisco Division

STRIKE 3 HOLDINGS, LLC,

Plaintiff,

v.

JOHN DOE SUBSCRIBER ASSIGNED IP
ADDRESS 73.189.255.94,

Defendant.

Case No. 19-cv-01661-LB

**ORDER GRANTING EX PARTE
APPLICATION FOR LEAVE TO
SERVE THIRD-PARTY SUBPOENA**

Re: ECF No. 9

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 73.189.255.94 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

¹ Appl. – ECF No. 9 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.

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.

STATEMENT

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

The Doe defendant, who uses the Comcast-provided IP address 73.189.255.94, used the file distribution network known as "BitTorrent" to illegally download and distribute Strike 3 Holdings's copyrighted movies.⁷ Through geolocation technology, Strike 3 has traced each download made to the Doe defendant's IP address to a physical address in the Northern District of California.⁸ Strike 3 Holdings's investigator established direct "TCP/IP" connections with the defendant's IP address while the defendant was using BitTorrent.⁹ The investigator downloaded media files containing a digital copy of Strike 3's copyrighted movies from the defendant.¹⁰ The "file hash" — a unique value that acts as a "fingerprint" identifying media files — confirmed that the files the investigator downloaded were downloaded from the defendant.¹¹ The defendant "has been recorded infringing 39 movies over an extended period of time."¹² Strike 3 Holdings did not

⁴ See generally *id.*

⁵ Compl. – ECF No. 1 at 1 (¶ 3).

⁶ *Id.* at 5 (¶¶ 32–33).

⁷ *Id.* (¶ 24).

⁸ *Id.* at 2 (¶¶ 8–9).

⁹ *Id.* at 5 (¶ 25).

¹⁰ *Id.* (¶ 26).

¹¹ *Id.* (¶ 27).

¹² *Id.* at 2 (¶ 4).

1 give the defendant permission or authorization to distribute its copyrighted movies.¹³ Strike 3
 2 Holdings alleges that Comcast can identify the defendant through his or her IP address.¹⁴

3 On March 29, 2019, Strike 3 Holdings filed a complaint against the Doe defendant alleging
 4 one claim for copyright infringement under the Copyright Act.¹⁵ On April 24, 2019, Strike 3
 5 Holdings filed an ex parte application asking the court to allow it to serve Comcast 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

9 10 GOVERNING LAW

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); *Semitool, 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." *Semitool*, 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 defendant with sufficient specificity that the court can determine that the defendant is a real person

24
 25 ¹³ *Id.* at 6 (¶ 38).

26 ¹⁴ *Id.* at 2 (¶ 5).

27 ¹⁵ *Id.* at 6 (¶¶ 35–39).

¹⁶ Appl. – ECF No. 9 at 10.

¹⁷ *Id.*

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

ANALYSIS

1. Strike 3 Holdings Establishes Good Cause for Early Discovery

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

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

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

¹⁹ Appl. – ECF No. 9 at 17.

²⁰ Compl. – ECF No. 1 at 2 (¶¶ 8–9).

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

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

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

26 ²¹ *Id.*

27 ²² *Id.* at 5 (¶¶ 28–32).

28 ²³ *Id.* at 5 (¶ 33).

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