

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 73.189.241.101,

Defendant.

Case No. 20-cv-05912-LB

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

Re: ECF No. 11

**INTRODUCTION**

The plaintiff Strike 3 Holdings owns the copyrights for several adult motion pictures.<sup>1</sup> It alleges that someone — the Doe defendant here — who uses the IP address 73.189.241.101 infringed on those copyrights.<sup>2</sup> Despite its own efforts, Strike 3 Holdings has not been able to identify the individual associated with that IP address.<sup>3</sup> Strike 3 Holdings now asks the court to let it serve a subpoena on non-party Comcast Cable Communications, LLC the Doe defendant’s

<sup>1</sup> Appl. – ECF No. 11 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.

<sup>2</sup> *Id.* at 13–14.

<sup>3</sup> *Id.* at 10–11.

1 internet service provider, to learn the Doe defendant's identity.<sup>4</sup> Because Strike 3 Holdings has  
2 demonstrated that good cause exists to allow it to serve a subpoena, 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*.<sup>5</sup> The motion pictures are registered with the  
7 United States Copyright Office.<sup>6</sup>

8 The Doe defendant, who uses the Comcast Cable Communications, LLC-provided IP address  
9 73.189.241.101, used the file distribution network known as "BitTorrent" to illegally download  
10 and distribute Strike 3 Holdings's copyrighted movies.<sup>7</sup> Through geolocation technology, Strike 3  
11 has traced each download made to the Doe defendant's IP address to a physical address in the  
12 Northern District of California.<sup>8</sup> Using a proprietary infringement detection system called "VXN  
13 Scan," Strike 3 Holdings established direct "TCP/IP" connections with the defendant's IP address  
14 while the defendant was using BitTorrent.<sup>9</sup> VXN Scan downloaded media files containing a digital  
15 copy of Strike 3's copyrighted movies from the defendant.<sup>10</sup> The "Info Hash" — the data that  
16 BitTorrent protocol uses to identify media files across the BitTorrent network — confirmed that  
17 the files that VXN Scan downloaded were downloaded from the defendant.<sup>11</sup> The defendant "has  
18 been recorded infringing 44 movies over an extended period of time."<sup>12</sup> Strike 3 Holdings did not  
19 give the defendant authorization to distribute its copyrighted movies.<sup>13</sup> Strike 3 Holdings alleges

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21 <sup>4</sup> See generally *id.*

22 <sup>5</sup> Compl. – ECF No. 1 at 2 (¶¶ 2–3).

23 <sup>6</sup> *Id.* at 6 ¶ 47).

24 <sup>7</sup> *Id.* at 4 (¶ 19).

25 <sup>8</sup> *Id.* at 2 (¶ 9).

26 <sup>9</sup> *Id.* at 5 (¶¶ 29–31).

27 <sup>10</sup> *Id.* (¶¶ 32–33).

28 <sup>11</sup> *Id.* at 6 (¶ 37).

29 <sup>12</sup> *Id.* at 2 (¶ 4).

30 <sup>13</sup> *Id.* at 6 (¶ 17).

1 that Comcast Cable Communications, LLC can identify the defendant through his or her IP  
2 address.<sup>14</sup>

3 On August 21, 2020, Strike 3 Holdings filed a complaint against the Doe defendant alleging  
4 one claim for copyright infringement under the Copyright Act.<sup>15</sup> On October 10, 2020, Strike 3  
5 Holdings filed an *ex parte* application asking the court to allow it to serve Comcast Cable  
6 Communications, LLC with a subpoena under Federal Rule of Civil Procedure 45.<sup>16</sup> Strike 3  
7 Holdings says that the subpoena will be limited to the name and address of the individual/  
8 individuals associated with the Doe defendant's IP address.<sup>17</sup>

### GOVERNING LAW

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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); *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 who can be sued in federal court, (2) recounts the steps taken to locate and identify the defendant,

25  
26 <sup>14</sup> *Id.* at 2 (¶ 5).

27 <sup>15</sup> *Id.* at 7–8 (¶¶ 49–54).

28 <sup>16</sup> Appl. – ECF No. 11 at 10.

<sup>17</sup> ...

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

## 10 ANALYSIS

### 11 1. Strike 3 Holdings Establishes Good Cause for Early Discovery

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

15 First, Strike 3 Holdings has identified the Doe defendant with sufficient specificity that the  
 16 court can determine that he or she is a real person who can be sued in federal court. It alleges that  
 17 the Doe defendant downloaded Strike 3 Holdings’s copyrighted adult motion pictures and  
 18 distributed them over the BitTorrent network.<sup>18</sup> To download the movie, the Doe defendant had to  
 19 direct his or her BitTorrent client to download the media file.<sup>19</sup> These facts indicate that the Doe  
 20 defendant is an identifiable adult who likely is the primary subscriber of the IP address or  
 21 someone who resides with and is known to the subscriber. Strike 3 Holdings also has traced each  
 22 download made to the Doe defendant’s IP address to the Northern District of California, thus  
 23 giving the court jurisdiction over the defendant and Strike 3’s federal claim.<sup>20</sup>  
 24  
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26 \_\_\_\_\_  
 27 <sup>18</sup> Compl. – ECF No. 1 at 6 (¶¶ 45, 47).

<sup>19</sup> Appl. – ECF No. 11 at 16.

<sup>20</sup> Compl. – ECF No. 1 at 6 (¶¶ 45, 47).

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.<sup>21</sup> 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.<sup>22</sup>  
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 the Doe Defendant's ISP, Comcast Cable can identify the Doe defendant through his  
22 or her IP address.<sup>23</sup>

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26 <sup>21</sup> *Id.*

27 <sup>22</sup> *Id.* at 6 (¶¶ 45–47).

28 <sup>23</sup> *Id.* at 6 (¶ 48).

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