

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

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

STRIKE 3 HOLDINGS, LLC,  
Plaintiff,  
v.  
JOHN DOE SUBSCRIBER ASSIGNED IP  
ADDRESS 67.180.142.99,  
Defendant.

Case No. [21-cv-07970-EMC](#)

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

Docket No. 7

**I. INTRODUCTION**

The plaintiff Strike 3 Holdings owns the copyrights for several adult motion pictures. Docket No. 7 (“Ex Parte Appl.”) at 9. It alleges that someone — the Doe defendant here — who uses the IP address 67.180.142.99 infringed on those copyrights. Docket No. 1 (“Compl.”). Despite its own efforts, Strike 3 Holdings has not been able to identify the individual associated with that IP address. Ex Parte Appl. at 18. Strike 3 Holdings now asks the Court to let it serve a subpoena on non-party Comcast, the Doe defendant’s internet service provider, to learn the Doe defendant’s identity. *See generally id.*

Because Strike 3 Holdings has demonstrated that good cause exists to allow it to serve a subpoena, the Court **GRANTS** the motion.

**II. BACKGROUND**

Strike 3 Holdings is the owner of several adult motion pictures distributed through its adult brands *Blacked*, *Tushy*, *Vixen*, and *Blacked Raw*. Ex Parte Appl. at 10. Strike 3 holds title to each of the motion pictures distributed through its brands’ sites. *Id.*

The Doe defendant, who uses the Comcast-provided IP address 67.180.142.99, allegedly

1 used the file distribution network known as “BitTorrent” to illegally download and distribute  
 2 Strike 3 Holdings’s copyrighted movies. Compl. ¶ 38. Through geolocation technology, Strike 3  
 3 has traced each download made to the Doe defendant’s IP address to a physical address in the  
 4 Northern District of California. Ex Parte Appl. at 16-17. Strike 3 Holdings’s investigator  
 5 established direct “TCP/IP” connections with the defendant’s IP address while the defendant was  
 6 using BitTorrent. Compl. ¶¶ 30-33. The investigator downloaded media files containing a digital  
 7 copy of Strike 3’s copyrighted movies from the defendant. Compl. ¶¶ 28-47. The file hash — a  
 8 unique value that acts as a fingerprint identifying media files — confirmed that the files the  
 9 investigator downloaded were downloaded from the defendant. *Id.*; Ex Parte Appl. at 18. The  
 10 defendant “has been recorded infringing 38 movies over an extended period of time.” Compl. ¶ 4.  
 11 Strike 3 Holdings did not give the defendant permission or authorization to distribute its  
 12 copyrighted movies. *Id.* ¶ 51. Strike 3 Holdings alleges that Comcast can identify the defendant  
 13 through his or her IP address. *Id.* ¶ 5; Ex Parte Appl. at 20.

14 On October 11, 2021, Strike 3 Holdings filed a complaint against the Doe defendant  
 15 alleging one claim for copyright infringement under the Copyright Act. Compl. On October 20,  
 16 2021, Strike 3 Holdings filed an ex parte application asking the court to allow it to serve Comcast  
 17 with a subpoena under Federal Rule of Civil Procedure 45. Ex Parte Appl. Strike 3 Holdings says  
 18 that the subpoena will be limited to the name and address of the individual/individuals associated  
 19 with the Doe defendant’s IP address. *Id.* at 21.

### 20 III. LEGAL STANDARD

21 A court may authorize early discovery before the Rule 26(f) conference for the parties’ and  
 22 witnesses’ convenience and in the interests of justice. Fed. R. Civ. P. 26(d). Courts within the  
 23 Ninth Circuit generally consider whether a plaintiff has shown “good cause” for early discovery.  
 24 *See, e.g., IO Grp., Inc. v. Does 1–65*, No. 10-4377 SC, 2010 WL 4055667, at \*2 (N.D. Cal. Oct.  
 25 15, 2010); *Semitoool, Inc. v. Tokyo Electron Am., Inc.*, 208 F.R.D. 273, 275–77 (N.D. Cal. 2002);  
 26 *Tex. Guaranteed Student Loan Corp. v. Dhindsa*, No. 1:10-cv-00335-LJO-SKO, 2010 WL  
 27 2353520, at \*2 (E.D. Cal. June 9, 2010); *Yokohama Tire Corp. v. Dealers Tire Supply, Inc.*, 202

28 F.R.D. 612, 612–14 (D. Ariz. 2001) (collecting cases and standards). “Good cause may be found

1 where the need for expedited discovery, in consideration of the administration of justice,  
2 outweighs the prejudice to the responding party.” *Semitoal*, 208 F.R.D. at 276.

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

#### 15 IV. ANALYSIS

##### 16 A. Strike 3 Holdings Establishes Good Cause for Early Discovery

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

20 First, Strike 3 Holdings has identified the Doe defendant with sufficient specificity that the  
21 Court can determine that he or she is a real person who can be sued in federal court. It alleges that  
22 the Doe defendant downloaded Strike 3 Holdings’s copyrighted adult motion pictures and  
23 distributed them over the BitTorrent network. Compl. ¶¶ 28-47. To download the movie, the Doe  
24 defendant had to direct his or her BitTorrent client to download the media file. *Id.* These facts  
25 indicate that the Doe defendant is an identifiable adult who likely is the primary subscriber of the  
26 IP address or someone who resides with and is known to the subscriber. Ex Parte Appl. at 13-14.  
27 Strike 3 Holdings also has traced each download made to the Doe defendant’s IP address to the

1 federal claim. Compl. ¶¶ 8-10.

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

6 Third, Strike 3 Holdings has demonstrated that its copyright claim could withstand a  
7 motion to dismiss. A plaintiff "must satisfy two requirements to present a prima facie case of  
8 direct infringement: (1) [he or she] must show ownership of the allegedly infringed material and  
9 (2) [he or she] must demonstrate that the alleged infringers violate at least one exclusive right  
10 granted to copyright holders under 17 U.S.C. § 106." *Perfect 10, Inc. v. Amazon.com, Inc.*, 508  
11 F.3d 1146, 1159 (9th Cir. 2007) (citing *A&M Records, Inc. v. Napster, Inc.*, 239 F.3d 1004, 1013  
12 (9th Cir. 2001)); *see* 17 U.S.C. § 501(a). Under Section 106, a copyright holder has the exclusive  
13 rights to reproduce, distribute, publicly display, perform, and create derivative works of the  
14 copyrighted work. Direct copyright infringement does not require intent or any particular state of  
15 mind. *Fox Broad. Co. Inc. v. Dish Network, LLC*, 905 F. Supp. 2d 1088, 1098–99 (C.D. Cal.  
16 2012); *Religious Tech. Ctr. v. Netcom On-Line Commc 'n Servs., Inc.*, 907 F. Supp. 1361, 1367  
17 (N.D. Cal. 1995). Strike 3 Holdings alleges that it holds the copyrights for the adult motion  
18 pictures that the Doe defendant downloaded (and thus copied) and distributed the movies without  
19 its permission. Compl. ¶ 51. Strike 3 Holdings has sufficiently alleged a prima facie claim for  
20 copyright infringement.

21 Fourth, Strike 3 Holdings has shown that the discovery it seeks is reasonably likely to lead  
22 to identifying information that will permit service of process on the Doe defendant. Strike 3  
23 Holdings alleges that Comcast records should identify the Doe defendant. *Ex Parte Appl.* at 14-  
24 15.

25 B. Protective Order

26 "[U]nder Rule 26(c), the Court may *sua sponte* grant a protective order for good cause  
27 shown." *McCoy v. Sw. Airlines Co., Inc.*, 211 F.R.D. 381, 385 (C.D. Cal. 2002). The court issues

28 the limited protective order described below because the ISP subscriber may be an innocent third

1 party and the subject matter of the suit deals with sensitive and personal matters.

2 Here, as has been discussed by other courts in this district, the ISP subscribers may not be  
3 the individuals who infringed upon Strike 3 Holdings's copyright. *See, e.g., Pac. Century Int'l*  
4 *Ltd. v. Does 1-101*, No. C-11-02533 (DMR), 2011 WL 5117424, at \*2 (N.D. Cal. Oct. 27, 2011);  
5 *see also IO Grp., Inc. v. Does 1-19*, No. C 10-03851 SI, 2011 WL 772909, at \*1 (N.D. Cal. Mar.  
6 1, 2011) (granting the plaintiff additional time to identify and serve the true defendant where a  
7 subscriber asserted that he did not infringe plaintiff's work, suggesting that someone else used his  
8 IP address to infringe the plaintiff's work, and the plaintiff claimed that it needed to take third-  
9 party discovery from the subscriber to try to identify who actually used the subscriber's IP address  
10 to allegedly infringe the plaintiff's work).

11 Additionally, requests for pseudonymity have been granted when anonymity is necessary  
12 to preserve privacy in a matter of a sensitive and highly personal nature. *See Does I Thru XXIII v.*  
13 *Advanced Textile Corp.*, 214 F.3d 1058, 1068 (9th Cir. 2000). An allegation that an individual  
14 illegally downloaded adult motion pictures likely goes to matters of a sensitive and highly  
15 personal nature, including one's sexuality.

16 Accordingly, the Court issues a protective order to the limited extent that any information  
17 regarding the Doe defendant released to Strike 3 Holding by the ISP will be treated as confidential  
18 for a limited duration. *See IO Grp., Inc. v. Does 1-19*, No. C 10-03851 SI, 2010 WL 5071605, at  
19 \*2 (N.D. Cal. 2010). Specifically, Strike 3 Holdings must not publicly disclose that information  
20 until the Doe defendant has the opportunity to file a motion with this Court to be allowed to  
21 proceed in this litigation anonymously and that motion is ruled on by the Court. *Id.*

22 If the Doe defendant fails to file a motion for leave to proceed anonymously within 30  
23 days after his or her information is disclosed to Strike 3 Holdings's counsel, this limited protective  
24 order will expire. *Id.* Given the potential embarrassment associated with being publicly accused  
25 of having illegally downloaded adult motion pictures, if the Doe defendant includes identifying  
26 information within his or her request to proceed anonymously, the Court finds good cause to order  
27 the papers filed under seal until the Court has the opportunity to rule on the request. *See id.* at \*3

28 (committing party to file under seal a declaration with identifying information). If the Doe

# 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.