

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 73.92.217.35,  
Defendant.

Case No. 3:23-cv-00236-MMC (LB)

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

Re: ECF No. 8

**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 73.92.217.35 infringed on those copyrights.<sup>2</sup> Despite its own efforts, Strike 3 has not been able to identify the individual associated with that IP address.<sup>3</sup> Strike 3 now asks the court to let it serve a subpoena on non-party Comcast Cable, the Doe defendant’s internet-service provider (ISP), to learn the Doe defendant’s identity.<sup>4</sup> The trial court referred discovery in this case, including the plaintiff’s ex

<sup>1</sup> Appl. – ECF No. 8 at 13–14. 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> Compl. – ECF No. 1 at 2 (¶¶ 4–5).

<sup>3</sup> Appl. – ECF No. 8 at 14.

<sup>4</sup> See Compl. – ECF No. 1 at 2 (¶¶ 1–2).

1 parte application, to the undersigned.<sup>5</sup> Because Strike 3 has demonstrated that good cause exists to  
 2 allow it to serve a subpoena, the court grants the motion.

### 3 4 STATEMENT

5 Strike 3 is the owner of several adult motion pictures distributed through its adult brands  
 6 *Blacked, Tushy, Vixen, and Blacked Raw*.<sup>6</sup> The motion pictures are registered with the United  
 7 States Copyright Office.<sup>7</sup>

8 The Doe defendant, who uses the Comcast Cable-provided IP address 73.92.217.35, used the  
 9 file distribution network known as “BitTorrent” to illegally download and distribute Strike 3’s  
 10 copyrighted movies.<sup>8</sup> Through geolocation technology, Strike 3 has traced each download made to  
 11 the Doe defendant’s IP address to a physical address in the Northern District of California.<sup>9</sup> Using  
 12 a proprietary infringement detection system called “VXN Scan,” Strike 3 established direct  
 13 “TCP/IP” connections with the defendant’s IP address while the defendant was using BitTorrent.<sup>10</sup>  
 14 VXN Scan downloaded media files containing a digital copy of Strike 3’s copyrighted movies  
 15 from the defendant.<sup>11</sup> The “Info Hash” — the data that BitTorrent protocol uses to identify media  
 16 files across the BitTorrent network — confirmed that the files that VXN Scan downloaded were  
 17 downloaded from the defendant.<sup>12</sup> The defendant “has been recorded infringing 30 movies over an  
 18 extended period of time.”<sup>13</sup> Strike 3 did not give the defendant authorization to distribute its  
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22 <sup>5</sup> Order – ECF No. 9.

23 <sup>6</sup> Compl. – ECF No. 1 at 1–2 (¶¶ 2–3).

24 <sup>7</sup> *Id.* at 6 (¶ 46).

25 <sup>8</sup> *Id.* at 2 (¶¶ 4–5).

26 <sup>9</sup> *Id.* (¶ 9).

27 <sup>10</sup> *Id.* at 5 (¶¶ 28–30).

28 <sup>11</sup> *Id.* (¶¶ 31–32).

29 <sup>12</sup> *Id.* at 6 (¶ 36).

30 <sup>13</sup> *Id.* at 6 (¶ 36).

1 copyrighted movies.<sup>14</sup> Strike 3 alleges that Comcast Cable can identify the defendant through his  
2 or her IP address.<sup>15</sup>

3 On January 18, 2023, Strike 3 filed a complaint against the Doe defendant alleging one claim  
4 for copyright infringement under the Copyright Act.<sup>16</sup> On February 12, 2023, Strike 3 filed an ex  
5 parte application asking the court to allow it to serve Comcast Cable with a subpoena under  
6 Federal Rule of Civil Procedure 45.<sup>17</sup> Strike 3 says that the subpoena will be limited to the name  
7 and address of the individual/individuals associated with the Doe defendant's IP address.<sup>18</sup>

### 8

### 9 GOVERNING LAW

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

20 In evaluating whether a plaintiff establishes good cause to learn the identity of a Doe  
21 defendant through early discovery, courts examine whether the plaintiff: (1) identifies the Doe  
22 defendant with sufficient specificity that the court can determine that the defendant is a real person  
23 who can be sued in federal court, (2) recounts the steps taken to locate and identify the defendant,

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25 <sup>14</sup> *Id.* at 6 (¶ 44).

26 <sup>15</sup> *Id.* at 2 (¶ 5).

27 <sup>16</sup> *Id.* at 7 (¶¶ 48–53).

28 <sup>17</sup> Appl. – ECF No. 8 at 9.

<sup>18</sup> *Id.* at 9.

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 ANALYSIS

### 9 1. Strike 3 Establishes Good Cause for Early Discovery

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

13 First, Strike 3 has identified the Doe defendant with sufficient specificity that the court can  
 14 determine that he or she is a real person who can be sued in federal court. It alleges that the Doe  
 15 defendant downloaded Strike 3’s copyrighted adult motion pictures and distributed them over the  
 16 BitTorrent network.<sup>19</sup> To download the movie, the Doe defendant had to direct his or her  
 17 BitTorrent client to download the media file.<sup>20</sup> These facts indicate that the Doe defendant is an  
 18 identifiable adult who likely is the primary subscriber of the IP address or someone who resides  
 19 with and is known to the subscriber. Strike 3 also has traced each download made to the Doe  
 20 defendant’s IP address to the Northern District of California, thus giving the court jurisdiction  
 21 over the defendant and Strike 3’s federal claim.<sup>21</sup>

22 Second, Strike 3 has recounted the steps taken to locate and identify the Doe defendant. The  
 23 Doe defendant downloaded and distributed Strike 3’s movies through his or her IP address, and  
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 27 <sup>19</sup> Compl. – ECF No. 1 at 2 (¶ 4).

<sup>20</sup> Appl. – ECF No. 8 at 16.

<sup>21</sup> Compl. – ECF No. 1 at 2 (¶ 4).

1 his or her IP address was traced to this district.<sup>22</sup> The IP address is not sufficient for Strike 3 to  
 2 identify the Doe defendant.<sup>23</sup>

3 Third, Strike 3 has demonstrated that its copyright claim could withstand a motion to dismiss.  
 4 A plaintiff “must satisfy two requirements to present a prima facie case of direct infringement:  
 5 (1) [he or she] must show ownership of the allegedly infringed material and (2) [he or she] must  
 6 demonstrate that the alleged infringers violate at least one exclusive right granted to copyright  
 7 holders under 17 U.S.C. § 106.” *Perfect 10, Inc. v. Amazon.com, Inc.*, 508 F.3d 1146, 1159 (9th  
 8 Cir. 2007); *see* 17 U.S.C. § 501(a). Under Section 106, a copyright holder has the exclusive rights  
 9 to reproduce, distribute, publicly display, perform, and create derivative works of the copyrighted  
 10 work. Direct copyright infringement does not require intent or any particular state of mind. *Fox*  
 11 *Broad. Co. v. Dish Network, LLC*, 905 F. Supp. 2d 1088, 1098–99 (C.D. Cal. 2012); *Religious*  
 12 *Tech. Ctr. v. Netcom On-Line Commc’n Servs., Inc.*, 907 F. Supp. 1361, 1367 (N.D. Cal. 1995).  
 13 Strike 3 alleges that it holds the copyrights for the adult motion pictures that the Doe defendant  
 14 downloaded (and thus copied) and distributed the movies without its permission.<sup>24</sup> Strike 3 has  
 15 sufficiently alleged a prima facie claim for copyright infringement.

16 Fourth, Strike 3 has shown that the discovery it seeks is reasonably likely to lead to identifying  
 17 information that will permit service of process on the Doe defendant. Strike 3 alleges that the Doe  
 18 Defendant’s ISP, Comcast Cable, can identify the Doe defendant through his or her IP address.<sup>25</sup>

## 20 **2. Protective Order**

21 “[U]nder Rule 26(c), the Court may *sua sponte* grant a protective order for good cause  
 22 shown.” *McCoy v. Sw. Airlines Co.*, 211 F.R.D. 381, 385 (C.D. Cal. 2002). The court issues the  
 23 limited protective order described below because the ISP subscriber may be an innocent third  
 24 party and the subject matter of the suit deals with sensitive and personal matters.

25 \_\_\_\_\_  
 26 <sup>22</sup> Compl. – ECF No. 1 at 2 (¶¶ 9–10).

27 <sup>23</sup> Appl. – ECF No. 8 at 14.

28 <sup>24</sup> Compl. – ECF No. 1 at 6 (¶¶ 44, 46).

<sup>25</sup> *Id.* at 6 (¶ 45).

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