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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

STRIKE 3 HOLDINGS, LLC,
Plaintiff,
v.
JOHN DOE SUBSCRIBER ASSIGNED
IP ADDRESS 73.222.246.161,
Defendant.

Case No. 21-cv-07759-PJH

**ORDER GRANTING PLAINTIFF’S EX
PARTE REQUEST TO TAKE EARLY
DISCOVERY**

Re: Dkt. No. 7

United States District Court
Northern District of California

Plaintiff Strike 3 Holdings, LLC (“Strike 3”) owns the copyrights for several adult motion pictures. It alleges that someone—the Doe defendant here—who uses the IP address 73.222.246.161 infringed on those copyrights. Despite its own efforts, Strike 3 has not been able to identify the individual associated with that IP address. Strike 3 now asks the court to let it serve a subpoena on non-party Comcast Cable, the Doe defendant’s internet service provider, to learn the Doe defendant’s identity. Because Strike 3 has demonstrated that good cause exists to allow it to serve a subpoena, the court GRANTS the motion.

I. BACKGROUND

Strike 3 is the owner of several adult motion pictures distributed through its adult brands *Blacked*, *Blacked Raw*, *Tushy*, and *Vixen*. Williamson Decl. at ¶ 13 (Dkt. 7-1 at 4). Strike 3 holds title to the intellectual property associated with these brands, including the copyrights to each of the motion pictures distributed through the brands’ sites and the trademarks to each of the brands’ names and logos. Williamson Decl. at ¶ 13.

Strike 3 alleges the Doe defendant, who uses the Comcast Cable provided IP

1 address 73.222.246.161, used the file distribution network known as “BitTorrent” to
2 illegally download and distribute Strike 3’s copyrighted movies. Through its infringement
3 detection system, “VXN Scan,” Strike 3 traced copying made over BitTorrent to
4 defendant’s IP address. See Williamson Decl. and Paige Decl. (Dkt. 7-1). Then, using a
5 well-accepted geolocation technology, Strike 3 traced the file sharing made to the Doe
6 defendant’s IP address to a physical address in the Northern District of California,
7 specifically in San Leandro, California. Kennedy Decl. (Dkt. 7-1 at 31). Strike 3’s
8 investigator confirmed that an Internet user at the defendant’s IP address engaged in a
9 BitTorrent transaction that shared certain media files by analyzing a “packet capture”
10 (“PCAP”) that recorded the transaction. Paige Decl. ¶¶ 14-18 (Dkt. 7-1 at 20). The
11 media files from the PCAP correspond to Strike 3’s copyrighted material. Stalzer Decl.
12 (Dkt. 7-1 at 25-26). The defendant “has been recorded infringing 30 movies over an
13 extended period of time.” Compl. ¶ 4; see also Ex. A (Dkt. 1-1). Strike 3 did not give the
14 defendant permission or authorization to distribute its copyrighted movies. Strike 3
15 alleges that Comcast Cable can identify the defendant through his or her IP address.

16 On October 5, 2021, Strike 3 filed a complaint against the Doe defendant alleging
17 one claim for copyright infringement under the Copyright Act. Dkt. 1. On October 11,
18 2021, Strike 3 filed an ex parte motion asking the court to allow it to serve Comcast Cable
19 with a subpoena under Federal Rule of Civil Procedure 45. Dkt. 7. Strike 3 says that the
20 subpoena will be limited to the name and address of the individual/individuals associated
21 with the Doe defendant’s IP address.

22 II. DISCUSSION

23 A. Legal Standard

24 A court may authorize early discovery before the Rule 26(f) conference for the
25 parties’ and witnesses’ convenience and in the interests of justice. Fed. R. Civ. P. 26(d).
26 Courts within the Ninth Circuit generally consider whether a plaintiff has shown “good
27 cause” for early discovery. See, e.g., Strike 3 Holdings, LLC v. JOHN DOE subscriber

28 assigned IP address 73.222.246.161, No. 19-CV-01666-LB, 2019 WL 4865028, at *2 (N.D.

1 Cal. Apr. 25, 2019); IO Grp., Inc. v. Does 1-65, No. C 10-4377 SC, 2010 WL 4055667, at
 2 *2 (N.D. Cal. Oct. 15, 2010); Semitool, Inc. v. Tokyo Electron Am., Inc., 208 F.R.D. 273,
 3 275-77 (N.D. Cal. 2002); Yokohama Tire Corp. v. Dealers Tire Supply, Inc., 202 F.R.D.
 4 612, 613-14 (D. Ariz. 2001) (collecting cases and standards). “Good cause may be found
 5 where the need for expedited discovery, in consideration of the administration of justice,
 6 outweighs the prejudice to the responding party.” Semitool, 208 F.R.D. at 276.

7 In evaluating whether a plaintiff establishes good cause to learn the identity of a
 8 Doe defendant through early discovery, courts examine whether the plaintiff: (1) identifies
 9 the Doe defendant with sufficient specificity that the court can determine that the
 10 defendant is a real person who can be sued in federal court; (2) recounts the steps taken
 11 to locate and identify the defendant; (3) demonstrates that the action can withstand a
 12 motion to dismiss; and (4) shows that the discovery is reasonably likely to lead to
 13 identifying information that will permit service of process. Columbia Ins. Co. v.
 14 seescandy.com, 185 F.R.D. 573, 578-80 (N.D. Cal. 1999) (citations omitted). “[W]here
 15 the identity of alleged defendants [is not] known prior to the filing of a complaint[,] the
 16 plaintiff should be given an opportunity through discovery to identify the unknown
 17 defendants, unless it is clear that discovery would not uncover the identities, or that the
 18 complaint would be dismissed on other grounds.” Wakefield v. Thompson, 177 F.3d
 19 1160, 1163 (9th Cir. 1999) (quoting Gillespie v. Civiletti, 629 F.2d 637, 642 (9th Cir.
 20 1980)).

21 B. Analysis

22 1. *Strike 3 Establishes Good Cause for Early discovery*

23 An internet service provider (“ISP”) cannot disclose information correlating the
 24 identity of a user unless authorized to do so by a court order. See 47 U.S.C. §
 25 551(c)(2)(B) (“A cable operator may disclose such information if the disclosure is . . .
 26 made pursuant to a court order authorizing such disclosure[.]”). Strike 3 has made a
 27 sufficient showing under each of the four seescandy factors listed above to establish

1 the ISP.

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

11 Second, Strike 3 has recounted the steps taken to locate and identify the Doe
12 defendant. The Doe defendant downloaded and distributed Strike 3's movies through his
13 or her IP address, and his or her IP address was traced to this district. The IP address
14 alone is not sufficient for Strike 3 to identify the Doe defendant.

15 Third, Strike 3 has demonstrated that its copyright claim could withstand a motion
16 to dismiss. A plaintiff "must satisfy two requirements to present a prima facie case of
17 direct infringement: (1) [he or she] must show ownership of the allegedly infringed
18 material and (2) [he or she] must demonstrate that the alleged infringers violate at least
19 one exclusive right granted to copyright holders under 17 U.S.C. § 106." Perfect 10, Inc.
20 v. Amazon.com, Inc., 508 F.3d 1146, 1159 (9th Cir. 2007) (citing A&M Records, Inc. v.
21 Napster, Inc., 239 F.3d 1004, 1013 (9th Cir. 2001)); see also 17 U.S.C. § 501(a). Under
22 § 106, a copyright holder has the exclusive rights to reproduce, distribute, publicly
23 display, perform, and create derivative works of the copyrighted work. Direct copyright
24 infringement does not require intent or any particular state of mind. Fox Broad. Co., Inc.
25 v. Dish Network, LLC, 905 F. Supp. 2d 1088, 1098-99 (C.D. Cal. 2012); Religious Tech.
26 Ctr. v. Netcom On-Line Commc'n Servs., Inc., 907 F. Supp. 1361, 1367 (N.D. Cal. 1995).
27 Strike 3 alleges that it holds the copyrights for the adult motion pictures that the Doe

1 sufficiently alleged a prima facie claim for copyright infringement.

2 Fourth, Strike 3 has shown that the discovery it seeks is reasonably likely to lead
3 to identifying information that will permit service of process on the Doe defendant. Strike
4 3 alleges that Comcast Cable's records should identify the Doe defendant.

5 **2. Protective Order**

6 "[U]nder Rule 26(c), the Court may sua sponte grant a protective order for good
7 cause shown." McCoy v. Southwest Airlines Co., Inc., 211 F.R.D. 381, 385 (C.D. Cal.
8 2002). The court issues the limited protective order described below because the ISP
9 subscriber may be an innocent third party, and the subject matter of the suit deals with
10 sensitive and personal matters.

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

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

26 Accordingly, the court issues a protective order to the limited extent that any
27 information regarding the Doe defendant released to Strike 3 by the ISP will be treated as

28 confidential for a limited duration. See IO Group, Inc. v. Does 1-19, No. C 10-03851 SI

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