

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

STRIKE 3 HOLDINGS, LLC,
Plaintiff,
v.
JOHN DOE SUBSCRIBER ASSIGNED IP
ADDRESS 24.6.63.42,
Defendant.

Case No. 23-cv-06685-EJD

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

Re: ECF No. 7

Plaintiff Strike 3 Holdings, LLC (“Strike 3”), filed this copyright infringement action against an unknown individual (the “Doe Defendant”) who allegedly used BitTorrent to illegally download and distribute Strike 3’s copyrighted adult films. *See* Compl., ECF No. 1. Strike 3 seeks a subpoena to compel third-party Comcast Cable to identify the Doe Defendant, who is associated with the IP address 24.6.63.42, for service of process. *See* Ex Parte Appl. for Leave to Serve Third-Party Subpoena (“Appl.”), ECF No. 7.

Based on Strike 3’s submissions, the Court GRANTS leave to serve a subpoena with specific conditions provided below. Because many courts have raised concerns that Strike 3 could be pursuing potentially innocent ISP account owners who are often embarrassed into early settlements, the identity of the Doe Defendant SHALL be protected unless and until further order by the Court.

I. BACKGROUND

Strike 3 owns the copyrights for several adult motion pictures that are associated with and distributed through various adult websites. *See* Compl. ¶¶ 1–3, 43, ECF No. 1; *see id.* at Exh. A,

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1 ECF No. 1-1. Using a specialized infringement detection system it developed (the “VXN Scan
2 System”), Strike 3 discovered the IP address of the Doe Defendant who allegedly infringed upon
3 its copyrights. *See* Compl. ¶¶ 28–29. The Complaint alleges that the Doe Defendant illegally
4 downloaded and distributed 28 motion pictures copyrighted by Strike 3 by using BitTorrent, a
5 system designed to quickly distribute large files over the Internet. *See id.* ¶¶ 18, 29, 38; *see id.* at
6 Exh. A.

7 Strike 3 filed this action on December 29, 2023, asserting one claim of direct copyright
8 infringement and seeking an injunction and statutory damages. *Id.* ¶¶ 48–53. Strike 3 filed the
9 instant Application on January 11, 2024, seeking leave to serve a third-party subpoena on Comcast
10 Cable prior to a Rule 26(f) conference. *See* Appl.

11 **II. LEGAL STANDARD**

12 A court may authorize early discovery before the Rule 26(f) conference for the parties’ and
13 witnesses’ convenience and in the interests of justice. *See* Fed. R. Civ. P. 26(d). Courts within the
14 Ninth Circuit generally consider whether a plaintiff has shown “good cause.” *See, e.g., IO Grp.,*
15 *Inc. v. Does 1–65*, No. 10–4377, 2010 WL 4055667, at *2 (N.D. Cal. Oct. 15, 2010); *Semitoool,*
16 *Inc. v. Tokyo Electron Am., Inc.*, 208 F.R.D. 273, 275–77 (N.D. Cal. 2002). “Good cause may be
17 found where the need for expedited discovery, in consideration of the administration of justice,
18 outweighs the prejudice to the responding party.” *Semitoool*, 208 F.R.D. at 276.

19 In evaluating whether a plaintiff establishes good cause to learn the identity of a Doe
20 defendant through early discovery, courts examine whether the plaintiff:

- 21 (1) identifies the Doe defendant with sufficient specificity that the court can determine that
22 the defendant is a real person who can be sued in federal court;
- 23 (2) recounts the steps taken to locate and identify the defendant;
- 24 (3) demonstrates that the action can withstand a motion to dismiss; and
- 25 (4) shows that the discovery is reasonably likely to lead to identifying information that will
26 permit service of process.

27 *See Columbia Ins. Co. v. seescandy.com* (“*Seescandy.com*”), 185 F.R.D. 573, 578–80 (N.D. Cal.

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1 1999) (citations omitted). “[W]here the identity of alleged defendants [is not] known prior to the
 2 filing of a complaint[,] the plaintiff should be given an opportunity through discovery to identify
 3 the unknown defendants, unless it is clear that discovery would not uncover the identities, or that
 4 the complaint would be dismissed on other grounds.” *Wakefield v. Thompson*, 177 F.3d 1160,
 5 1163 (9th Cir. 1999).

6 **III. DISCUSSION**

7 **A. Strike 3’s Litigation History**

8 As this Court has done in its prior orders, before turning to the merits of the application,
 9 the Court first provides an overview of Strike 3’s litigation history as useful context for the Doe
 10 Defendant or any other party who may receive this Order. *See Strike 3 Holdings, LLC v. John*
 11 *Doe Subscriber Assigned IP Address 73.231.214.39*, No. 23-CV-05468-EJD, 2023 WL 8458262,
 12 at *2 (N.D. Cal. Nov. 27, 2023); *Strike 3 Holdings, LLC v. John Doe Subscriber Assigned IP*
 13 *Address 174.160.76.56*, No. 24-CV-00440-EJD, 2024 WL 950171, at *2 (N.D. Cal. Mar. 5, 2024).
 14 Given the informational disparity and matrix of undesirable options facing an ISP subscriber
 15 served with such a complaint as the one filed in this action, the Court hopes the following context
 16 will reduce any prejudice that individual may face.

17 Strike 3 has filed thousands of similar lawsuits and requests to subpoena subscriber
 18 information from ISPs, such as Comcast Cable. *See, e.g., Strike 3 Holdings, LLC v. Doe*, No. 23-
 19 CV-04339-RS, 2023 WL 6542326, at *2 (N.D. Cal. Sept. 22, 2023) (collecting cases). At least
 20 one federal judge has also openly characterized Strike 3 as a “copyright troll” that uses its
 21 “swarms of lawyers [to] hound people who allegedly watch their content through BitTorrent.”
 22 *Strike 3 Holdings, LLC v. Doe*, 351 F. Supp. 3d 160, 161–62 (D.D.C. 2018) (describing the
 23 copyright troll’s strategy as “file a deluge of complaints; ask the court to compel disclosure of the
 24 account holders; settle as many claims as possible; abandon the rest”), *rev’d and remanded*, 964
 25 F.3d 1203 (D.C. Cir. 2020); *see also, e.g., Strike 3 Holdings, LLC v. John Doe (73.225.38.130)*,
 26 No. C17-1731, 2020 WL 531996, at *6 & n.6 (W.D. Wash. Feb. 3, 2020) (granting summary
 27 judgment and attorney fees in favor of Doe defendant and against Strike 3 and noting that “[a]

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1 copyright troll’s success derives ‘not from the Copyright Act, but from the law of large
2 numbers’”) (citation omitted).

3 The Court recognizes that in practice, once subscribers are alerted that they are being sued
4 for uploading pornography, they may be pressured to quickly settle the matter to avoid the risk of
5 having their names publicly associated with the lawsuit or the costs of hiring an expensive
6 copyright legal specialist. *See Strike 3 Holdings, LLC*, 2023 WL 6542326, at *2; *see also Strike 3*
7 *Holdings*, 351 F. Supp. 3d at 162 (“[O]nce the ISP outs the subscriber, permitting them to be
8 served as the defendant, any future Google search of their name will turn-up associations with the
9 websites *Vixen, Blacked, Tushy, and Blacked Raw.*”). As a result, many innocent ISP subscribers
10 would be pressured to settle, even though several courts have observed that “ISP subscribers may
11 not be the individuals who infringed upon Strike 3’s copyright.” *Strike 3 Holdings, LLC v. Doe*
12 *Subscriber Assigned IP Address 24.6.34.109*, No. 23-CV-01977, 2023 WL 4003723, at *3 (N.D.
13 Cal. May 9, 2023) (collecting cases); *see also Strike 3 Holdings*, 351 F. Supp. 3d at 162
14 (“[I]nferred the person who pays the cable bill illegally downloaded a specific file is even less
15 trustworthy than inferring they watched a specific TV show.”). Moreover, if a defendant moves to
16 confront a “copyright troll” or exhibits any serious resistance, the company can simply drop the
17 case and avoid any unfavorable judicial rulings. *See Strike 3 Holdings*, 351 F. Supp. 3d at 162
18 (“These serial litigants drop cases at the first sign of resistance, preying on low-hanging fruit and
19 staying one step ahead of any coordinated defense.”).

20 **B. Good Cause**

21 Turning to the merits of Strike 3’s *ex parte* application, the Court finds that Strike 3 has
22 demonstrated good cause for this early discovery under the four *Seescandy.com* factors.

23 First, the Court finds that Strike 3 has identified the Doe Defendant with sufficient
24 specificity for the Court to determine that the Doe Defendant is a real person who may be sued in
25 federal court. The Complaint alleges that BitTorrent’s protocols require the activity of a human
26 user to share movies within the BitTorrent network. Compl. ¶¶ 18–27. Strike 3 also used “IP
27 address geolocation technology” offered by the company Maxmind Inc. to trace the IP address that

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1 Strike 3 procured—through its VXN Scan System—to a physical location within this district. *Id.*
2 ¶¶ 9, 29.

3 Second, Strike 3 has described the steps it took to locate and identify the Doe Defendant.
4 *See* Appl. 10. In addition to the geolocation and infringement detection technology already
5 described, Strike 3 has attempted to associate the IP address with a defendant individual using
6 various web search tools and consultations with computer investigators and cyber security experts.
7 *See id.*

8 Third, Strike 3 has preliminarily demonstrated that its action can withstand a motion to
9 dismiss. “Plaintiffs must satisfy two requirements to present a prima facie case of direct
10 infringement: (1) they must show ownership of the allegedly infringed material and (2) they must
11 demonstrate that the alleged infringers violate at least one exclusive right granted to copyright
12 holders under 17 U.S.C. § 106.” *Perfect 10, Inc. v. Amazon.com, Inc.*, 508 F.3d 1146, 1159 (9th
13 Cir. 2007). A copyright holder’s rights under § 106 include the exclusive rights to reproduce,
14 distribute, publicly display, perform, and create derivative works of the copyrighted work. *See* 17
15 U.S.C. § 106. Here, Strike 3 alleges that it owns the copyrights to adult movies that the Doe
16 Defendant downloaded, copied, and distributed without permission. *See* Compl. ¶¶ 29, 44, 46; *see*
17 *id.* at Exh. A. Accepting these allegations as true, the Court finds that the Complaint may
18 withstand a motion to dismiss.

19 Fourth and finally, Strike 3 has shown that the discovery it seeks is reasonably likely to
20 lead to identifying information that will permit service of process on the Doe Defendant.
21 Specifically, Strike 3 only seeks the name and address of the Doe Defendant and has represented
22 that the “only entity that can correlate the IP address to its subscriber and identify Defendant as the
23 person assigned the IP address is Defendant’s ISP.” Appl. 6 (citing *BMG Rts. Mgmt. (US) LLC v.*
24 *Cox Commc’ns, Inc.*, 881 F.3d 293, 299 (4th Cir. 2018) (“[O]nly the ISP can match the IP address
25 to the subscriber’s identity.”)).

26 In sum, the Court finds that Strike 3 has satisfied all four *Seescandy.com* factors and
27 presented good cause for its requested expedited discovery.

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