

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 98.47.46.165,
Defendant.

Case No. 24-cv-00989-EJD

**ORDER GRANTING APPLICATION
FOR LEAVE TO FILE THIRD PARTY
SUBPOENA**

Re: ECF No. 7

Plaintiff, Strike 3 Holdings, LLC (“Strike 3”), filed this action against an unknown individual who allegedly used BitTorrent to illegally download and distribute Strike 3’s copyrighted adult films. Strike 3 now seeks a subpoena to compel non-party Comcast Cable to identify this unknown individual associated with the IP address 98.47.46.165. Ex Parte Appl. for Leave to Serve a 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

Plaintiff Strike 3 Holdings, LLC owns the copyrights for several adult motion pictures that are associated with and distributed through various adult websites. Compl. ¶¶ 1–3, ECF No. 1. Using a specialized infringement detection system it developed, Strike 3 discovered the IP address of the Doe Defendant who allegedly infringed upon its copyrights. *Id.* ¶¶ 28–29. Specifically, the

1 Complaint alleges that the Defendant used BitTorrent’s file network to illegally download and
 2 distribute about twenty-four (24) of Strike 3’s copyrighted material. *Id.* ¶¶ 29, 38; *see also id.*,
 3 Ex. A.

4 On January 20, 2024, Strike 3 filed the Complaint in this case, asserting one claim of direct
 5 copyright infringement and seeking an injunction and statutory damages. *Id.* at 7–8.

6 **II. LEGAL STANDARD**

7 A court may authorize early discovery before the Rule 26(f) conference for the parties’ and
 8 witnesses’ convenience and in the interests of justice. Fed. R. Civ. P. 26(d). Courts within the
 9 Ninth Circuit generally consider whether a plaintiff has shown “good cause.” *See, e.g., IO Grp.,*
 10 *Inc. v. Does 1–65*, 2010 WL 4055667, at *2 (N.D. Cal. Oct. 15, 2010); *Semitool, Inc. v. Tokyo*
 11 *Electron Am., Inc.*, 208 F.R.D. 273, 275–77 (N.D. Cal. 2002). “Good cause may be found where
 12 the need for expedited discovery, in consideration of the administration of justice, outweighs the
 13 prejudice to the responding party.” *Semitool*, 208 F.R.D. at 276.

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

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

22 *Columbia Ins. Co. v. seescandy.com*, 185 F.R.D. 573, 578–80 (N.D. Cal. 1999) (citations omitted).

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

1 **III. DISCUSSION**

2 **A. Strike 3's Litigation History**

3 As this Court has done in its prior orders, before turning to the merits of the application,
4 the Court believes that an overview of Strike 3's litigation history would provide useful context
5 for the Doe Defendant or any other party who may receive this Order. *See Strike 3 Holdings, LLC*
6 *v. John Doe Subscriber Assigned IP Address 73.231.214.39*, No. 5:23-CV-05468-EJD, 2023 WL
7 8458262, at *1 (N.D. Cal. Nov. 27, 2023). Especially given the informational disparity and matrix
8 of undesirable options facing an ISP subscriber served with such a complaint, this context will
9 hopefully reduce the prejudice that individual may face.

10 Strike 3 has filed thousands of similar lawsuits and requests to subpoena subscriber
11 information from ISPs, such as Comcast Cable. *See, e.g., Strike 3 Holdings, LLC v. Doe*, No. 23-
12 CV-04339-RS, 2023 WL 6542326, at *2 (N.D. Cal. Sept. 22, 2023) (collecting cases). At least
13 one federal judge has also openly characterized Strike 3 as a "copyright troll" that uses its
14 "swarms of lawyers [to] hound people who allegedly watch their content through BitTorrent."
15 *Strike 3 Holdings, LLC v. Doe*, 351 F. Supp. 3d 160, 161–62 (D.D.C. 2018) (describing the
16 copyright troll's strategy as "file a deluge of complaints; ask the court to compel disclosure of the
17 account holders; settle as many claims as possible; abandon the rest"), *rev'd and remanded*, 964
18 F.3d 1203 (D.C. Cir. 2020).

19 In practice, once subscribers are alerted that they are being sued for uploading
20 pornography, they may be pressured to quickly settle the matter to avoid the risk of having their
21 names publicly associated with the lawsuit or the costs of hiring an expensive copyright legal
22 specialist. *See Strike 3 Holdings, LLC*, 2023 WL 6542326, at *2; *see also Strike 3 Holdings*, 351
23 F. Supp. 3d at 162 ("[O]nce the ISP outs the subscriber, permitting them to be served as the
24 defendant, any future Google search of their name will turn-up associations with the websites
25 *Vixen, Blacked, Tushy, and Blacked Raw*"). As a result, many innocent ISP subscribers would be
26 pressured to settle, even though several courts have observed that "ISP subscribers may not be the
27 individuals who infringed upon Strike 3's copyright." *Strike 3 Holdings, LLC v. Doe*, No. 3:23-
28 CV-01077-LB, 2023 WL 4002722, at *2 (N.D. Cal. Mar. 9, 2023) (collecting cases); *see also*

1 *Strike 3 Holdings*, 351 F. Supp. 3d at 162 (“[I]nferred the person who pays the cable bill illegally
 2 downloaded a specific file is even less trustworthy than inferring they watched a specific TV
 3 show.”). Moreover, if a defendant moves to confront a “copyright troll” or exhibits any serious
 4 resistance, the company can simply drop the case and avoid any unfavorable judicial rulings. *See*
 5 *Strike 3 Holdings*, 351 F. Supp. 3d at 162 (“These serial litigants drop cases at the first sign of
 6 resistance, preying on low-hanging fruit and staying one step ahead of any coordinated defense.”).

7 **B. Good Cause**

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

10 First, the Court finds that Strike 3 has identified the Doe Defendant with sufficient
 11 specificity for the Court to determine that the Doe Defendant is a real person who may be sued in
 12 federal court. The Complaint alleges that BitTorrent’s protocols require the activity of a human
 13 user to share movies within the BitTorrent network. Compl. ¶¶ 18–27. Strike 3 also used
 14 Maxmind geolocation technology to trace the IP address it procured through its VXN Scan
 15 detection software to a geographic location within this district. *Id.* ¶ 9.

16 Second, Strike 3 has recounted the steps it took to locate and identify the Doe Defendant.
 17 In addition to the geolocation and infringement detection technology already described, Strike 3
 18 has attempted to associate the IP address with a defendant individual using various web search
 19 tools and consultations with computer investigators and cyber security experts. Appl. 10.

20 Third, Strike 3 has preliminarily demonstrated that its action can withstand a motion to
 21 dismiss. “Plaintiffs must satisfy two requirements to present a prima facie case of direct
 22 infringement: (1) they must show ownership of the allegedly infringed material and (2) they must
 23 demonstrate that the alleged infringers violate at least one exclusive right granted to copyright
 24 holders under 17 U.S.C. § 106.” *Perfect 10, Inc. v. Amazon.com, Inc.*, 508 F.3d 1146, 1159 (9th
 25 Cir. 2007). A copyright holder’s rights under § 106 include the exclusive rights to reproduce,
 26 distribute, publicly display, perform, and create derivative works of the copyrighted work. 17
 27 U.S.C. § 106. Here, Strike 3 alleges that it owns the copyrights to adult movies that the Doe
 28 Defendant downloaded, copied, and distributed without permission. Compl. ¶¶ 29–44. According

1 these allegations as true, the Court finds that the Complaint may withstand a motion to dismiss.

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

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

11 C. Protective Order

12 Even though Strike 3 is entitled to a pre-discovery subpoena, the Court retains authority
 13 under Federal Rule of Civil Procedure 26(c) to grant a *sua sponte* protective order for good cause.
 14 *See, e.g., McCoy v. Sw. Airlines Co.*, 211 F.R.D. 381, 385 (C.D. Cal. 2002); Fed. R. Civ. P. 26(c).
 15 In this case, the Court finds that there is good cause to implement limited protective measures to
 16 shield a potential innocent and unwitting ISP subscriber from undue prejudice. Strike 3 does not
 17 oppose establishing procedural safeguards to respect privacy interests. Appl. 12–13.

18 Consistent with the protective measures undertaken by many other courts in this district,
 19 the Court will employ procedures to treat as confidential any personal information regarding the
 20 Doe Defendant that Comcast Cable produces to Strike 3. The Court will also permit and consider
 21 any request by the Doe Defendant to proceed anonymously under a pseudonym.

22 IV. CONCLUSION

23 Based on the foregoing, the Court GRANTS Strike 3’s Ex Parte Application with respect
 24 to Defendant Doe, Subscriber Assigned IP Address 98.47.46.165, as follows:

- 25 1. Strike 3 MAY serve a Rule 45 subpoena on Comcast Cable (“ISP”), commanding the
 26 ISP to provide Strike 3 with the true name and address of the Defendant to whom the
 27 ISP assigned an IP address as set forth on Exhibit A to the Complaint. Strike 3

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.