

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

STRIKE 3 HOLDINGS, LLC,

Plaintiff,

v.

JOHN DOE subscriber assigned IP address  
71.59.3.125,

Defendant.

Civil Action No.  
1:23-cv-02096-SDG

STRIKE 3 HOLDINGS, LLC,

Plaintiff,

v.

JOHN DOE subscriber assigned IP address  
73.137.105.62,

Defendant.

Civil Action No.  
1:23-cv-02098-SDG

STRIKE 3 HOLDINGS, LLC,

Plaintiff,

v.

JOHN DOE subscriber assigned IP address  
24.240.23.76,

Defendant.

Civil Action No.  
1:23-cv-02099-SDG

STRIKE 3 HOLDINGS, LLC,

Plaintiff,

v.

JOHN DOE subscriber assigned IP address  
73.237.242.170,

Defendant.

Civil Action No.  
1:23-cv-02100-SDG

STRIKE 3 HOLDINGS, LLC,

Plaintiff,

v.

JOHN DOE subscriber assigned IP address  
73.137.234.124,

Defendant.

Civil Action No.  
1:23-cv-02102-SDG

STRIKE 3 HOLDINGS, LLC,

Plaintiff,

v.

JOHN DOE subscriber assigned IP address  
73.184.211.143,

Defendant.

Civil Action No.  
1:23-cv-02103-SDG

### OPINION & ORDER

This matter is before the Court on Plaintiff Strike 3 Holdings, LLC's (Strike 3) motions to serve subpoenas on multiple Defendants pursuant to Fed. R. Civ. P. 45 in the above-captioned cases [1:23-cv-02096-SDG, ECF 6; 1:23-cv-02098-SDG, ECF 6; 1:23-cv-02099-SDG, ECF 6; 1:23-cv-02100-SDG, ECF 6; 1:23-cv-02100-SDG, ECF 6; 1:23-cv-02103-SDG, ECF 6]. For the reasons that follow, the motions to serve subpoenas are **GRANTED**. The application for admission *pro hac vice* is **DENIED as moot**. See ECF 9.

## I. Background

The facts underpinning these cases are essentially the same.<sup>1</sup> Strike 3 owns a library of adult motion pictures, dozens of which the John Doe Defendants allegedly copied and reproduced, infringing on Strike 3's copyrights.<sup>2</sup> According to Strike 3, these motion pictures are "award-winning," "critically acclaimed," "high-end," "artistic," and "performer-inspiring" owing to their "Hollywood[-]style budget and quality."<sup>3</sup> Apparently, quality begets viewership: Strike 3's subscription-based websites boast a subscriber base that is purportedly one of the highest of any adult content website.<sup>4</sup> It also invites rampant infringement, evidenced by Strike 3's content allegedly "appearing among the most infringed popular entertainment content on torrent websites."<sup>5</sup> Because of Defendants and

---

<sup>1</sup> For this reason, the court refers only to documents from the case filed first in time, 1:23-cv-02096-SDG.

<sup>2</sup> ECF 1, ¶¶ 1-4.

<sup>3</sup> *Id.* ¶ 3.

<sup>4</sup> *Id.* ¶ 13.

<sup>5</sup> *Id.* ¶ 16.

other alleged pirates, “Strike 3’s motion pictures are among the most pirated content in the world.”<sup>6</sup>

Strike 3 maintains that Defendants “not only engage in illegal downloading, but are also large[-]scale unauthorized distributors of Strike 3’s content.”<sup>7</sup> They are as yet unidentified because they cloaked their identities to evade detection. But, Strike 3 reasons, Defendants’ internet providers might be able to identify Defendants through their IP addresses, which Strike 3 uncovered using third-party geolocation technology and their own proprietary infringement detection system.<sup>8</sup> For this reason, Strike 3 filed its many motions to serve Fed. R. Civ. P. 45 subpoenas on Defendants.

## II. Discussion

### A. Fictitious Party Pleading

Although fictitious party practice is not ordinarily allowed in federal court, *Richardson v. Johnson*, 598 F.3d 734, 738 (11th Cir. 2010), the Eleventh Circuit Court of Appeals recognizes an exception when “the plaintiff’s description of the defendant is so specific as to be ‘at the very worst, surplusage.’” *Id.* (citation

---

<sup>6</sup> *Id.*

<sup>7</sup> ECF 6-1, at 5 (citation omitted).

<sup>8</sup> ECF 1, ¶¶ 5, 9, 27–28.

omitted). This exception has been applied by courts in this Circuit, as in other Circuits, to allow fictitious party pleading where discovery is necessary to determine a defendant's true identity. *See, e.g., Roe v. Doe*, 2019 WL 13215281, at \*1 (N.D. Ga. Oct. 10, 2019) (finding fictitious party pleading was acceptable and authorizing limited discovery where defendants allegedly used false names and email accounts and could only be identified by those names and accounts).

Strike 3 has sufficiently identified Defendants by their IP addresses – unique electronic signatures assigned to devices allegedly used by the infringers to pirate Strike 3's property. *See, e.g., Breaking Glass Pictures, LLC v. Doe*, 2013 WL 8336085, at \*5 (N.D. Ga. Apr. 12, 2013) (granting preliminary discovery where the plaintiff only knew the defendant's IP address and sought leave to serve a subpoena based on this information to uncover the defendant's identity). Without limited discovery, Strike 3 would be precluded from pursuing its claims and obtaining judicial relief related to the alleged infringement. Thus, in this case, the Court finds that fictitious party pleading is warranted and excepted from the general prohibition.

#### **B. Early Discovery Under Rule 26(d)(1)**

Under Rule 26(d)(1) of the Federal Rules of Civil Procedure, “[a] party may not seek discovery from any source before the parties have conferred as required

# 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.