

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

Strike 3 Holdings, LLC v. John Doe Subscriber Assigned IP Address 98.51.3.252

Strike 3 Holdings · No. 25-cv-01608-RS · Decided March 3, 2025

SUMMARY

The United States District Court for the Northern District of California grants Strike 3 Holdings, LLC leave to serve Rule 45 subpoenas on Comcast or other identified internet service providers to discover the identity of the subscriber associated with IP address 98.51.3.252. The order imposes safeguards concerning notice, anonymity, confidentiality, use of disclosed information, subpoena costs, and preservation of information.

CASE DETAILS

COURT	United States District Court for the Northern District of California
WRITING FOR THE COURT	Richard Seeborg
JURISDICTION	United States District Court for the Northern District of California
DECIDED	March 3, 2025
DOCKET	25-cv-01608-RS
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff moved under Federal Rule of Civil Procedure 26(d) for leave to serve a Rule 45 subpoena before the Rule 26(f) conference to identify the Doe defendant associated with a specified IP address.
STANDARD OF REVIEW	Good cause is required for early discovery before the Rule 26(f) conference. The court evaluates whether the Doe defendant is identified with sufficient specificity, whether the plaintiff has taken reasonable steps to identify the defendant, whether the complaint can withstand a motion to dismiss, and whether the requested discovery is reasonably likely to lead to identifying information permitting service.
PRECEDENTIAL VALUE	Unknown; district court order with no precedential-status designation in the source metadata.

TOPICS

discovery dispute

service of process

copyright infringement

civil procedure

PRACTICE AREAS

copyright

civil procedure

QUESTIONS PRESENTED

1. Whether the plaintiff demonstrated good cause under Federal Rule of Civil Procedure 26(d) to obtain early discovery before the Rule 26(f) conference.
2. Whether the court should authorize Rule 45 subpoenas directed to the ISP and any follow-on Internet service provider to identify the Doe defendant.
3. What procedural safeguards were necessary to protect the Doe defendant from undue prejudice, including notice, anonymity, confidentiality, sealing, preservation, and cost-related protections.

HOLDINGS

1. The plaintiff demonstrated good cause for early discovery because it identified the Doe defendant with sufficient specificity, described the steps taken to locate the defendant, presented allegations sufficiently plausible to withstand dismissal, and showed that the subpoena was reasonably likely to produce information identifying the defendant for service.
2. Leave to serve the subpoenas was granted subject to conditions requiring notice to the subscriber, an opportunity to seek anonymous treatment, restricted use and sealing of identifying information, an affidavit concerning proposed confidentiality, limits on advance ISP charges, production of billing support for claimed costs, and preservation of subpoenaed information pending resolution of a timely motion to dismiss.

KEY QUOTATIONS

“Although there is no certainty that the “John Doe” account holder is the person who engaged in the allegedly wrongful distribution, Strike 3’s allegations are sufficiently plausible to permit discovery as to the account holder’s identity.” (at 1)

“In evaluating whether a plaintiff establishes good cause to learn the identity of a Doe defendant through early discovery, courts examine whether the plaintiff: (1) identifies the Doe defendant with sufficient specificity that the court can determine if the defendant is a real person who can be sued in federal court; (2) recounts the steps taken to locate and identify the defendant; (3) demonstrates the action can withstand a motion to dismiss; and (4) shows the discovery is reasonably likely to lead to identifying information that will permit service of process.” (at 2)

“To ensure Doe is not unduly prejudiced, Strike 3 must attempt to ensure Doe knows at the earliest possible opportunity that he or she can proceed anonymously, as ordered below.” (at 3)

FACTUAL BACKGROUND

Strike 3 alleged that an unidentified defendant used IP address 98.51.3.252 to distribute Strike 3's copyrighted films without authorization. The IP address was known, but only Comcast or another associated Internet service provider could identify the subscriber assigned that address. The court recognized that the subscriber might not be the person who engaged in the alleged distribution, but found the allegations sufficiently plausible to permit discovery of the account holder's identity.

PROCEDURAL HISTORY

Strike 3 Holdings filed a copyright-infringement action against an unidentified subscriber associated with IP address 98.51.3.252. Because Comcast, the Internet service provider, possessed the information identifying the account holder, Strike 3 sought early discovery. The court granted leave to serve subpoenas subject to notice, confidentiality, preservation, and cost-related conditions.

DISPOSITION

other

CASES CITED

- Semitool, Inc. v. Tokyo Electron Am., Inc., 208 F.R.D. 273, 275-77 (N.D. Cal. 2002)
- Columbia Ins. Co. v. seescandy.com, 185 F.R.D. 573, 578-80 (N.D. Cal. 1999)
- Wakefield v. Thompson, 177 F.3d 1160, 1163 (9th Cir. 1999)
- Gillespie v. Civiletti, 629 F.2d 637, 642 (9th Cir. 1980)
- Strike 3 Holdings, LLC v. Doe, 351 F. Supp. 3d 160, 161-62 (D.D.C. 2018), rev'd and remanded, 964 F.3d 1203, 1205 (D.C. Cir. 2020)
- Ingenuity 13 LLC v. Doe, 2013 WL 1898633, at *1 (C.D. Cal. May 6, 2013)
- Strike 3 Holdings, LLC v. Doe, No. 22-cv-08977-RS (N.D. Cal. Jan. 24, 2023)
- Strike 3 Holdings, LLC v. Doe, No. 22-cv-05160-RS, 2022 WL 5007963 (N.D. Cal. Oct. 4, 2022)
- Strike 3 Holdings, LLC v. Doe, No. 22-cv-05088-LB, 2022 WL 4467684 (N.D. Cal. Sept. 27, 2022)
- Strike 3 Holdings, LLC v. Doe, No. 22-cv-04577-MMC (LB), 2022 WL 4021841 (N.D. Cal. Sept. 2, 2022)

OPINION

Strike 3 Holdings, LLC v. John Doe subscriber assigned IP address 98.51.3.252

PER CURIAM.

1 2 3 4 5 6

7 UNITED STATES DISTRICT COURT

8 NORTHERN DISTRICT OF CALIFORNIA

9

STRIKE 3 HOLDINGS, LLC,

10 Case No. 25-cv-01608-RS Plaintiff, 11

v. ORDER GRANTING LEAVE TO

12 SERVE SUBPOENA

JOHN DOE SUBSCRIBER ASSIGNED IP

13 ADDRESS 98.51.3.252,

14 Defendant. 15

16 Plaintiff Strike 3 Holdings, LLC (“Strike 3”), seeks leave to serve a subpoena to discover 17 the identity of defendant “John Doe,” who allegedly has shared Strike 3’s copyrighted 18 pornographic films without authorization. Strike 3 knows the Internet Protocol (“IP”) address used 19 to distribute the videos, but only the Internet Service Provider (“ISP”) associated with that address 20 (in this instance, Comcast) can determine the account holder to which that address was assigned. 21 Although there is no certainty that the “John Doe” account holder is the person who engaged in 22 the allegedly wrongful distribution, Strike 3’s allegations are sufficiently plausible to permit 23 discovery as to the account holder’s identity. 24 A court may authorize early discovery before the Rule 26(f) conference for the parties’ and 25 witnesses’ convenience and in the interests of justice. Fed. R. Civ. P. 26(d). Courts in the Ninth 26 Circuit generally consider whether a plaintiff has shown “good cause” for early discovery. See, 27 e.g., *Semitool, Inc. v. Tokyo Electron Am., Inc.*, 208 F.R.D. 273, 275–77 (N.D. Cal. 2002). “Good 1 of justice, outweighs the prejudice to the responding party.” *Id.* at 276. 2 In evaluating whether a plaintiff establishes good cause to learn the identity of a Doe 3 defendant through early discovery, courts examine whether the plaintiff: (1) identifies the Doe 4 defendant with sufficient specificity that the court can determine if the defendant is a real person 5 who can be sued in federal court; (2) recounts the steps taken to locate and identify the defendant; 6 (3) demonstrates the action can withstand a motion to dismiss; and (4) shows the discovery is 7 reasonably likely to lead to identifying information that will permit service of process. See 8 *Columbia Ins. Co. v. seescandy.com*, 185 F.R.D. 573, 578–80 (N.D. Cal. 1999) (citations omitted). 9 “[W]here the identity of alleged defendants [is not] known prior to the filing of a complaint[,] the 10 plaintiff should be given an opportunity through discovery to identify the unknown defendants, 11 unless it is clear that discovery would not uncover the identities, or the complaint would be 12 dismissed on other grounds.” *Wakefield v. Thompson*, 177 F.3d 1160, 1163 (9th Cir. 1999) (third 13 alteration in original) (quoting *Gillespie v. Civiletti*, 629 F.2d 637, 642 (9th Cir. 1980)). Strike 3 14 has made an adequate showing under these standards.

15 Strike 3 has been labeled by some as a “copyright troll” that files extortive lawsuits. Strike 16 3 Holdings, LLC v. Doe, 351 F. Supp. 3d 160, 161 (D.D.C. 2018), rev’d and remanded, 964 F.3d 17 1203, 1205 (D.C. Cir. 2020). In its detractors’ view, Strike 3 profits from “the nexus of antiquated 18 copyright laws, paralyzing social stigma, and unaffordable defense costs.” *Ingenuity* 13 LLC v. 19 Doe, 2013 WL 1898633, at *1 (C.D. Cal. May. 6, 2013). The supposed scheme works like this:

20 Strike 3 identifies thousands of IP addresses per year that uploaded its copyrighted material. Strike

21 3, 351 F. Supp. 3d at 162 (summarizing many cases). It then files thousands of functionally 22 identical lawsuits (including many in this District) and routinely seeks leave to subpoena the 23 subscriber's information from the ISP. See, e.g., *Strike 3 Holdings, LLC v. Doe*, No. 22-cv-08977-24 RS (N.D. Cal. Jan. 24, 2023); *Strike 3 Holdings, LLC v. Doe*, No. 22-cv-05160-RS, 2022 WL 25 5007963 (N.D. Cal. Oct. 4, 2022); *Strike 3 Holdings, LLC v. Doe*, No. 22-cv-05088-LB, 2022 WL 26 4467684 (N.D. Cal. Sept. 27, 2022); *Strike 3 Holdings, LLC v. Doe*, No. 22-cv-04577-MMC (LB), 27 2022 WL 4021841 (N.D. Cal. Sept. 2, 2022). When Strike 3 succeeds, the subscriber learns he or 1 she is being sued for uploading pornography. To avoid embarrassment, the subscriber usually 2 settles for just less than the cost of defending the suit. Their alternative is to pay high legal fees for 3 a specialist in copyright law and hope the court lets them proceed anonymously. If a defendant 4 does put up any fight, the company usually drops the case. See *Strike 3*, 351 F. Supp. 3d at 162 5 ("These serial litigants drop cases at the first sign of resistance, preying on low-hanging fruit and 6 staying one step ahead of any coordinated defense."). 7 In response to such characterizations, Strike 3 alleges that it does not seek to force anyone 8 to settle unwillingly, especially anyone that is innocent. Strike 3 insists it only files strong cases 9 against extreme infringers who not merely engage in illegal downloading, but who are also large- 10 scale unauthorized distributors of Strike 3's content. Strike 3 asserts it does not send demand 11 letters or seek settlements unless initiated by a defendant or a defendant's counsel. Strike 3 12 expressly "welcomes" an order "establishing procedural safeguards such as allowing a defendant 13 to proceed anonymously." 14 The motion is granted. To ensure Doe is not unduly prejudiced, Strike 3 must attempt to 15 ensure Doe knows at the earliest possible opportunity that he or she can proceed anonymously, as 16 ordered below. 17 18 1. Plaintiff may serve the ISP with a Rule 45 subpoena commanding the ISP to 19 provide Plaintiff with the true name and address of the Defendant to whom the ISP 20 assigned an IP address as set forth in Exhibit A to the Complaint. Plaintiff shall attach a 21 copy of this Order to any such subpoena. 22 2. Plaintiff may also serve a Rule 45 subpoena in the same manner as above on any 23 service provider that is identified in response to a subpoena as a provider of Internet 24 services to Defendant; the same requirements laid out for Comcast Cable in this Order will 25 also apply to any follow-on orders pursuant hereto. 26 27 1 3. If the ISP qualifies as a "cable operator," as defined by 47 U.S.C. § 522(5),1 then 2 it shall comply with 47 U.S.C. § 551(c)(2)(B)2 by sending a copy of this Order to 3 Defendant. 4 4. Plaintiff shall also request the ISP forward a copy of this Order to the subscriber, 5 regardless of whether the ISP qualifies as a cable operator. If the ISP declines, Plaintiff 6 shall serve a copy of this Order on Defendant simultaneous to or before any other service 7 or communication to Defendant. 8 5. Plaintiff may only use the information disclosed in response to a Rule 45 9 subpoena served on the ISP for the purpose of protecting and enforcing Plaintiff's rights as 10 set forth in its Complaint. Specifically, Plaintiff must not publicly disclose the information 11 obtained based on this subpoena without leave of the Court — at least until the Doe 12 defendant has had an opportunity to file a motion to proceed anonymously, or further 13

discovery has been taken. All references to Defendant's identity must be redacted and filed 14 under seal until further notice. 15 6. Plaintiff must first file an affidavit confirming it proposed confidentiality to 16 Defendant, as it has represented it would. This filing must contain the relevant 17 communications concerning any proposed agreement, e.g., copies of emails related to 18 confidentiality, or descriptions of conversations with Defendant. 19 7. Comcast Cable, and/or any other ISP that receives a subpoena pursuant to this 20 Order, must confer with Strike 3 and may not assess any charge in advance of providing 21 the information requested in the subpoena. The ISP that receives a subpoena and elects to 22 23 1 "[T]he term 'cable operator' means any person or group of persons (A) who provides cable 24 service over a cable system and directly or through one or more affiliates owns a significant interest in such cable system, or (B) who otherwise controls or is responsible for, through any 25 arrangement, the management and operation of such a cable system." 47 U.S.C. § 522(5). 26 2 "A cable operator may disclose such [personal identifying] information if the disclosure is . . . made pursuant to a court order authorizing such disclosure, if the subscriber is notified of such 27 order by the person to whom the order is directed[.]" 47 U.S.C. § 551(c)(2)(B). 1 charge for the costs of production must provide a billing summary and cost reports that 2 serve as a basis for such billing summary and any costs claimed by the ISP. 3 8. Comcast Cable, and/or any other ISP that receives a subpoena pursuant to this 4 Order, must preserve any subpoenaed information pending the resolution of any timely 5 filed motion to dismiss. 6 7 || ITISSO ORDERED. 8 9 Dated: March 3, 2025 10 ICHARD SEEBORG I Chief United States District Judge 12 © 15 16 = 17 Z 18 19 20 21 22 23 24 25 26 27 28 CASE No. 25-cv-01608-RS