

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

Strike 3 Holdings, LLC v. Doe

Strike 3 Holdings · No. 25cv1466-JES-SBC · Decided June 25, 2025

SUMMARY

The United States District Court for the Southern District of California grants Strike 3 Holdings, LLC’s ex parte application to serve a third-party subpoena before the Rule 26(f) conference. The order authorizes a Rule 45 subpoena to Spectrum seeking the name and address of the subscriber assigned to the identified IP address during the relevant period in a copyright infringement action against a John Doe defendant. It requires notice to the subscriber and limits discovery to the authorized identification information.

OPINION

Strike 3 Holdings, LLC v. Doe

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 SOUTHERN DISTRICT OF CALIFORNIA

10 11 STRIKE 3 HOLDINGS, LLC, Case No.: 25cv1466-JES-SBC 12 Plaintiff,

ORDER GRANTING PLAINTIFF’S

13 v. EX PARTE APPLICATION FOR

LEAVE TO SERVE A THIRD-

14 JOHN DOE, subscriber assigned IP

PARTY SUBPOENA PRIOR TO A

address 172.88.76.11,

15 RULE 26(f) CONFERENCE

Defendant. 16 [ECF No. 4] 17 18 Before the Court is Strike 3 Holdings, LLC’s (“Plaintiff’s”) ex parte application for 19 leave to serve a third-party subpoena prior to a Rule 26(f) conference. (ECF No. 4.) No 20 Defendant has been named or served. For the reasons discussed below, Plaintiff’s 21 application is GRANTED.

22 I. PROCEDURAL HISTORY

23 On June 6, 2025, Plaintiff filed a complaint against “John Doe,” allegedly a 24 subscriber of Spectrum and assigned Internet Protocol (“IP”) address 104.52.240.104 25 (“Defendant”). (ECF No. 1.) Plaintiff alleges direct copyright infringement against 26 Defendant. (Id.) Plaintiff asserts that it is the registered copyright holder of certain 27 copyrighted works alleged to have been

infringed by Defendant. (Id.) Plaintiff contends Defendant used the BitTorrent file distribution network to copy and distribute Plaintiff's 1 copyrighted works without Plaintiff's permission. (Id.) 2 Plaintiff seeks leave to conduct early discovery to learn the identity of the subscriber 3 of the subject IP address from the Internet Service Provider ("ISP"), Spectrum, who 4 assigned the IP address to its subscriber during the relevant period. (ECF No. 4.) 5 Specifically, Plaintiff seeks an order permitting it to serve a third-party subpoena on 6 Spectrum, pursuant to Federal Rule of Civil Procedure 45, requiring the ISP to supply the 7 name and address of its subscriber to Plaintiff. (Id.)

8 II. LEGAL STANDARD

9 Formal discovery generally is not permitted without a court order before the parties 10 have conferred pursuant to Federal Rule of Civil Procedure 26(f). Fed. R. Civ. P. 26(d)(1). 11 "[H]owever, in rare cases, courts have made exceptions, permitting limited discovery to 12 ensue after filing of the complaint to permit the plaintiff to learn the identifying facts 13 necessary to permit service on the defendant." *Columbia Ins. Co. v. Seescandy.com*, 185 14 F.R.D. 573, 577 (N.D. Cal. 1999) (citing *Gillespie v. Civiletti*, 629 F.2d 637, 642 (9th Cir. 15 1980)). Requests for early or expedited discovery are granted upon a showing of good 16 cause by the moving party. See *Semitool, Inc. v. Tokyo Electron Am., Inc.*, 208 F.R.D. 273, 17 275-76 (N.D. Cal. 2002) (applying "the conventional standard of good cause in evaluating 18 Plaintiff's request for expedited discovery"). 19 "The Ninth Circuit has held that when the defendants' identities are unknown at the 20 time the complaint is filed, courts may grant plaintiffs leave to take early discovery to 21 determine the defendants' identities 'unless it is clear that discovery would not uncover the 22 identities, or that the complaint would be dismissed on other grounds.'" 808 Holdings, LLC 23 v. Collective of Dec. 29, 2011 Sharing Hash, No. 12-cv-0186 MMA (RBB), 2012 WL 24 12884688, at *3 (S.D. Cal. May 8, 2012) (quoting *Gillespie*, 629 F.2d at 642). "A district 25 court's decision to grant discovery to determine jurisdictional facts is a matter of 26 discretion." *Columbia Ins. Co.*, 185 F.R.D. at 578 (citing *Wells Fargo & Co. v. Wells Fargo 27 Express Co.*, 556 F.2d 406, 430 n.24 (9th Cir. 1977)). 28 District courts apply a three-factor test when considering motions for early discovery 1 to identify Doe defendants. *Id.* at 578-80. First, "the plaintiff should identify the missing 2 party with sufficient specificity such that the Court can determine that defendant is a real 3 person or entity who could be sued in federal court." *Id.* at 578. Second, the plaintiff 4 "should identify all previous steps taken to locate the elusive defendant" to ensure that the 5 plaintiff has made a good faith effort to identify and serve process on the defendant. *Id.* at 6 579. Third, the "plaintiff should establish to the Court's satisfaction that plaintiff's suit 7 against defendant could withstand a motion to dismiss." *Id.* (citing *Gillespie*, 629 F.2d at 8 642). Further, "the plaintiff should file a request for discovery with the Court, along with 9 a statement of reasons justifying the specific discovery requested as well as identification 10 of a limited number of persons or entities on whom discovery process might be served and 11 for which there is a reasonable likelihood that the discovery process will lead to identifying 12

information about defendant that would make service of process possible.” Id. at 580.

13 III. ANALYSIS

14 Upon review of the application and its supporting declarations, the Court finds that 15 Plaintiff has met its evidentiary burden and shown good cause to subpoena records from 16 Spectrum identifying the subscriber assigned to the subject IP address at the identified 17 times. First, Plaintiff identified Defendant with specificity by using geolocation technology 18 to trace his or her unique IP address. (ECF No. 4-1 at 12-13.) Second, Plaintiff identified 19 previous steps taken to locate the Defendant, such as using various web search tools, and 20 employing computer investigators and cyber security consultants. (Id. at 14.) Third, 21 Plaintiff sets forth sufficient factual allegations as to each of the elements of direct 22 copyright infringement and shows the complaint could withstand a motion to dismiss. 23 Specifically, Plaintiff pleads: (1) it is the owner of a valid copyrighted work; (2) Defendant 24 copied and distributed Plaintiff's files; and (3) Plaintiff did not authorize, permit, or consent 25 to Defendant's copying or distribution of its files. (ECF No. 1 at 7-8.) Finally, Plaintiff's 26 application demonstrates a reasonable likelihood that Plaintiff will be able to identify 27 Defendant's true name and address through a Rule 45 subpoena. 28 The Cable Privacy Act generally prohibits a cable operator from disclosing 1 “personally identifiable information concerning any subscriber without the prior written or 2 || electronic consent of the subscriber concerned[.]” 47 U.S.C. § 551(c)(1). However, a cable 3 operator may disclose the information if the disclosure is made pursuant to a court order 4 || and the cable operator notifies the subscriber of the order. 47 U.S.C. § 551(c)(2)(B). The 5 that Plaintiff intends to subpoena in this case is a cable operator within the meaning of 6 || the Act.

7 IV. CONCLUSION

8 Based on the above, the Court GRANTS Plaintiff's ex parte application for leave to 9 serve a third-party subpoena prior to a Rule 26(f) conference (ECF No. 4) as follows: 10 1. Plaintiff may serve a subpoena, pursuant to and compliant with Federal Rule 11 Civil Procedure 45, on the ISP, Spectrum, seeking only the name and address of the 12 || subscriber assigned to the subject IP address for the relevant time period. 13 2. The subpoena must provide at least forty-five (45) calendar days from service 14 production. The ISP may seek to quash or modify the subpoena as provided at Rule 15 45(d)(3). 16 3. The ISP must notify its subscriber, no later than fourteen (14) calendar days 17 || after service of the subpoena, that his or her identity has been subpoenaed by Plaintiff. The 18 subscriber whose identity has been subpoenaed will have thirty (30) calendar days from 19 || the date of the notice to seek a protective order, to move to quash or modify the subpoena, 20 || or file any other responsive pleading. 21 4. Plaintiff must serve a copy of this Order with the subpoena upon the ISP. The 22 || ISP, in turn, must provide a copy of this Order along with the required notice to the 23 subscriber whose identity is sought pursuant to this Order. 24 5. No other discovery is authorized at this time. 25 IT IS SO ORDERED. HY Ca. 26 || Dated: June 25, 2025 FF Hon. Steve B. Chu 27 United States Magistrate Judge 28

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