

1  
2  
3  
4  
5  
6  
7  
8 **UNITED STATES DISTRICT COURT**  
9 **DISTRICT OF NEVADA**

10 STRIKE 3 HOLDINGS, LLC,

11 Plaintiff(s),

12 v.

13 JOHN DOE SUBSCRIBER ASSIGNED IP  
14 ADDRESS 70.189.203.216,

15 Defendant(s).

Case No.: 2:18-cv-01541-KJD-NJK

**ORDER**

[Docket No. 4]

16 This is a copyright case in which Plaintiff alleges infringement through the BitTorrent  
17 protocol. *See* Docket No. 1. Pending before the Court is Plaintiff's *ex parte* motion for leave to  
18 obtain discovery from an Internet Service Provider to ascertain Defendant's identity. Docket No.  
19 4.

20 The Ninth Circuit has held that, where the identity of a defendant is unknown prior to the  
21 filing of a complaint, the plaintiff should be given an opportunity through discovery to identify the  
22 unknown defendant, unless it is clear that discovery would not uncover the identity of the  
23 defendant, or that the complaint would be dismissed on other grounds. *See Wakefield v. Thompson*,  
24 177 F.3d 1160, 1163 (9th Cir. 1999) (citing *Gillespie v. Civiletti*, 629 F.2d 637, 642 (9th Cir.  
25 1980)).

26 In the context of BitTorrent copyright infringement, the Ninth Circuit has recently held that  
27 a plaintiff bears the burden of pleading factual allegations that create a reasonable inference that  
28 the defendant is the infringer. *Cobbler Nevada, LLC v. Gonzales*, \_\_ F.3d \_\_, 2018 WL 4055766,

1 at \*3 (9th Cir. Aug. 27, 2018). Pleading a defendant’s “status as the registered subscriber of an  
2 infringing IP address, standing alone, does not create a reasonable inference that he is also the  
3 infringer. Because multiple devices and individuals may be able to connect via an IP address,  
4 simply identifying the IP subscriber solves only part of the puzzle. A plaintiff must allege  
5 something more to create a reasonable inference that a subscriber is also an infringer.” *Id.* at \*1.  
6 Hence, a complaint that traces infringement to a particular IP address and pleads that the IP address  
7 is registered to the defendant is insufficient to state a claim. *Id.* at \*3.

8 The Court has not located any case law addressing the interplay between the standard for  
9 expedited discovery and the pleading standard articulated in *Gonzales*. Moreover, the pending  
10 motion acknowledges that the complaint must be able to survive a motion to dismiss to obtain this  
11 discovery, but it does not address how the complaint has done so in light of *Gonzales*. See Docket  
12 No. 4 at 9-11. The motion also does not argue that the pleading standard in *Gonzales* is  
13 inapplicable to the determination of the sufficiency of the complaint required at this stage.

14 Accordingly, the pending motion is hereby **DENIED** without prejudice. Any renewed  
15 motion must discuss explicitly (1) whether the *Gonzales* pleading standard applies to the Court’s  
16 inquiry deciding whether Plaintiff may obtain discovery into the defendant’s identity and (2)  
17 whether the complaint in this case has sufficiently pled a claim if that standard does apply at this  
18 juncture.<sup>1</sup> Any renewed motion shall be filed within 14 days of the issuance of this order.

19 IT IS SO ORDERED.

20 Dated: September 18, 2018

21   
22 \_\_\_\_\_  
23 Nancy J. Koppe  
24 United States Magistrate Judge  
25  
26  
27

28 <sup>1</sup> The Court expresses no opinion herein as to either issue.