

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

STRIKE 3 HOLDINGS, LLC,)	Case No.: 8:21-cv-00083-GJH
)	
Plaintiff,)	Honorable
)	
vs.)	
)	
JOHN DOE subscriber assigned IP address)	
173.79.64.81,)	
Defendant)	
)	
)	
)	

**DEFENDANT JOHN DOE’S ANSWER, AFFIRMATIVE DEFENSES,
AND COUNTERCLAIMS**

JURY TRIAL REQUESTED

Comes now, JOHN DOE subscriber assigned IP address 173.79.64.81 (“John Doe”) who having been sued for Copyright Infringement does hereby answer Plaintiff Strike 3 Holdings, LLC’s (“Strike 3”) allegations, present John Doe’s affirmative defenses, and make John Doe’s counterclaims for Declaratory Judgment and an Action for Contempt.

ANSWER

Introduction

1. As to paragraph 1, Denied.
2. As to paragraph 2, Defendant has no knowledge of these facts, so therefore denies.
3. As to paragraph 3, Defendant has no knowledge of these facts, so therefore denies.
4. As to paragraph 4, Denied.
5. As to paragraph 5, Denied as to Theft, Defendant has no knowledge of the capabilities of Verizon.
6. As to paragraph 6, This appears to be a statement of law, so John Doe can neither admit nor deny, so therefore denies.

JOHN DOE’S ANSWER, AFFIRMATIVE DEFENSES, AND COUNTERCLAIMS

Jurisdiction and Venue

7. As to paragraph 7, This appears to be a statement of law, so John Doe can neither admit nor deny, so therefore denies.

8. As to paragraph 8, This appears to be a statement of law, so John Doe can neither admit nor deny, but denies that John Doe committed any torts whatsoever.

9. As to paragraph 9, John Doe has no knowledge of the capabilities of “Maxmind”, so therefore denies.

10. As to paragraph 10, This appears to be a statement of law, so John Doe can neither admit nor deny, so therefore denies; to the extent that “events” are construed as a factual admission of infringement, John Doe denies.

Jurisdiction and Venue

11. As to paragraph 11, John Doe has no knowledge of Strike 3’s corporate organization or location, so therefore denies.

12. As to paragraph 12, John Doe has no knowledge of Strike 3’s ability to identify a party, so therefore denies.

Factual Background

13. As to paragraph 13, John Doe has no knowledge of Strike 3’s success as a producer of adult motion pictures, so can neither admit nor deny these “facts”, so therefore denies.

14. As to paragraph 14, John Doe has no knowledge of Strike 3’s awards for the production of adult motion pictures, so can neither admit nor deny these “facts”, so therefore denies.

15. As to paragraph 15, John Doe has no knowledge of Strike 3’s allegation of having a “positive effect” from the production of adult motion pictures, so can neither admit nor deny these allegations, so therefore denies.

16. As to paragraph 16, John Doe has no knowledge of Strike 3's has suffered any ill effects from Internet Piracy, so can neither admit nor deny these allegations, so therefore denies.

17. As to paragraph 17, this appears to be a statement of how a certain technology operates and as John Doe is not an expert in "BitTorrent", he can neither admit nor deny these "facts", so therefore denies.

18. As to paragraph 18, see paragraph 17, which is incorporated herein by reference.

19. As to paragraph 19, see paragraph 17, which is incorporated herein by reference.

20. As to paragraph 20, see paragraph 17, which is incorporated herein by reference.

21. As to paragraph 21, see paragraph 17, which is incorporated herein by reference.

22. As to paragraph 22, see paragraph 17, which is incorporated herein by reference.

23. As to paragraph 23, see paragraph 17, which is incorporated herein by reference.

24. As to paragraph 24, see paragraph 17, which is incorporated herein by reference.

25. As to paragraph 25, see paragraph 17, which is incorporated herein by reference.

26. As to paragraph 26, see paragraph 17, which is incorporated herein by reference.

27. As to paragraph 27, this appears to be a statement regarding a computer system that Strike 3 developed called "VXN Scan", since John Doe did not participate in the development of "VXN Scan" he can neither admit nor deny how "VXN Scan" works, its reliability, and/or whether it purports to do what Strike 3 claims it can do.

28. As to paragraph 28, John Doe incorporates by reference paragraph 27, and John Doe did not install and use a bittorrent client.

29. As to paragraph 29, John Doe incorporates by reference paragraph 27, and John Doe did not install and use a bittorrent client

30. As to paragraph 30, John Doe incorporates by reference paragraph 27, but cannot admit or deny that Strike 3 interacted with John Doe's computers.

31. As to paragraph 31, John Doe incorporates by reference paragraph 27 and as John Doe did not download Strike 3's movies he therefore denies these allegations.

32. As to paragraph 32, John Doe incorporates by reference paragraph 27.

33. As to paragraph 33, John Doe incorporates by reference paragraph 27.

34. As to paragraph 34, John Doe incorporates by reference paragraph 27.

35. As to paragraph 35, John Doe incorporates by reference paragraph 27.

36. As to paragraph 36, John Doe incorporates by reference paragraph 27.

37. As to paragraph 37, John Doe incorporates by reference paragraph 27.
38. As to paragraph 38, John Doe incorporates by reference paragraph 27.
39. As to paragraph 39, John Doe incorporates by reference paragraph 27.
40. As to paragraph 40, John Doe incorporates by reference paragraph 27.
41. As to paragraph 41, John Doe incorporates by reference paragraph 27.
42. As to paragraph 42, John Doe incorporates by reference paragraph 27.
43. As to paragraph 43, John Doe denies.
44. As to paragraph 44, John Doe denies.
45. As to paragraph 45, to the extent this is a factual allegation, John Doe has no knowledge of the Plaintiff's status of copyright applications and registrations, so John Doe denies.
46. As to paragraph 46, this appears to be a statement of Strike 3's requested remedy so John Doe cannot admit or deny, so therefore denies.

COUNT I – Direct Copyright Infringement

47. As to paragraph 47, John Doe incorporates by reference all denials in paragraphs 1-46.
48. As to paragraph 48, this appears to be a statement of Strike 3's authorship so John Doe cannot admit or deny, so therefore denies.
49. As to paragraph 49, John Doe denies.
50. As to paragraph 50, John Doe denies.
51. As to paragraph 51 and subsections (A)-(D), John Doe denies.
52. As to paragraph 52, John Doe denies.

Denial of Plaintiff's Prayer for Relief

53. John Doe denies that this Court should grant all remedies request in Strike 3's prayer at Page 9.

Plaintiff's Request for Jury Trial.

54. John Doe agrees to a Trial by Jury on the single count of Copyright Infringement.

AFFIRMATIVE DEFENSES

55. Strike 3 fails to state a claim upon which relief can be granted for failing to plead facts with specificity under *Twombly/Iqbal* in that an “IP Address cannot be linked to a particular person”.

56. John Doe asserts the defense of non-infringement.

57. John Doe asserts the defense of copyright misuse.

58. John Doe asserts all statutory defenses under the Copyright Act.

59. John Doe will assert further defenses as facts are discovered in this case and will move to amend these affirmative defenses at a later date.

COUNTERCLAIMS OF JOHN DOE

60. John Doe is a Cameroonian native, an immigrant to the United States and a naturalized United States Citizen. In his present occupation he provides services to people infected with HIV/AIDS, working for an NGO, and frequently travels to Western Africa. John Doe is married (“Jane Doe”) and they have infant child.

61. On Tuesday, August 24, 2021, John Doe received, in the mail, a deposition subpoena commanding John Doe to appear for a deposition. This is the first time he had heard of Strike 3. John Doe started researching Strike 3. Based on John Doe’s internet research it became apparent that he would have to hire a lawyer to resolve this matter.

62. Before John Doe could retain counsel, on August 26, 2021, a red Hyundai car parked in John Doe’s driveway at approximately 9:30 am. This was noticed by Jane Doe who was downstairs attending to her infant child. A photo of the car is below:



63. The car was parked in Jane Doe and John Does' driveway for approximately 30 minutes. John Doe and Jane Doe observed the individual ("Process Server") speaking on his phone during the time period prior to exiting. At this time, John Doe, thought this was unusual activity for his neighborhood but was on a work call and could not leave his house to ask the driver why he was parked in his driveway.

64. While John Doe was on the work call and making a presentation, the Process Server exited the red car and rang the doorbell and knocked.

65. Jane Doe answered the door and the individual from the car asked to see John Doe (using John Doe's personal name). Jane Doe informed the Process Server that John Doe was in a meeting by telephone and that he could not come down. The Process Server insisted that it was a "very important matter and he needed to speak to [John Doe] personally".

66. Jane Doe called John Doe, who had to interrupt his work call, and John Doe met the Process Server. John Doe asked if he could help the Process Server. The Process Server handed John Doe a closed thick envelope and which appeared to have the same thickness as the papers John Doe received on August 24, 2021.

67. The Process Server did not remove the papers from the envelope.

68. The Process Server then said, (to best of John Doe's recollection), "...This is a legal document for a deposition related to the downloading of pornographic materials from the internet...". This statement was made in the presence of Jane Doe and the infant daughter, who heard this entire conversation.

69. John Doe then responded confused. "...I don't know anything about this...".

70. The Process Server then appeared to assume that John Doe's denial was due to the presence of Jane Doe and his infant daughter. So the Process Server then said, in effect, "...by the way, I am trying to be discreet and not have your wife find out..", the Process Server then said "...we all sometimes do things like that... and watch adult content movies...".

71. John Doe then responded by saying, "...I do not know about other people, but I did not do this and I will have to look at my options..".

72. The Process Server then said "...This is a very serious matter, you have to take it seriously...". The Process Server then clearly said for John Doe to call the lawyer who was listed in the document ("Strike 3's lawyer").

73. The impression given by the Process Server to John Doe and Jane Doe (who was present) was that John Doe was in serious trouble and must call Strike 3's lawyer, by affirmatively stating that the telephone number for the lawyer was on the paperwork and that John Doe should call "her" (Strike 3's lawyer) and "find out the best way to resolve it."

74. John Doe then said to the Process Server, "...I will have to get a lawyer myself...".

75. The Process Server then started to leave, John Doe requested he identify himself, the Process Server unintelligibly said something to the effect of "Tony".

76. The Process Server got back in his car, started talking on his cell phone, and then conducted surveillance of John Doe's property from his car. He remained on John Doe's driveway for another half hour. The Process Server was on John Doe's property for approximately an hour in total.

77. On September 23, 2021, counsel for John Doe sent to Counsel for Strike 3 a detailed declaration of non-infringement by John Doe.

78. On October 3, 2021, counsel for Strike 3 acknowledged receipt of the declaration of Non-Infringement, and stated: "...This is helpful but we still have some follow up questions for your client...".

79. On November 8, 2021, counsel for Strike 3 sent a document that was purportedly executed by the Process Server on the same day of service (August 26, 2021). The Process Server's full name as signed cannot be determined from the document.

COUNTERCLAIMS

COUNT ONE – DECLARATORY RELIEF OF NON-INFRINGEMENT

80. John Doe incorporates by reference the above paragraphs 1 to 79.

81. This Court has subject matter jurisdiction over this counterclaim under the Declaratory Judgments Act and under the Copyright Act. Venue is proper as Strike 3 has availed itself to this Court and has alleged and demanded that John Doe is liable for infringement.

82. Strike 3 has alleged and John Doe denies that John Doe committed copyright infringement.

83. Strike 3's claim is for statutory damages ranging from \$ 200.00 to \$ 150,000.00 per work.

84. John Doe, who is starting a family, cannot risk the large economic uncertainty of Strike 3's impending copyright action.

85. John Doe respectfully requests that under the Declaratory Judgments Act that John Doe did not infringe Strike 3's works and a judgment of non-infringement from this Court.

COUNT TWO– CIVIL CONTEMPT OF COURT

86. John Doe incorporates by reference paragraphs 1 to 85 above.

87. Whereas this Court issued an order at ECF 6 concerning how the deposition of John Doe should be conducted.

88. Strike 3 hired the law firm of Clark Hill to litigate this lawsuit in this District. The lawyers at Clark Hill had actual knowledge and/or constructive knowledge of the Court's Order at ECF 6.

89. Strike 3 obtained John Doe's name and personal information from the ISP. At this time Strike 3's counsel could have done a simple "Google Search". There is nothing in the public record that would remotely suggest that John Doe was the infringer of the works, rather the search would reveal that John Doe is a professional and is an author or coauthor of numerous scientific publications. Since there was no information connecting John Doe to the alleged infringements, Strike 3's intent at this point going forward was to pressure John Doe into a *de-minimus* nuisance settlement "pay-off" Strike 3 to avoid financial risk to his family.

JOHN DOE'S ANSWER, AFFIRMATIVE DEFENSES, AND COUNTERCLAIMS

90. This Court's Order at ECF 6 required that under Rule 11(b) that counsel makes a determination if John Doe was insufficient to determine if John Doe was an infringer.

91. The Court's Order at ECF 6 paragraph 4a. allows for the service of a deposition subpoena predicated on Rule 11(b). Counsel for Strike 3, pursuant to Rule 11(b)(1) represented that the early discovery: "...it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation..."

92. The Court's Order at ECF 6 paragraph 4c, ordered no further discovery.

93. This Court granted Strike 3 with the right for early discovery of the deposition based on inaccurate allegations made in the complaint and the motion for early discovery, and Strike 3 and their lawyer's intentional ignorance of publicly available facts that John Doe was not the infringer of Strike 3's works.

94. Strike 3 and/or their attorney's Clark Hill hired the Process Server who is and was their agent to serve the deposition subpoena on August 26, 2021 on John Doe. The Process Server was the legal agent for Strike 3 and bound by this Court's order at ECF 6 paragraph 5.

95. Strike 3, via their lawyers, retaining as their agent, the Process Server, who violated this Court's Order at ECF 6, paragraph 5, and this Court's directive under FRCP 11(b) namely:

- a. The Process Server's act of menacing John Doe and his family by parking on his property for a period of one half hour before to and one half hour afterwards was a clear signal to compel John Doe to call Strike 3's lawyer to discuss settlement in violation of ECF 6, paragraph 5.
- b. The Process Server's statements to John Doe for him to call Strike 3's lawyer was done with the intent to have John Doe to enter settlement negotiations directly with Strike 3.
- c. The Process Server's detailed knowledge of the facts of this case required that he was either directed by Strike 3 and/or Strike 3's local counsel to investigate this matter to try and pressure John Doe into a settlement upon service of the deposition subpoena.

COUNTERCLAIMANT’S PRAYER FOR RELIEF

Whereas, John Doe hereby prays this Court enter the following counterclaim for relief:

A) As to Count I - A judgment of non-infringement of Strike 3’s works pursuant to 17 U.S.C. §101, award of attorney fees, an award of costs, and other relief this Court may grant;

B) As to Count II – An order to show cause that Strike 3, their counsel, and/or their agents violated this Court’s Order at ECF 6 and award such damages and/or an equitable order of injunctive relief pursuant to this Court’s authority to prevent such litigation abuses from occurring in the future to John Doe and/or to other defendants who are similarly situated.

Respectfully Submitted,

Dated: November 14, 2021



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