

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

STRIKE 3 HOLDINGS, LLC,  
  
Plaintiff,  
  
v.  
  
JOHN DOE subscriber assigned IP address  
73.2.97.225,  
  
Defendant.

No. 1:18-cv-01075-MCE-CKD

ORDER RE: SANCTIONS

This case is one of twenty-four nearly-identical cases presently facing an order to show cause why the court should not impose sanctions based upon plaintiff’s failure to follow an order of the court.<sup>1</sup> Plaintiff filed a written response, a notice of voluntary dismissal, and requested a

<sup>1</sup> Strike 3 Holdings, LLC v. John Doe, 1:18-cv-01075-MCE-CKD, Order to Show Cause, ECF No. 13; Strike 3 Holdings, LLC v. John Doe, 1:18-cv-01076-MCE-CKD, Order to Show Cause, ECF No. 13; Strike 3 Holdings, LLC v. John Doe, 1:18-cv-01080-MCE-CKD, Order to Show Cause, ECF No. 13; Strike 3 Holdings, LLC v. John Doe, 1:18-cv-01089-MCE-CKD, Order to Show Cause, ECF No. 13; Strike 3 Holdings, LLC v. John Doe, 1:18-cv-01304-MCE-CKD, Order to Show Cause, ECF No. 8; Strike 3 Holdings, LLC v. John Doe, 2:18-cv-02201-MCE-CKD, Order to Show Cause, ECF No. 11; Strike 3 Holdings, LLC v. John Doe, 2:18-cv-02202-MCE-CKD, Order to Show Cause, ECF No. 11; Strike 3 Holdings, LLC v. John Doe, 2:18-cv-02203-MCE-CKD, Order to Show Cause, ECF No. 11; Strike 3 Holdings, LLC v. John Doe, 2:18-cv-02204-MCE-CKD, Order to Show Cause, ECF No. 11; Strike 3 Holdings, LLC v. John Doe, 2:18-cv-02205-MCE-CKD, Order to Show Cause, ECF No. 11; Strike 3 Holdings, LLC v. John Doe, 2:18-cv-02206-MCE-CKD, Order to Show Cause, ECF No. 11; Strike 3 Holdings, LLC v. John Doe, 2:18-cv-02207-MCE-CKD, Order to Show Cause, ECF No. 11; Strike 3

1 hearing. (See, e.g., ECF Nos. 14, 15.) These matters were heard jointly on February 20, 2019 at  
2 10:00 a.m., before the undersigned. Lincoln D. Bandlow appeared on behalf of plaintiff. Upon  
3 review of plaintiff's response, upon hearing the arguments of plaintiff's counsel, and good cause  
4 appearing therefor, THE COURT FINDS AS FOLLOWS:

5 I. RELEVANT BACKGROUND

6 This case is one of approximately 2,500 nearly-identical cases that plaintiff has filed  
7 across the country since October 2017.<sup>2</sup> Plaintiff has filed scores of these cases in the Eastern  
8 District since April 2018.

9 In each case, plaintiff filed an ex parte application to serve a third-party subpoena on an  
10 internet service provider to obtain the identity of a Doe defendant who has allegedly engaged in  
11 copyright infringement of plaintiff's pornographic films. See, e.g., Strike 3 Holdings, LLC v.  
12 John Doe, 1:18-cv-01075-MCE-CKD, Compl. and Ex Parte Appl., ECF Nos. 1, 6. The court  
13 granted each ex parte application and required plaintiff to serve a copy of the court's order on  
14 defendant, once identified, and to file a status report with the court within forty-five days.<sup>3</sup> See,

15  
16 Holdings, LLC v. John Doe, 2:18-cv-02208-MCE-CKD, Order to Show Cause, ECF No. 11;  
17 Strike 3 Holdings, LLC v. John Doe, 2:18-cv-02209-MCE-CKD, Order to Show Cause, ECF No.  
18 11; Strike 3 Holdings, LLC v. John Doe, 2:18-cv-02582-MCE-CKD, Order to Show Cause, ECF  
19 No. 8; Strike 3 Holdings, LLC v. John Doe, 2:18-cv-02584-MCE-CKD, Order to Show Cause,  
20 ECF No. 8; Strike 3 Holdings, LLC v. John Doe, 2:18-cv-02585-MCE-CKD, Order to Show  
21 Cause, ECF No. 8; Strike 3 Holdings, LLC v. John Doe, 2:18-cv-02636-MCE-CKD, Order to  
22 Show Cause, ECF No. 8; Strike 3 Holdings, LLC v. John Doe, 2:18-cv-02638-MCE-CKD, Order  
23 to Show Cause, ECF No. 8; Strike 3 Holdings, LLC v. John Doe, 2:18-cv-02639-MCE-CKD,  
Order to Show Cause, ECF No. 9; Strike 3 Holdings, LLC v. John Doe, 2:18-cv-02640-MCE-  
CKD, Order to Show Cause, ECF No. 8; Strike 3 Holdings, LLC v. John Doe, 2:18-cv-02641-  
MCE-CKD, Order to Show Cause, ECF No. 8; Strike 3 Holdings, LLC v. John Doe, 2:18-cv-  
02642-MCE-CKD, Order to Show Cause, ECF No. 8; Strike 3 Holdings, LLC v. John Doe, 2:18-  
cv-02643-MCE-CKD, Order to Show Cause, ECF No. 6.

24 <sup>2</sup> According to Mr. Bandlow at the hearing.

25 <sup>3</sup> At the hearing, Mr. Bandlow indicated that, due to various procedural hurdles in serving a  
26 subpoena on internet service providers, in most of these cases nothing worth reporting will occur  
27 within forty-five days of the court granting a subpoena request. Thus, Mr. Bandlow suggested  
28 that the court consider giving plaintiff sixty days to file a status report, in future orders. This is  
the first time that plaintiff has made this suggestion to the court. While this suggestion does not  
excuse Mr. Bandlow's conduct here, the court will take it under advisement.

1 e.g., Id., Order Granting Ex Parte App., ECF No. 10.

2 A. Previous Orders to Show Cause (Four Cases)

3 On November 9, 2018, the court issued the first set of orders to show cause in four of  
4 these matters, due to plaintiff's failure to follow the court's orders granting plaintiff's ex parte  
5 applications. Strike 3 Holdings, LLC v. John Doe, 1:18-cv-00587-MCE-CKD, Order to Show  
6 Cause, ECF No. 13; Strike 3 Holdings, LLC v. John Doe, 2:18-cv-01663-MCE-CKD, Order to  
7 Show Cause, ECF No. 10; Strike 3 Holdings, LLC v. John Doe, 2:18-cv-01667-MCE-CKD,  
8 Order to Show Cause, ECF No. 9; Strike 3 Holdings, LLC v. John Doe, 2:18-cv-01677-MCE-  
9 CKD, Order to Show Cause, ECF No. 10.

10 Plaintiff filed a response in each matter, and explained that the failures were caused by  
11 calendaring issues and/or incorrectly reading the court's orders. Plaintiff proclaimed that it "takes  
12 Court deadlines seriously and it will set additional measures in place to ensure that all deadlines  
13 are appropriately calendared, and that it diligently updates the Court of its efforts in each case in  
14 the future." Strike 3, 2:18-cv-01663-MCE-CKD, Pl.'s Resp., ECF No. 11 at 3.

15 Accepting plaintiff's explanations and assurances that plaintiff had remedied these issues,  
16 on December 5, 2018, the court discharged the first set of orders to show cause without imposing  
17 any sanctions. The court explicitly "cautioned [plaintiff] to carefully calendar deadlines and  
18 follow all future court orders." Strike 3, 1:18-cv-00587-MCE-CKD, Order Dischrg. Order to  
19 Show Cause, ECF No. 16 at 2; Strike 3, 2:18-cv-01663-MCE-CKD, Order Dischrg. Order to  
20 Show Cause, ECF No. 12 at 2; Strike 3, 2:18-cv-01667-MCE-CKD, Order Dischrg. Order to  
21 Show Cause, ECF No. 13 at 2; Strike 3, 2:18-cv-01677-MCE-CKD, Order Dischrg. Order to  
22 Show Cause, ECF No. 12 at 2.

23 B. Pending Orders to Show Cause (Twenty-Four Cases)

24 Between November 8, 2018 and November 14, 2018, the court granted plaintiff's ex parte  
25 applications in each of the twenty-four cases currently at issue. See, e.g., Strike 3, 1:18-cv-  
26 01075-MCE-CKD, Order Granting Ex Parte App., ECF No. 10; Strike 3 Holdings, LLC v. John  
27 Doe, 2:18-cv-02643-MCE-CKD, Order Granting Ex Parte App., ECF No. 5. Status reports in  
28 these cases were due between December 24, 2018 and December 31, 2018. Id. Plaintiff failed to

1 provide status reports or request extensions of time.

2 As a result, between January 2, 2019 and January 4, 2019, plaintiff was ordered to show  
3 cause in writing why the court should not impose \$250.00 in sanctions in each of these twenty-  
4 four cases, based upon plaintiff's failure to follow an order of the court. See, e.g., Strike 3, 1:18-  
5 cv-01075-MCE-CKD, Order to Show Cause, ECF No. 13; Strike 3, 2:18-cv-02643-MCE-CKD,  
6 Order to Show Cause, ECF No. 6.

7 II. PLAINTIFF'S ARGUMENT

8 In each case in which an order to show cause is pending, plaintiff has submitted a notice  
9 of voluntary dismissal and a boilerplate response, asserting that its failure to comply in these  
10 matters was caused by inadvertence and not bad faith.<sup>4</sup> See, e.g., Strike 3, 1:18-cv-01075-MCE-  
11 CKD, Pl.'s Resp. and Vol. Dismissal, ECF Nos. 14, 15; Strike 3, 2:18-cv-02582-MCE-CKD,  
12 Pl.'s Resp. and Vol. Dismissal, ECF Nos. 9, 10.

13 Mr. Bandlow acknowledges that, as a result of the first set of orders to show cause in  
14 November 2018, he became aware of problems with his calendaring procedure and protocol. He  
15 asserts that he promptly employed information technology professionals to address these  
16 problems. Strike 3, 1:18-cv-01075-MCE-CKD, Pl.'s Resp., ECF No. 14 at 2. Mr. Bandlow  
17 admits, however, that this problem has not been resolved and that plaintiff "has again  
18 inadvertently missed a number of status report deadlines." Id. Mr. Bandlow indicates this was  
19 due in part to a "lack of adequate staff to ensure deadlines [we]re covered over the [December]  
20 holidays, coupled with additional technological issues related to receiving emails and  
21 notifications regarding calendaring deadlines." Id. Plaintiff also voluntarily dismissed each of  
22 these cases because "this is a repeat issue that it has not fixed, and so as to not further  
23 inconvenience" the court. Id. at 3.

24 At the hearing, Mr. Bandlow further explained that the failures to timely respond in  
25 approximately nineteen of the twenty-four cases were caused by staff being out of the office

---

26 <sup>4</sup> Plaintiff initially responded in only four of these cases, but later responded in the other twenty.  
27 The second set of twenty responses includes more argument than does the initial set of four, but  
28 all provide essentially the same excuse of inadvertence. See, e.g., Strike 3, 1:18-cv-01075-MCE-  
CKD, Pl.'s Resp., ECF No. 14; Strike 3, 2:18-cv-02582-MCE-CKD, Pl.'s Resp., ECF No. 9.

1 during the late December holidays, whereas the other failures were caused by either an over-  
2 active email spam filter or an ineffective electronic docketing notification system. Mr. Bandlow  
3 expressed sincere apologies for the inconvenience he has caused the court, and insisted that these  
4 failures were not in bad faith. Mr. Bandlow also represented to the court that he has been  
5 practicing and teaching law for over twenty-five years, and he has never been sanctioned by a  
6 court.

### 7 III. LEGAL STANDARD

8 Eastern District Local Rule 110 clearly provides that “[f]ailure of counsel or of a party to  
9 comply with these Rules or with any order of the Court may be grounds for imposition by the  
10 Court of any and all sanctions authorized by statute or Rule or within the inherent power of the  
11 Court.”

12 Federal courts have the inherent power to impose monetary sanctions against attorneys  
13 and parties for “bad faith” conduct in litigation or for “willful disobedience” of a court order. See  
14 Chambers v. NASCO, Inc., 501 US 32, 43 (1991); Roadway Express, Inc. v. Piper, 447 US 752,  
15 764-66, (1980). “[S]anctions are available if the court specifically finds bad faith or conduct  
16 tantamount to bad faith.” B.K.B. v. Maui Police Dep’t, 276 F.3d 1091, 1108 (9th Cir. 2002), as  
17 amended (Feb. 20, 2002). A party “shows bad faith by delaying or disrupting the litigation or by  
18 hampering enforcement of a court order.” Chambers, 501 U.S. at 46.

19 “[A] voluntary dismissal does not expunge the . . . [underlying] violation” or bad faith  
20 conduct. Cooter & Gell v. Hartmarx Corp., 496 U.S. 384, 395 (1990). Nor does a voluntary  
21 dismissal remove the court’s inherent authority to impose sanctions. See Id.; Thomas v. Early  
22 Cty., GA, 360 F. App’x 71, 75 (11th Cir. 2010) (“For the same reasons [enumerated in Cooter],  
23 motions seeking attorney’s fees and costs pursuant to statute or the court’s inherent powers may  
24 be considered by the district court after dismissal”).

### 25 IV. DISCUSSION

26 Plaintiff’s excuses and explanations are unavailing. First, plaintiff chose to file scores of  
27 nearly-identical cases in the Eastern District, within months of each other. Plaintiff’s failures are  
28 not excused because counsel’s tracking system and staff were inadequate to process the number

1 of cases that plaintiff voluntarily brought. Mr. Bandlow has a professional responsibility to  
2 refrain from acting as counsel in more cases than he can handle at one time.

3 Second, these failures to comply did not occur in a vacuum. Plaintiff had already failed to  
4 comply with court orders in four other related cases, under nearly-identical circumstances. In  
5 those matters, the court did not issue sanctions because the court believed that plaintiff's initial  
6 failures to comply were, in fact, inadvertent. At the same time, because "plaintiff ha[d] numerous  
7 related matters pending before the court, [on December 5, 2018] plaintiff [wa]s cautioned to  
8 carefully calendar deadlines and follow all future court orders." Strike 3, 1:18-cv-00587-MCE-  
9 CKD, Order Dischrg. Order to Show Cause, ECF No. 16 at 2. The status reports in the pending  
10 matters were due between December 24, 2018 and December 31, 2018, several weeks after the  
11 court issued this warning.

12 Third, Mr. Bandlow's efforts to employ information technology professionals to address  
13 his technological problems did not relieve him of his duty to follow court orders. The practice of  
14 law predates the computer. Computer and technological problems do not justify failing to comply  
15 with court-ordered deadlines, especially under the specific circumstances of these cases. Once  
16 Mr. Bandlow became aware of his technological problems, he could have—and indeed should  
17 have—manually calendared and tracked all deadlines.

18 Fourth, by Mr. Bandlow's own admission, approximately nineteen of the twenty-four  
19 deadlines were missed because of inadequate staffing at his firm, rather than technological issues.  
20 At the hearing, Mr. Bandlow indicated that his firm, Fox Rothschild LLP, at which he is a  
21 partner, employs approximately 900 lawyers. It is unacceptable and inexcusable that Mr.  
22 Bandlow's firm had insufficient coverage over the holidays to address court-ordered deadlines in  
23 cases that its client chose to file in this court.

24 The failures before the court today do not represent mere inadvertence or recklessness.  
25 After he was reprimanded for failing to meet deadlines in related matters, Mr. Bandlow was on  
26 notice of problems with his calendaring procedure and he was explicitly warned to make sure that  
27 he properly calendared all future deadlines. Instead of doing so, Mr. Bandlow failed to comply  
28 with court-ordered deadlines twenty-four additional times. Mr. Bandlow's conduct constitutes

1 willful disobedience of court orders, which is tantamount to bad faith.

2 Such willful disobedience is not excused by plaintiff's voluntary dismissal of each case in  
3 which a deadline was missed. See Cooter, 496 U.S. at 395. The harm has already occurred, as  
4 the court has expended significant resources in managing these cases and addressing plaintiff's  
5 numerous failures to follow court orders.

6 In light of Mr. Bandlow's representations at the hearing, the court recognizes that his bad  
7 faith is not the most egregious kind. The court believes that Mr. Bandlow's apologies are sincere.  
8 At the same time, the fact remains that Mr. Bandlow delayed and disrupted the litigation here by  
9 willfully ignoring, and thereby disobeying, explicit orders and warnings from the court—conduct  
10 that is unacceptable from any attorney, let alone one with over twenty-five years of experience.  
11 See Chambers, 501 U.S. at 46.

12 Therefore, for the foregoing reasons, the court determines that it is appropriate to impose  
13 monetary sanctions on plaintiff's counsel, Lincoln D. Bandlow, but in a lesser amount than  
14 originally contemplated.

15 V. CONCLUSION

16 Accordingly, IT IS HEREBY ORDERED that

- 17 1. Plaintiff is sanctioned a total of \$750.00 based upon its willful disobedience of court  
18 orders in twenty-four related matters.<sup>5</sup> The sanctions are imposed on plaintiff's

---

19 <sup>5</sup> Strike 3 Holdings, LLC v. John Doe, 1:18-cv-01075-MCE-CKD, Order Granting Ex Parte App.,  
20 ECF No. 10; Strike 3 Holdings, LLC v. John Doe, 1:18-cv-01076-MCE-CKD, Order Granting Ex  
21 Parte App., ECF No. 10; Strike 3 Holdings, LLC v. John Doe, 1:18-cv-01080-MCE-CKD, Order  
22 Granting Ex Parte App., ECF No. 10; Strike 3 Holdings, LLC v. John Doe, 1:18-cv-01089-MCE-  
23 CKD, Order Granting Ex Parte App., ECF No. 10; Strike 3 Holdings, LLC v. John Doe, 1:18-cv-  
24 01304-MCE-CKD, Order Granting Ex Parte App., ECF No. 7; Strike 3 Holdings, LLC v. John  
25 Doe, 2:18-cv-02201-MCE-CKD, Order Granting Ex Parte App., ECF No. 10; Strike 3 Holdings,  
26 LLC v. John Doe, 2:18-cv-02202-MCE-CKD, Order Granting Ex Parte App., ECF No. 10; Strike  
27 3 Holdings, LLC v. John Doe, 2:18-cv-02203-MCE-CKD, Order Granting Ex Parte App., ECF  
28 No. 10; Strike 3 Holdings, LLC v. John Doe, 2:18-cv-02204-MCE-CKD, Order Granting Ex  
Parte App., ECF No. 10; Strike 3 Holdings, LLC v. John Doe, 2:18-cv-02205-MCE-CKD, Order  
Granting Ex Parte App., ECF No. 10; Strike 3 Holdings, LLC v. John Doe, 2:18-cv-02206-MCE-  
CKD, Order Granting Ex Parte App., ECF No. 10; Strike 3 Holdings, LLC v. John Doe, 2:18-cv-  
02207-MCE-CKD, Order Granting Ex Parte App., ECF No. 10; Strike 3 Holdings, LLC v. John  
Doe, 2:18-cv-02208-MCE-CKD, Order Granting Ex Parte App., ECF No. 10; Strike 3 Holdings,  
LLC v. John Doe, 2:18-cv-02209-MCE-CKD, Order Granting Ex Parte App., ECF No. 10; Strike

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

counsel, Lincoln D. Bandlow, who shall pay \$750.00 to the Clerk of Court within twenty-one (21) days of this order.

- 2. For ease of administration, the sanctions shall be paid in case Strike 3 Holdings, LLC v. John Doe, 1:18-cv-01075-MCE-CKD, even though the sanctions are imposed for the conduct that occurred in all twenty-four cases.

Dated: February 26, 2019

  
\_\_\_\_\_  
CAROLYN K. DELANEY  
UNITED STATES MAGISTRATE JUDGE

Strike 3 Holdings, LLC v. John Doe, 2:18-cv-02582-MCE-CKD, Order Granting Ex Parte App., ECF No. 7; Strike 3 Holdings, LLC v. John Doe, 2:18-cv-02584-MCE-CKD, Order Granting Ex Parte App., ECF No. 7; Strike 3 Holdings, LLC v. John Doe, 2:18-cv-02585-MCE-CKD, Order Granting Ex Parte App., ECF No. 7; Strike 3 Holdings, LLC v. John Doe, 2:18-cv-02636-MCE-CKD, Order Granting Ex Parte App., ECF No. 7; Strike 3 Holdings, LLC v. John Doe, 2:18-cv-02638-MCE-CKD, Order Granting Ex Parte App., ECF No. 7; Strike 3 Holdings, LLC v. John Doe, 2:18-cv-02639-MCE-CKD, Order Granting Ex Parte App., ECF No. 8; Strike 3 Holdings, LLC v. John Doe, 2:18-cv-02640-MCE-CKD, Order Granting Ex Parte App., ECF No. 7; Strike 3 Holdings, LLC v. John Doe, 2:18-cv-02641-MCE-CKD, Order Granting Ex Parte App., ECF No. 7; Strike 3 Holdings, LLC v. John Doe, 2:18-cv-02642-MCE-CKD, Order Granting Ex Parte App., ECF No. 7; Strike 3 Holdings, LLC v. John Doe, 2:18-cv-02643-MCE-CKD, Order Granting Ex Parte App., ECF No. 5.