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8 Attorney for Defendant, JOHN DOE

9  
10 **UNITED STATES DISTRICT COURT**  
11 **NORTHERN DISTRICT OF CALIFORNIA**

12	IN RE Rule 45 Subpoenas served on	)	Misc Case No. _____
13	GOOGLE and NETFLIX	)	Lead Case:MD FL 8:20-cv-00676-MSS-CP]
14	-----	)	
15	STRIKE 3 HOLDINGS, LLC,	)	DEFENDANT JOHN DOE'S
16	Plaintiff,	)	MOTION TO QUASH THE SUBPOENAS
17	vs.	)	SERVED ON GOOGLE AND NETFLIX
18		)	AND FOR A PROTECTIVE ORDER
19	JOHN DOE infringer identified as using	)	[FRCP 45]
20	IP address 47.197.99.186,.	)	
21	Defendant.	)	
22	-----	)	

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**NOTICE OF MOTION AND MOTION**

1 To all parties and their attorneys of record: Defendant JOHN DOE identified as using IP  
2 address 47.197.99.186 (“John Doe”) hereby moves to quash third party subpoenas (Exhibit 3 and  
3 Exhibit 4) for the production of records served on Google and Netflix by Plaintiff Strike 3 Holdings,  
4 LLC, (“Strike 3”). This motion will be heard before a Judge located in the Northern District of  
5 California, with a date and time to be determined after the case has been assigned by the clerk.  
6

7 The underlying action is venued in Middle District of Florida. *Strike 3 Holdings vs. John Doe*  
8 (2020). MD FL 8:20-cv-00676-MSS-CPT.

9 This motion is based on the Middle District of Florida Rules which states:

10 *The Court follows the rule that the completion date means that all discovery*  
11 *must be completed by that date. For example, interrogatories must be served more*  
12 *than thirty days prior to the completion date to permit the opposing party to respond*  
13 *before the discovery deadline. Untimely discovery requests are subject to objection*  
14 *on that basis. (See Exhibit 1).*

15 The District Court for the Middle District of Florida has ordered fact discovery to be completed on  
16 March 16, 2022. (See Scheduling Order, Exhibit 2). The response date for these subpoenas is 30  
17 days from the service date of the subpoenas. Rule 34 is incorporated in by Rule 45, Thus, the  
18 subpoenas served on Google and Netflix should be quashed.

19 Defendant John Doe also moves for a protective order concerning said subpoenas. Like any  
20 other method of discovery, a Rule 45 subpoena is subject to the limitations of Rule 26. *Amini*  
21 *Innovation Corp. v. McFerran Home Furnishings, Inc.*, (C.D. Cal. 2014) 300 F.R.D. 406, 409.  
22 Under Rule 26, courts may limit discovery that is not relevant to any party’s claim or defense, that  
23 is not proportional to the needs of the case, or that may be obtained from some source that is more  
24 convenient, less burdensome, or less expensive. Fed. R. Civ. P. 26(b)(1), (2)(C). Here there is no  
25 need or good cause for the documents being subpoenaed, and in all events not proportional to the  
26 needs of the case. Also the subpoenas invade John Doe’s and other parties privacy interests.  
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**FACTUAL AND PROCEDURAL BACKGROUND**

Defendant John Doe seeks to quash two subpoenas: one on Google and one on Netflix, both entities having corporate headquarters in this judicial district relating to an underlying action is based in the Middle District of Florida.

Strike 3 allegedly issued the document production subpoenas on February 25, 2022 on Netflix and Google under Rule 45. (Ex 3, Ex 4). Rule 45 incorporates the production time rules of Rule 34. Assuming, but not conceding, that personal service occurred on the date of issuance, Google and Netflix had through and inclusive of March 28 to respond, which is 12 days after the close of discovery.

Strike 3 improperly, and in violation of the 30 days requirement of Rule 34, set the production date for March 14, 2022.

Also, no good cause exists for this discovery even if this Court considers the subpoenas as timely. The subpoenaed documents facially exceed any reasonable scope and manifestly invade the privacy interests of John Doe and other parties.

**PARTIES HAVE MET AND CONFERRED**

The parties have met and confer (see Edmondson Declaration) and there was no resolution.

**ARGUMENT**

**I. JOHN DOE HAS STANDING TO QUASH THE GOOGLE AND NETFLIX SUBPOENAS**

A party moving to quash a subpoena on third parties has standing when the party has a personal right or privilege in the information sought to be disclosed." *Chevron Corp. v. Donziger*, No. 12-mc-80237 CRB (NC), 2013 WL 4536808, at \*4 (N.D. Cal. Aug. 22, 2013) (quoting *Knoll, Inc. v. Moderno, Inc.*, No. 12-mc-80193 SI, 2012 WL 4466543, at \*2 (N.D.Cal. Sept. 26, 2012)); see also 9A Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2459 (3d ed. 2008). Rule 45 provides that this motion should be brought in this district.

1 Here Strike 3’s overly broad, highly invasive, and immaterial subpoena on Google requests  
2 of private and personal information.

3 The Google Subpoena requests are invasive of the personal data of John Doe stored on  
4 Google’s computer systems. To illustrate, Strike 3 requests “...alternate email addresses...”  
5 (Category 2) which bear no connection to the infringement of Strike 3’s movies since “Bittorrent”  
6 was the application that has been alleged to been used to download their movies. Strike 3 also  
7 requests “All documents identifying the file names. (Category 8). Not only would this reveal  
8 personal and private information, it would also identify privileged communications with counsel.  
9 Strike 3 also wants from Google “. All videos uploaded to YouTube.”, this requests information  
10 that is irrelevant as there are no allegations or evidence that YouTube has been hosting Strike 3  
11 movies. Strike 3 also desires “...All documents related to internet searches...”, aside from the  
12 fundamental fact that internet searches themselves are considered private. See *In re Google*  
13 *Referrer Header Privacy Litigation*, (ND CAL 2015) 87 F. Supp. 3d 1122, 1127 “...*User search*  
14 *queries can also contain highly-personal and sensitive issues, such as confidential medical*  
15 *information, racial or ethnic origins, political or religious beliefs or sexuality, which are often tied*  
16 *to the user’s personal information...*”. John Doe’s activity on Google and YouTube are not only  
17 irrelevant to this litigation but a personal right in the information that Strike 3 seeks to have  
18 disclosed conferring standing on John Doe.

19 Likewise, Strike 3’s subpoena on Netflix also requests highly invasive personal information  
20 unrelated to the simple question of whether Strike 3’s movie data was downloaded on John Doe’s  
21 computer. The document request category: “4. All **document(s)** related to the **Games History** for  
22 **Defendant’s Netflix Account** from July 1, 2019 to present day” is irrelevant as Strike 3 does not  
23 distribute games, so John Doe’s gaming history has no connection to this litigation. Category No.  
24 11 is even more invasive: “All **document(s)** related to the **Viewing Activity** for **Defendant’s**  
25 **Netflix Account** from July 1, 2019 to present day.”. John Doe’s viewing activity of movies on  
26 Netflix is not only irrelevant to this litigation but is personal right in the information that Strike 3  
27 seeks to have disclosed.  
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2 **II. SUBPOENAS FOR THE PRODUCTION OF DOCUMENTS THAT HAVE A RESPONSE DATE**  
3 **AFTER CLOSE OF DISCOVERY MUST BE QUASHED.**  
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5 Under the Court's Case Management Order, written discovery requests had to be completed  
6 by March 16, 2022. (Ex. 2). Here discovery has closed on March 16, 2022. The subject subpoenas  
7 require responses beyond the discovery cutoff.  
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9 **III. THE GOOGLE AND NETFLIX SUBPOENAS ARE OVERBROAD, SEEK IRRELEVANT**  
10 **INFORMATION, AND INVADE THE PRIVACY INTERESTS OF JOHN DOE**

11 Like any other method of discovery, a Rule 45 subpoena is subject to the limitations of Rule  
12 26. *Amini Innovation Corp. v. McFerran Home Furnishings, Inc.*, 300 F.R.D. 406, 409 (C.D. Cal.  
13 2014). The breadth of discovery allowed under Rule 45 is limited by the proportionality  
14 requirements of Rule 26. There is no evidence on John Doe's hard drives of the movies. Strike 3  
15 has demanded extensive discovery from John Doe. John Doe has already provided voluminous  
16 discovery responses to Strike 3 including searches of his hard drive. There is no evidence on John  
17 Doe's hard drives of Strike 3's movies.

18 There is no evidence that either Netflix or Google participated in the production, distribution,  
19 or financing of hard-core pornography. Instead Strike 3 seeks irrelevant information from these two  
20 companies with the intent of harvesting John Doe's personal account information from these two  
21 sources. This is manifestly an invasion of privacy. None of this personal account information is  
22 relevant to this case.  
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24 **IV. THE COURT SHOULD CONSIDER SANCTIONS UNDER RULE 37**

25 A court may impose sanctions when a party issues a subpoena in bad faith, for an improper  
26 purpose, or in a manner inconsistent with existing law. *Legal Voice v. Stormans Inc.*, (9th Circuit  
27 2013) 738 F. 3d 1178, 1185. Serving an untimely subpoena is clearly inconsistent with existing  
28 law. Also, no reasonable attorney could in good faith believe that the breadth of these subpoenas

1 meets the proportionality requirements of Rule 26. The time and costs for the motion to quash is  
2 outlined in counsel's declaration.

3 **CONCLUSION**

4 Strike 3 has violated the local rules and court order of the Middle District of Florida  
5 requiring discovery to be completed by March 16, 2022, the discovery cutoff date. Further, the  
6 subpoenas seek irrelevant and overbroad documents unrelated to the dispute.

7 Thus, the Court should quash the subpoenas on Google and Netflix.

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9 Respectfully submitted

10 Dated: March 19, 2022

11 BY: /s/J. Curtis Edmondson  
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**CERTIFICATE OF SERVICE**

I certify that I am an attorney at the law firm offices of J. Curtis Edmondson in Beaverton, Oregon. I am a U.S. citizen over the age of eighteen years and not a party to the within cause. On March 19, 2022, I caused to be served a true and correct copy of the foregoing on counsel of record by email.

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*/s/ J. Curtis Edmondson*