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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

HARD DRIVE PRODUCTIONS, INC., *et al.*,                      No. C-11-1959 EMC

Plaintiff,

v.

JOHN DOE ASSOCIATED WITH IP  
ADDRESS: 24.7.26.204,

Defendant.

**ORDER ADOPTING MAGISTRATE  
JUDGE’S REPORT AND  
RECOMMENDATION AND DENYING  
DEFENDANT’S MOTION TO QUASH**

(Docket Nos. 23, 39)

Defendant John Doe associated with IP Address 24.7.26.204<sup>1</sup> has filed a motion to quash a subpoena issued by Plaintiff Hard Drive Productions, Inc. Docket No. 23 (“Motion”). Having reviewed Magistrate Judge Spero’s report and recommendation and Plaintiff’s objections to the report and recommendation, the Court **DENIES** Defendant’s motion to quash.

**I. FACTUAL & PROCEDURAL HISTORY**

Plaintiff is a producer and distributor of adult entertainment. Compl. ¶ 6. Plaintiff originally brought this suit against 46 Doe Defendants, alleging that Doe Defendants used the Peer-to-Peer

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<sup>1</sup> The original complaint was brought against Defendant John Doe associated with IP Address 24.7.26.204. Compl., Exh. A. Defendant John Doe states in his motion that “the cited IP address of 24.7.26.204 is not the digital signature of the owner(s) of this residence,” and lists Doe’s IP address as 24.6.184.34. Docket No. 23 at 4. Plaintiff points out that “an IP address that was assigned to a Doe Defendant *at the time of the infringement* may not be assigned to that Doe Defendant today.” Docket No. 25 at 2, n.2. Plaintiff also claims that both addresses are located in the approximate vicinity of Santa Clara, California, suggesting that Doe changed his IP address after this action was filed. *Id.* at 3, n.3; *see also* Docket No. 39 at 1 n.1. In any event, the only subpoena at issue currently before the Court is the one directed at 24.7.26.204.

1 media distribution system BitTorrent to download and distribute Plaintiff’s copyrighted works.  
2 Compl. ¶ 23.

3 In April 2011, the Court granted Plaintiff’s motion to serve Rule 45 subpoenas upon the  
4 Internet Service Providers (“ISPs”) identified in the Complaint. Docket No. 8. The subpoenas  
5 sought information identifying each Defendant based on the supplied IP addresses, including name,  
6 address, telephone number, e-mail address, and Media Access Control address. Docket No. 8. A  
7 motion to quash and/or vacate the subpoena was filed by Doe Defendant associated with IP address  
8 24.7.26.204. Docket No. 23. In this motion, Doe Defendant challenged the subpoena on the basis of  
9 lack of jurisdiction, undue burden, and denial of liability. Docket No. 23 ¶¶ 5, 7. The motion was  
10 referred to Judge Spero, who found that “challenges based on the possible lack of personal  
11 jurisdiction are premature, that compliance with the subpoena by the ISP would not constitute an  
12 undue burden, and that denial of liability is not a basis for quashing a subpoena.” Docket No. 39 at  
13 1 (“R&R”). However, Judge Spero recommended that Doe Defendant’s motion be granted because  
14 of improper joinder. R&R at 2.

15 Plaintiff dismissed all Doe defendants except Doe Defendant associated with IP address  
16 24.7.26.204. Docket No. 30. On this basis, Plaintiff objected to the R&R, arguing that misjoinder  
17 was no longer a basis for granting Doe’s motion to quash. Docket No. 41.

## 18 II. DISCUSSION

19 The Court agrees with Judge Spero that a challenge based on lack of personal jurisdiction is  
20 premature (*see Call of the Wild Movie, LLC v. Does*, No. 10-455 (BAH), 10-569 (BAH). 10-1520  
21 (BAH0, 2011 U.S. Dist. LEXIS 29153, at \*27-32 (D.D.C. Mar. 22, 2011)), that “the merits of this  
22 case are not relevant to the issue of whether the subpoena is valid and enforceable” (*Voltage*  
23 *Pictures, LLC v. Does*, No. 10-0873 (BAH), 2011 U.S. Dist. LEXIS 50787, at \*18-20 (D.D.C. May  
24 12, 2011)), and that being named a defendant in a case does not in and of itself constitute an undue  
25 burden such that the subpoena should be quashed.

26 As to Judge Spero’s finding of improper joinder, Plaintiff’s dismissal of all other Defendants  
27 other than Doe Defendant herein renders that issue moot. Improper joinder is no longer a basis to  
28 grant the motion to quash.

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**III. CONCLUSION**

For the reasons stated above, the Court **DENIES** Doe Defendant's motion to quash. Plaintiff shall serve a copy of this order on Defendant John Doe associated with IP Address 24.7.26.204.

This order disposes of Docket Nos. 23 and 39.

IT IS SO ORDERED.

Dated: February 28, 2012

  
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EDWARD M. CHEN  
United States District Judge