

UNITED STATES DISTRICT COURT
Northern District of California

PATRICK COLLINS, INC.,

No. C 11-2766 MEJ

Plaintiff,

**ORDER DENYING MOTION TO
QUASH (IP ADDRESS 71.88.189.140)**

v.

DOES 1-2,590,

Re: Docket No. 47Defendants.

On June 7, 2011, Plaintiff Patrick Collins, Inc. filed this lawsuit against 2,590 Doe Defendants, alleging that Defendants illegally reproduced and distributed a work subject to Plaintiff's exclusive license, ("*Real Female Orgasms 10*"), using an internet peer-to-peer file sharing network known as BitTorrent, thereby violating the Copyright Act, 17 U.S.C. § 101-1322. Compl. ¶¶ 6-15, Dkt. No. 1. On September 22, 2011, the Court granted Plaintiff's Application for Leave to Take Limited Expedited Discovery. Dkt. No. 12. The Court permitted Plaintiff to serve subpoenas on Does 1-2,590's Internet Service Providers ("ISPs") by serving a Federal Rule of Civil Procedure 45 subpoena that seeks information sufficient to identify the Doe Defendants, including the name, address, telephone number, and email address of Does 1-2,590. *Id.* at 11. Once the ISPs provided Does 1-2,590 with a copy of the subpoena, the Court permitted Does 1-2,590 30 days from the date of service to file any motions contesting the subpoena (including a motion to quash or modify the subpoena). *Id.*

Now before the Court is an objection filed by a Doe Defendant identified only by the IP address 71.88.189.140. Dkt. No. 47. In the motion, Doe Defendant argues that he did not use a

1 BitTorrent to download *Real Female Orgasms 10*, that the Court lacks jurisdiction over him, and
2 that venue is improper. As to the first argument, the Court finds that it goes to the merits of the case
3 and is therefore premature. As to jurisdiction and venue, the Court finds that a motion based on
4 these grounds is also premature. *See, e.g., New Sensations, Inc. v. Does 1-1,745*, 2011 WL 2837610,
5 at *1 (N.D. Cal. Jul. 18, 2011); *Call of the Wild Movie, LLC v. Smith*, No. 10-0455, 2011 WL
6 1807416, at *9 (D.D.C. May 12, 2011); *Voltage Pictures, LLC v. Does 1-5,000*, No. 10-0873, WL
7 1807438, at *8 (D.D.C. May 12, 2011). Rule 12(b)(2) permits defendants to move to dismiss for
8 lack of personal jurisdiction. Although the Doe Defendant moves the Court to dismiss the action
9 against him for lack of personal jurisdiction, he is not yet a defendant. If and when Plaintiff names
10 him as a defendant, he will be able to raise this defense. Once Plaintiff amasses enough evidence and
11 names the Does, it will then have the burden to present a prima facie case supporting personal
12 jurisdiction over defendants. *See Harris Rutsky & Co. Ins. Servs., Inc. v. Bell & Clements Ltd.*, 328
13 F.3d 1122, 1129 (9th Cir. 2003). At that time, the Doe Defendant may present his affidavit asserting
14 that he has never engaged in business with Plaintiff and that his activities with the forum state do not
15 meet the requisite minimum contacts to establish personal jurisdiction. With evidence from both
16 sides, jurisdiction will be decided on a full record. At this time, however, without any named
17 defendants, the motion is not yet ripe. The motion is DENIED WITHOUT PREJUDICE and may be
18 brought again once Plaintiff names the Doe Defendant as a defendant or when the Doe Defendant
19 has identified himself.

20 **IT IS SO ORDERED.**

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22 Dated: December 1, 2011

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24 Maria-Elena James
25 Chief United States Magistrate Judge
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