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UNITED STATES DISTRICT COURT
Northern District of California

PATRICK COLLINS, INC.,
Plaintiff,
v.
DOES 1-2,590,
Defendants.

No. C 11-2766 MEJ

**ORDER DENYING MOTION TO
QUASH (DOE DEFENDANT 222 - IP
ADDRESS 173.57.89.253)**

Docket No. 58

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 a Motion to Quash/Dismiss and Motion for Leave to Proceed Anonymously, filed by Doe Defendant 222 (IP address 173.57.89.253). Dkt. No. 58. In the motion, Doe Defendant argues that the Court lacks jurisdiction and that venue is improper. However, the Court finds that a motion based on these grounds is premature. *See, e.g., New Sensations, Inc. v.*

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

16 Further, as to Plaintiff's motion to proceed anonymously, if Doe 222 wishes to appear in this
17 action anonymously or otherwise, she must follow the proper procedures for doing so. At a
18 minimum, the Court and the parties must be informed of the litigant's identity. If the litigant wishes
19 to protect her identity from the public, the litigant may use a pseudonym in public filings only after
20 receiving permission for good cause shown. Defendant is advised that the Ninth Circuit court of
21 appeals allows the use of pseudonyms only in the most unusual cases. *See, e.g., Does I thru XXIII v.*
22 *Advanced Textile Corp.*, 214 F.3d 1058, 1067-68 (9th Cir. 2000). Accordingly, Doe 222's motion is
23 DENIED WITHOUT PREJUDICE.

24 **IT IS SO ORDERED.**

25
26 Dated: December 1, 2011

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Maria-Elena James
Chief United States Magistrate Judge