

1 UNITED STATES DISTRICT COURT
2 Northern District of California

3
4 NEW SENSATIONS, INC.,

No. C 11-2770 MEJ

5 Plaintiff,

**ORDER DISMISSING CASE
WITHOUT PREJUDICE**

6 v.

7 DOES 1-1,474,

8 Defendants.
9 _____/

10 On December 7, 2011, the Court ordered Plaintiff New Sensations, Inc. to conduct a search
11 to obtain geographic information about the IP Addresses listed in its Complaint and thereafter
12 provide the Court with the location for each IP Address. Dkt. No. 93. In addition, for all IP
13 Addresses outside this District, the Court ordered Plaintiff to either: (a) file a voluntary dismissal
14 without prejudice as to those Doe Defendants; or (b) show good cause as to why it has a good faith
15 belief that jurisdiction exists and venue is proper as to each individual Doe Defendant. *Id.*

16 In response, Plaintiff has now filed a request that the Court (i) allow the ISPs to comply
17 with the subpoenas, (ii) allow Plaintiff and those potential Doe defendants who desire to settle
18 their claims to reach settlements, and (iii) postpone any requirements that Plaintiff name and/or
19 dismiss any potential Doe defendants until February 20, 2012. Dkt. No. 100. Plaintiff's response
20 alleviates none of the Court's concerns. Although the Court initially granted leave for expedited
21 discovery, in the ensuing months, multiple defendants filed motions to quash those subpoenas,
22 raising issues such as innocence, lack of personal jurisdiction, improper joinder, and improper
23 venue. At the same time, a check of the Court's docket disclosed that no defendant had appeared
24 and no proofs of service had been filed. At the same time, the Court became aware of an outbreak of
25 similar litigation in this District and around the country, and the concerns raised by some of the
26 judges presiding over these cases.

27 Plaintiff's most recent filing does nothing to show why his matter should not be dismissed
28 for misjoinder and improper venue. Therefore, for the reasons stated in its December 7, 2011 Order,

1 and having reviewed Plaintiff's response to the Order, the Court finds that the Doe Defendants
2 named in this case are improperly joined. Accordingly, this case is hereby DISMISSED WITHOUT
3 PREJUDICE. If Plaintiff chooses to file an amended complaint, it must do so in compliance with
4 the Court's December 7, 2011 Order. Specifically, the Court finds that it is fundamentally unfair to
5 require a defendant from outside this District to incur the substantial costs necessary to file a motion
6 to quash in this District when Plaintiff has the ability to discern in advance which IP addresses are at
7 least likely to be from this District. Accordingly, if it chooses to amend its complaint, Plaintiff must
8 make at least a prima facie showing that the Court has personal jurisdiction over each defendant for
9 whom Plaintiff seeks early discovery and that venue is proper. *See OpenMind Solutions, Inc.*, 2011
10 WL 4715200 at *2 (granting motion for expedited discovery where, among other things, the plaintiff
11 had alleged sufficient information to show that each defendant was subject to the jurisdiction of the
12 court). General arguments such as those discussed in the Court's December 7 Order will not suffice.
13 Plaintiff must make a specific showing, including geographic information about the IP Addresses in
14 the amended complaint, as to each Doe Defendant. Any such request must include a declaration
15 under penalty of perjury that Plaintiff has taken all reasonable steps to determine that jurisdiction
16 and venue are proper. Said declaration shall include an explanation of all methods it utilized.

17 Plaintiff shall serve this Order upon all subpoenaed ISPs by December 20, 2011. This Order
18 has no effect on any settlements reached with any Doe Defendant prior to December 7, 2011.
19 However, if Plaintiff receives or has received any settlement amount on or after December 7,
20 Plaintiff shall immediately return the settlement funds.

21 Any motions to quash and/or dismiss that are pending or will be filed based on the issued
22 subpoenas are moot and shall be automatically terminated by the Clerk of Court pursuant to this
23 Order.

24 **IT IS SO ORDERED.**

25 Dated: December 15, 2011

26 
27 _____
28 Maria-Elena James
Chief United States Magistrate Judge