

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
For the Northern District of California

UNITED STATES DISTRICT COURT
Northern District of California

NEW SENSATIONS, INC.,
Plaintiff,
v.
DOES 1-1,474,
Defendants.

No. C 11-2770 MEJ
**ORDER DENYING DOE
DEFENDANT #37's MOTION TO
DISMISS (I.P. Address 108.34.138.72)**
Docket No. 22

_____ /

On June 7, 2011, Plaintiff New Sensations, Inc. ("Plaintiff") filed this lawsuit against 1,474 Doe Defendants, alleging that Defendants illegally reproduced and distributed a work subject to Plaintiff's exclusive license, ("*Big Bang Theory: A XXX Parody*"), 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. 13. The Court permitted Plaintiff to serve subpoenas on Does 1-1,474'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 1-1,474 with a copy of the subpoena, the Court permitted Does 1-1,474 30 days from the date of service to file any motions contesting the subpoena (including a motion to quash or

1 modify the subpoena). *Id.*

2 On November 1, 2011, Doe Defendant #37 (I.P. Address 108.34.138.72) filed a Motion to
3 Dismiss. Dkt. No. 22. In his motion, Doe #37 requests that the subpoena be quashed as to him and
4 the case against him dismissed because he does not reside, work, or conduct business in California;
5 has not contracted to supply services in California; the IP address that is identified as assigned to
6 him is not within the jurisdiction of this Court; he has no real property in California; he does not
7 consent to personal jurisdiction in California; he has no business or personal contacts in California;
8 and he has no significant relationship with California. *Id.* at 3.

9 In response to Defendant's motion, Plaintiff has now filed an opposition. Dkt. No. 36. In its
10 response, Plaintiff argues that it has no means of testing the truthfulness of Defendant's statements
11 because he is attempting to appear anonymously. Plaintiff that the Court, at a minimum, require
12 Defendant to provide his identity and submit a sworn declaration regarding jurisdiction. The Court
13 agrees. As there is no basis for giving any credence to an unsworn statement made by an
14 anonymous person, the Court finds it inappropriate to quash the subpoena, thereby dismissing Doe
15 Defendant #37 from this case, before Plaintiff has an opportunity to learn Doe #37's identity and to
16 determine whether jurisdiction is proper.

17 Accordingly, Doe Defendant #37's motion to quash is DENIED.

18 **IT IS SO ORDERED.**

19
20 Dated: November 15, 2011

21 
22 _____
23 Maria-Elena James
24 Chief United States Magistrate Judge
25
26
27
28