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UNITED STATES DISTRICT COURT  
For the Northern District of California

UNITED STATES DISTRICT COURT  
Northern District of California

NEW SENSATIONS, INC.,

No. C 11-2770 MEJ

Plaintiff,

**ORDER DENYING MOTION TO  
QUASH**

v.

DOES 1-1,474,

**Docket No. 44**

Defendants.

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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 1-1,474. *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 Now before the Court is a Motion to Quash, filed by Doe Defendant 1039 requesting that he  
3 be allowed to contest the subpoena without revealing his personal identifying information.<sup>1</sup> Dkt.  
4 No. 44. In his motion, Doe 1039 argues that the motion should be quashed because the Court lacks  
5 jurisdiction over him. However, any motion to dismiss based on jurisdictional grounds is premature.  
6 *See, e.g., New Sensations, Inc. v. Does 1-1,745*, 2011 WL 2837610, at \*1 (N.D. Cal. Jul. 18, 2011);  
7 *Call of the Wild Movie, LLC v. Smith*, No. 10-0455, 2011 WL 1807416, at \*9 (D.D.C. May 12,  
8 2011); *Voltage Pictures, LLC v. Does 1-5,000*, No. 10-0873, WL 1807438, at \*8 (D.D.C. May 12,  
9 2011). Rule 12(b)(2) permits defendants to move to dismiss for lack of personal jurisdiction.  
10 Although Doe Defendant 1039 moves the Court to dismiss the action against him for lack of  
11 personal jurisdiction, he is not yet a defendant. If and when Plaintiff names him as a defendant, he  
12 will be able to raise this defense. Once Plaintiff amasses enough evidence and names the Does, it  
13 will then have the burden to present a prima facie case supporting personal jurisdiction over  
14 defendants. *See Harris Rutsky & Co. Ins. Servs., Inc. v. Bell & Clements Ltd.*, 328 F.3d 1122, 1129  
15 (9th Cir. 2003). At that time, the Doe Defendant may present his affidavit asserting that he has  
16 never engaged in business with Plaintiff and that his activities with the forum state do not meet the

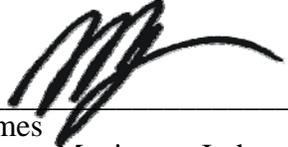
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18 <sup>1</sup>Under 28 U.S.C. § 636(b)(1)(A), a magistrate judge has jurisdiction to hear and decide  
19 nondispositive matters without the consent of the parties. A motion to quash is normally considered  
20 a non-dispositive matter, *Arista Records, LLC v. Doe 3*, 604 F.3d 110, 116 (2d Cir. 2010), and  
21 therefore, the undersigned has jurisdiction to rule on the Defendant’s motion(s) to the extent they  
22 seek to quash Plaintiff’s subpoena. In addition, a magistrate judge has jurisdiction to consider the  
23 question of whether joinder of unserved defendants is proper, including whether unserved  
24 defendants should be severed and dismissed from the action, because defendants who have not been  
25 served are not considered “parties” under 28 U.S.C. § 636(c). *Neals v. Norwood*, 59 F.3d 530, 532  
26 (5th Cir. 1995) (holding that magistrate judge had jurisdiction to dismiss prison inmate’s action  
27 under 42 U.S.C. § 1983 as frivolous without consent of defendants because defendants had not been  
28 served yet and therefore were not parties); *see also United States v. Real Property*, 135 F.3d 1212,  
1217 (9th Cir. 1998) (holding that magistrate judge had jurisdiction to enter default judgment in an  
in rem forfeiture action even though property owner had not consented to it because 28 U.S.C. §  
636(c)(1) only requires the consent of the parties and the property owner, having failed to comply  
with the applicable filing requirements, was not a party). Here, Plaintiff has consented to magistrate  
jurisdiction and the Doe Defendants have not yet been served. Therefore, the Court finds that it has  
jurisdiction under 28 U.S.C. § 636(c) to decide the issues raised in the instant motion(s).

1 requisite minimum contacts to establish personal jurisdiction. With evidence from both sides,  
2 jurisdiction will be decided on a full record. At this time, however, without any named defendants,  
3 the motion is not yet ripe. The motion is DENIED WITHOUT PREJUDICE and may be brought  
4 again once Plaintiff names Doe Defendant 1039 as a defendant or when the Doe Defendant has  
5 identified himself.

6 **IT IS SO ORDERED.**

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8 Dated: November 16, 2011

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11 Maria-Elena James  
12 Chief United States Magistrate Judge

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