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UNITED STATES DISTRICT COURT
Northern District of California

NEW SENSATIONS, INC.,

No. C 11-2770 MEJ

Plaintiff,

**ORDER DENYING DOE
DEFENDANT #305's MOTION TO
QUASH; MOTION TO PROCEED
ANONYMOUSLY (I.P. Address
207.68.252.6)**

v.

DOES 1-1,474,

Defendants.

Docket Nos. 50, 53

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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 modify the subpoena). *Id.*

On November 21, 2011, Doe Defendant #305 (I.P. Address 207.68.252.6) filed a Motion to Proceed Anonymously, Dkt. No. 50, and subsequently filed a Motion to Quash on November 22, 2011. In his motions, Doe #305 argues that Plaintiff has failed to establish a prima facie case of copyright infringement against him, that joinder is improper, and that the Court lacks jurisdiction over him. As to the first two arguments, the Court has addressed them at length in its September 22

1 Order and finds they are without merit at this stage of the litigation. Dkt. No. 13 at 5:10-6:4, 6:22-
2 11:10. As to the third argument, the Court finds that any motion to quash based on jurisdictional
3 grounds is premature. *See, e.g., New Sensations, Inc. v. Does 1-1,745*, 2011 WL 2837610, at *1
4 (N.D. Cal. Jul. 18, 2011); *Call of the Wild Movie, LLC v. Smith*, No. 10-0455, 2011 WL 1807416, at
5 *9 (D.D.C. May 12, 2011); *Voltage Pictures, LLC v. Does 1-5,000*, No. 10-0873, WL 1807438, at
6 *8 (D.D.C. May 12, 2011). Rule 12(b)(2) permits defendants to move to dismiss for lack of
7 personal jurisdiction. Although the Doe Defendant moves the Court to dismiss the action against
8 him for lack of personal jurisdiction, he is not yet a defendant. If and when Plaintiff names him as a
9 defendant, he will be able to raise this defense. Once Plaintiff amasses enough evidence and names
10 the Does, it will then have the burden to present a prima facie case supporting personal jurisdiction
11 over defendants. *See Harris Rutsky & Co. Ins. Servs., Inc. v. Bell & Clements Ltd.*, 328 F.3d 1122,
12 1129 (9th Cir. 2003). At that time, the Doe Defendant may present his affidavit asserting that he has
13 never engaged in business with Plaintiff and that his activities with the forum state do not meet the
14 requisite minimum contacts to establish personal jurisdiction. With evidence from both sides,
15 jurisdiction will be decided on a full record. At this time, however, without any named defendants,
16 the motion is not yet ripe. The motion is DENIED WITHOUT PREJUDICE and may be brought
17 again once Plaintiff names the Doe Defendant as a defendant or when the Doe Defendant has
18 identified himself. As there is no basis for giving any credence to an unsworn statement made by an
19 anonymous person, the Court finds it inappropriate to quash the subpoena, thereby dismissing Doe
20 Defendant #305 from this case, before Plaintiff has an opportunity to learn Doe #305's identity and
21 to determine whether jurisdiction is proper.

22 Accordingly, Doe Defendant #305's motions to proceed anonymously and quash are
23 DENIED.

24 **IT IS SO ORDERED.**

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26 Dated: November 30, 2011

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Maria-Elena James
Chief United States Magistrate Judge