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UNITED STATES DISTRICT COURT
Northern District of California

NEW SENSATIONS, INC.,

No. C 11-2770 MEJ

Plaintiff,

**ORDER DENYING MOTION TO
QUASH (DOE DEFENDANT #1340)**

v.

DOES 1-1,474,

Re: Docket No. 78

Defendants.

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 1340 requesting that he
3 be allowed to contest the subpoena without revealing his personal identifying information.¹ Dkt.
4 No. 78. In his motion, Doe 1340 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 1340 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 ¹Under 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 1340 as a defendant or when the Doe Defendant has
5 identified himself.

6 **IT IS SO ORDERED.**

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8 Dated: November 30, 2011

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11 Maria-Elena James
12 Chief United States Magistrate Judge

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