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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 (IP ADDRESS 24.176.24.5)**

v.

DOES 1-1,474,

Re: Docket No. 82

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 an individual Doe Defendant connected
3 to IP Address 24.176.24.5¹ Dkt. No. 82. In his motion, the Doe Defendant argues that the alleged
4 copyright violation “has been wrong suggested on my behalf” as he has “never used BitTorrent.”
5 However, as the Doe Defendant’s argument goes to the merits of the case, and the Doe Defendant
6 has not appeared in this case as a Defendant, the Court finds the motion premature. Accordingly, the
7 motion is DENIED.

8 **IT IS SO ORDERED.**

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10 Dated: December 1, 2011

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12 _____
13 Maria-Elena James
14 Chief United States Magistrate Judge

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17 _____
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).