

1  
2 UNITED STATES DISTRICT COURT  
3 Northern District of California  
4

5 NEW SENSATIONS, INC.,

No. C 11-2770 MEJ

6 Plaintiff,

**ORDER DENYING DOE  
DEFENDANT #389's MOTION TO  
QUASH**

7 v.

8 DOES 1-1,474,

**Docket No. 84**

9 Defendants.  
10  
11 \_\_\_\_\_/

12 On June 7, 2011, Plaintiff New Sensations, Inc. ("Plaintiff") filed this lawsuit against 1,474  
13 Doe Defendants, alleging that Defendants illegally reproduced and distributed a work subject to  
14 Plaintiff's exclusive license, ("*Big Bang Theory: A XXX Parody*"), using an internet peer-to-peer file  
15 sharing network known as BitTorrent, thereby violating the Copyright Act, 17 U.S.C. § 101-1322.  
16 Compl. ¶¶ 6-15, Dkt. No. 1. On September 22, 2011, the Court granted Plaintiff's Application for  
17 Leave to Take Limited Expedited Discovery. Dkt. No. 13. The Court permitted Plaintiff to serve  
18 subpoenas on Does 1-1,474's Internet Service Providers ("ISPs") by serving a Federal Rule of Civil  
19 Procedure 45 subpoena that seeks information sufficient to identify the Doe Defendants, including  
20 the name, address, telephone number, and email address of Does 1-1,474. *Id.* at 11. Once the ISPs  
21 provided Does 1-1,474 with a copy of the subpoena, the Court permitted Does 1-1,474 30 days from  
22 the date of service to file any motions contesting the subpoena (including a motion to quash or  
23 modify the subpoena). *Id.*

24 On December 1, 2011, Doe Defendant #389 filed a Motion to Quash. Dkt. No. 84. In his  
25 motion, Doe #389 argues that joinder is improper and that the Court lacks jurisdiction over him. As  
26 to the first argument, the Court addressed this issue at length in its September 22 Order and finds  
27 that it is without merit at this stage of the litigation. Dkt. No. 13 at 6:22-11:10. As to the second  
28 argument, the Court finds that any motion to quash based on jurisdictional grounds is premature.

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

20 **IT IS SO ORDERED.**

21  
22 Dated: December 5, 2011

23   
24 \_\_\_\_\_  
25 Maria-Elena James  
26 Chief United States Magistrate Judge  
27  
28