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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

808 HOLDINGS, LLC, a California)	Civil No. 12cv00191 MMA(RBB)
limited liability company,)	
Plaintiff,)	ORDER DENYING PLAINTIFF'S
v.)	MOTION FOR LEAVE TO TAKE EARLY
COLLECTIVE SHARING HASH)	DISCOVERY [ECF NO. 3]
E37917C8EEB4585E6421358FF32F29C)	
D63C23C91 on DECEMBER 28, 2011,)	
and DOES 1-39, inclusive,)	
Defendants.)	
_____)	

On January 25, 2012, Plaintiff filed a Motion for Leave to Take Early Discovery with a Memorandum of Points and Authorities and an exhibit [ECF No. 3] before United States Magistrate Judge Jan M. Adler. On April 25, 2012, the case was transferred to this Court pursuant to the "Low-Number" Rule [ECF No. 4]. Because no Defendant has been named or served, no opposition or reply briefs have been filed.

The Plaintiff failed to comply with local rules and obtain a hearing date before filing its Motion for Leave to Take Early Discovery. See S.D. Cal. Civ. R. 7.1(d). Although 808 Holdings

1 did not obtain a hearing date before Judge Adler, the Court finds
2 the Plaintiff's Motion suitable for resolution on the papers. See
3 S.D. Cal. Civ. R. 7.1(d)(1). For the reasons discussed below, the
4 Motion is **DENIED**.

5 **I.**

6 **PROCEDURAL HISTORY**

7 On January 24, 2012, Plaintiff 808 Holdings, LLC ("808
8 Holdings") filed a Complaint against the Collective Sharing Hash
9 E37917C8EEB4585E6421358FF32F29CD63C23C91 on December 28, 2011, and
10 DOES one through thirty-nine ("Defendants") [ECF No. 1]. Plaintiff
11 does business under the names "Cody Media" and "SeanCody.com," and
12 it purports to be the registered owner of, and hold the exclusive
13 rights to, the copyright of the motion picture, "Brandon & Pierce
14 Unwrapped." (Compl. 1, 3, ECF No. 1.) First, 808 Holdings alleges
15 a claim for copyright infringement, stating that Defendants
16 reproduced and distributed Plaintiff's copyrighted material through
17 the Internet without authorization of the Plaintiff. (Id. at 22-
18 23.) Second, 808 Holdings pleads contributory copyright
19 infringement, alleging that Defendants illegally obtained the
20 copyrighted motion picture and assisted others in doing the same.
21 (Id. at 23-25.) Third, Plaintiff argues that the Defendants were
22 negligent in failing to adequately secure their Internet access to
23 prevent its unlawful use by others. (Id. at 25-26.)

24 One day after filing the Complaint, on January 25, 2012, 808
25 Holdings filed this Motion for Leave to Take Early Discovery to
26 learn the identities of the Doe Defendants from their respective
27 Internet Service Providers ("ISPs"). (Mot. Leave Take Early Disc.
28

1 1, ECF No. 3.)¹ Specifically, 808 Holdings seeks an order
2 directing the ISPs to release the subscriber's identifying
3 information. (Id.) The Plaintiff also seeks leave to serve
4 interrogatories on, and take the depositions of, the individuals
5 identified by the ISPs to determine whether the actual Internet
6 subscriber is the proper defendant. (Id. Attach. #1 Mem. P. & A.
7 1.) Plaintiff attached to its Motion a list of the Internet
8 Protocol ("IP") addresses associated with subscribers it hopes to
9 identify as defendants. (Id. Attach. #2 Ex. 1, at 2-3.) The list
10 indicates the state attributable to each IP address, but it does
11 not provide the city. (See id.)

12 **II.**

13 **FACTUAL ALLEGATIONS**

14 In the Complaint, Plaintiff 808 Holdings alleges that the
15 thirty-nine Doe Defendants collectively infringed its copyrighted
16 work using a BitTorrent file transfer protocol. (Compl. 2, ECF No.
17 1.) In general, the Plaintiff asserts that each time a Defendant
18 distributes the motion picture to others, those individuals can
19 then distribute that infringing copy to other people in "an
20 interconnected collective," which then builds on its prior
21 infringements. (Id.) The Defendants are purportedly a collection
22 of "BitTorrent users" or "peers" whose computers are connected for
23 the purpose of sharing a file, otherwise known as a "swarm." (Id.
24 at 3.) Plaintiff alleges that each BitTorrent swarm is associated
25 with a particular "hash," which has a specific identifier for the
26

27 ¹ Because the pages attached to the Motion are not paginated,
28 the Court will cite to the Motion for Leave to Take Early Discovery
using the page numbers assigned by the electronic case filing
system.

1 file. (Id.) The sharing hash associated with the motion picture
2 at issue is E37917C8EEB4585E6421358FF32F29CD63C23C91 ("E379 Hash").
3 (Id. at 4.)

4 **A. BitTorrent Protocol**

5 According to 808 Holdings, the BitTorrent protocol is
6 distinguishable from previously used peer-to-peer file sharing
7 technology, utilized by Napster or Limewire, because it "allows for
8 higher transfer speeds by locating pieces (or 'bits') of the file
9 already present on other users' computers and downloading them
10 simultaneously." (Id. at 18.) "This is done by joining into the
11 'swarm,' or collective, of peers to download and upload from each
12 other simultaneously." (Id.) This process results in faster
13 downloads than peer-to-peer file sharing technology. (Id.)

14 Plaintiff describes the process of downloading and uploading
15 files through a BitTorrent protocol as "quick and efficient."
16 (Id.) When a user downloads a media file, he or she opens the file
17 on a BitTorrent client application; the user then extracts a list
18 with tracker locations that connect to IP addresses that are
19 currently running the BitTorrent software and offering to
20 distribute the file. (Id.) The downloader's BitTorrent program
21 then begins to download the media file automatically. (Id.)

22 **B. Forming a Swarm**

23 In the Complaint, 808 Holdings maintains that a swarm begins
24 with an initial user called the "seeder" who begins to share a file
25 with a torrent swarm. (Id.) New members of the swarm then connect
26 to the seeder to download the media file, which creates a digital
27 copy of the file; the process repeats as new members join the
28 swarm, increasing the number of users in the swarm. (Id.) Each

1 member both acquires and redistributes the media file by
2 simultaneously uploading and downloading portions of the same
3 digital copy with the other members. (Id. at 18-19.) Therefore,
4 Plaintiff contends that even if the original seeder leaves the
5 swarm, the media file can continue to be downloaded by old and new
6 members. (Id. at 19.)

7 **C. The December 28, 2011 Sharing Hash**

8 Plaintiff claims that on December 28, 2011, each of the
9 Defendants "republished, duplicated, and replicated the exact same
10 copy and exact same hash file." (Id. at 4.) Because all the
11 Defendants are associated with the E379 hash, 808 Holdings alleges
12 that each was a member of the same collective swarm. (Id. at 20.)
13 Accordingly, Plaintiff asserts that they "acted collectively, and
14 in concert, in effectuating the illegal and unauthorized sharing of
15 Plaintiff's copyrighted work." (Id.) 808 Holdings contends that
16 the Doe Defendants acted in unison:

17 Defendants engaged in their copyright infringement
18 scheme together. They all used the same torrent-sharing
19 technology to coordinate their collective copyright
20 theft; they were all members of the same exact swarm on
21 the same exact date; they all used the same exact tracker
22 file; they all shared and republished the same exact
23 motion picture; and they all shared the same exact hash
24 file of the Motion Picture with each other and other
25 individuals on the same exact date, December 28, 2011.

26 (Id. at 4.)

27 **III.**

28 **LEGAL STANDARDS**

Generally, discovery is not permitted without a court order
before the parties have conferred pursuant to Federal Rule of Civil
Procedure 26(f). Fed. R. Civ. P. 26(d)(1). Yet, "in rare cases,
courts have made exceptions, permitting limited discovery to ensue

1 after filing of the complaint to permit the plaintiff to learn the
2 identifying facts necessary to permit service on the defendant."
3 Columbia Ins. Co. v. Seescandy.com, 185 F.R.D. 573, 577 (N.D. Cal.
4 1999) (citing Gillespie v. Civiletti, 629 F.2d 637, 642 (9th Cir.
5 1980)). Courts grant these requests when the moving party shows
6 good cause for the early discovery. Semitool, Inc. v. Tokyo Elec.
7 Am., Inc., 208 F.R.D. 273, 275-76 (N.D. Cal. 2002).

8 The Ninth Circuit has held that when the defendants'
9 identities are unknown at the time the complaint is filed, courts
10 may grant plaintiffs leave to take early discovery to determine the
11 defendants' identities "unless it is clear that discovery would not
12 uncover the identities, or that the complaint would be dismissed on
13 other grounds." Gellespie, 629 F.2d at 642. "A district court's
14 decision to grant discovery to determine jurisdictional facts is a
15 matter of discretion." Columbia Ins. Co., 185 F.R.D. at 578.

16 District courts apply a three-factor test when considering
17 motions for early discovery to identify certain defendants. Id. at
18 578-80. First, the plaintiff should "identify the missing party
19 with sufficient specificity such that the Court can determine that
20 defendant is a real person or entity who could be sued in federal
21 court." Id. at 578. Second, the movant must describe "all
22 previous steps taken to locate the elusive defendant" to ensure
23 that the plaintiff has made a good faith effort to identify and
24 serve process on the defendant. Id. at 579. Third, plaintiff
25 should establish that its suit against the defendant could
26 withstand a motion to dismiss. Id. "[T]o prevent abuse of this
27 extraordinary application of the discovery process and to ensure
28 that the plaintiff has standing," plaintiff must show that some act

1 giving rise to liability actually occurred and that the discovery
2 is aimed at identifying the person who allegedly committed the act.
3 Id. at 579-80.

4 IV.

5 DISCUSSION

6 Plaintiff seeks an order permitting it to subpoena twenty-
7 three ISPs for documents and information sufficient to identify the
8 subscribers of the assigned IP addresses listed in Exhibit A to its
9 Motion: (1) AT&T d/b/a SBC Internet Services, (2) BellSouth.net,
10 (3) CABLE ONE, Inc., (4) CenturyTel Internet Holdings, (5) Charter
11 Communications, (6) Comcast Cable, (7) Cox Communications, (8)
12 Cyber Wurx, LLC, (9) Earthlink, (10) Embarq Corporation, (11) Fuse
13 Internet Access, (12) HickoryTech Corporation, (13) Insight
14 Communications Company, (14) The Iserv Company LLC, (15) Level 3
15 Communications, (16) Optimum Online, (17) Qwest Communications,
16 (18) RCN Corporation, (19) SureWest Broadband, (20) Time Warner
17 d/b/a Road Runner, (21) Verizon Internet Services, (22)
18 WideOpenWest, and (23) Windstream Communications. (Mot. Leave Take
19 Early Disc. Attach. #1 Mem. P. & A. 2, ECF No. 3.) Out of the
20 thirty-nine corresponding IP addresses that Plaintiff lists in
21 Exhibit 1, only eight are located in the State of California; the
22 remaining thirty-one are located outside of California. (Id.
23 Attach. #1 Ex. 1, at 2-3.) 808 Holdings does not identify the city
24 corresponding to each IP address. (See id.)

25 **A. Identification of Missing Parties with Sufficient Specificity**

26 First, 808 Holdings must identify the Doe Defendants with
27 enough specificity to enable the Court to determine that the
28 defendant is a real person or entity who would be subject to the

1 jurisdiction of this Court. Columbia Ins. Co., 185 F.R.D. at 578.
2 In its Motion for Leave to Take Early Discovery, 808 Holdings
3 asserts it has "sufficiently identified individuals who are real
4 persons" that Plaintiff can sue in this federal district court.
5 (Mot. Leave Take Early Disc. Attach. #1 Mem. P. & A. 3, ECF No. 3.)
6 It has "observed and documented infringement of its registered work
7 by the individuals identified as DOES" (Id.) Also, 808
8 Holdings contends that the discovery sought is necessary to
9 ascertain the identities of the Defendants. (Id.)

10 Some district courts in the Ninth Circuit have determined that
11 a plaintiff identifies Doe defendants with sufficient specificity
12 by providing the unique IP addresses assigned to an individual
13 defendant on the day of the allegedly infringing conduct, and by
14 using "geolocation technology" to trace the IP addresses to a
15 physical point of origin. See Openmind Solutions, Inc. v. Does
16 1-39, No. C-11-3311 MEJ, 2011 U.S. Dist. LEXIS 116552, at *5-6
17 (N.D. Cal. Oct. 7, 2011); Pink Lotus Entm't v. Does 1-46, No. C-11-
18 02263 HRL, 2011 U.S. Dist. LEXIS 65614, at *6-7 (N.D. Cal. June 21,
19 2011). Others have found that merely identifying the IP addresses
20 assigned to the defendants on the day of the purported infringement
21 is sufficient to satisfy the first factor. See MCGIP, LLC v. Does
22 1-149, No. C-11-02331 LB, 2011 U.S. Dist. LEXIS 85363, at *4-5
23 (N.D. Cal. Aug. 15, 2011) (opinion by Judge Beeler); First Time
24 Videos LLC v. Does 1-37, No. C-11-01675 LB, 2011 U.S. Dist. LEXIS
25 42376, at *5 (N.D. Cal. April 14, 2011) (opinion by Judge Beeler).

26 This Court finds the former standard persuasive. In any
27 event, here, 808 Holdings has submitted a chart listing the unique
28 IP address corresponding to each Defendant on December 28, 2011, as

1 well as the state in which each IP address is located. (See Mot.
2 Leave Take Early Disc. Attach. #2 Ex. 1, at 2-3, ECF No. 3.)
3 Although the Plaintiff has not also identified the city in which
4 each IP address is located, it has identified the Doe Defendants
5 with sufficient specificity to satisfy this first factor. See
6 Openmind Solutions, 2011 U.S. Dist. LEXIS 116552, at *6 (concluding
7 that plaintiff satisfied the first factor by identifying the
8 defendants' IP addresses and by tracing the IP addresses to a point
9 of origin); Pink Lotus Entm't, 2011 U.S. Dist. LEXIS 65614, at *6
10 (same).

11 **B. Previous Attempts to Locate Defendants**

12 Next, 808 Holdings must describe all prior steps it has taken
13 to identify the Doe Defendants in a good faith effort to locate and
14 serve them. See Columbia Ins. Co., 185 F.R.D. at 579. Plaintiff
15 generally maintains that there are no other practical measures
16 available to determine the identities of the Doe Defendants. (Mot.
17 Leave Take Early Disc. Attach #1 Mem. P. & A. 4, ECF No. 3.) "Due
18 to the nature of on-line transactions, Plaintiff has no way of
19 investigating the identities of the potential Defendants except via
20 third-party subpoena to the ISP." (Id.)

21 In its Motion, 808 Holdings does not describe the efforts it
22 made to learn the IP addresses. Plaintiff identified the IP
23 addresses from which each Doe Defendant connected to the Internet
24 and recorded the date and time each Defendant accessed Plaintiff's
25 motion picture. (See id. at 5.) Plaintiff apparently conducted "a
26 simple search on a publically available database" to determine
27 which ISP controls the particular IP addresses. (See id.) This
28 description is vague and is not supported by any declaration. See

1 Openmind Solutions, 2011 U.S. Dist. LEXIS 116552, at *7-10.

2 Moreover, Plaintiff does not provide the city in which each IP
3 address is located or explain why it was unable to do so.

4 Nonetheless, 808 Holdings appears to have obtained and investigated
5 the data pertaining to the December 28, 2011 alleged infringements,
6 in an effort to locate each Doe Defendant. See Digital Sin, Inc.
7 v. Does 1-5698, No. C 11-04397 LB, 2011 U.S. Dist. LEXIS 128033, at
8 *5 (N.D. Cal. Nov. 4, 2011); Openmind Solutions, 2011 U.S. Dist.
9 LEXIS 85363, at *5; MCGIP, 2011 U.S. Dist. LEXIS 85363, at *5; Pink
10 Lotus Entm't, 2011 U.S. Dist. LEXIS 65614, at *7.

11 **C. Ability to Withstand a Motion to Dismiss**

12 Finally, to be entitled to early discovery, 808 Holdings must
13 demonstrate that its Complaint can withstand a motion to dismiss.
14 See Columbia Ins. Co., 185 F.R.D. at 579.

15 In its Motion for Leave to Take Early Discovery, the Plaintiff
16 declares that it has stated a prima facie claim for copyright
17 infringement that can withstand a motion to dismiss. (Mot. Leave
18 Take Early Disc. Attach. #1 Mem. P. & A. 4, ECF No. 3.) According
19 to 808 Holdings, it has adequately alleged that Defendants engaged
20 in the unauthorized reproduction and distribution of its motion
21 picture, and that Plaintiff owns the registered copyrights for the
22 motion picture. (Id. (citing 17 U.S.C. §§ 106(1)(3)).) Also,
23 without a citation to supporting authority showing any "duty" to
24 copyright owners, 808 Holdings contends it has sufficiently pleaded
25 a negligence cause of action based on the Defendants' failure to
26 secure their Internet access, which enabled the copyright
27 infringements. (Id.)

28

1 **1. Lack of personal jurisdiction**

2 Exhibit 1 to Plaintiff's Motion indicates that most of the
3 potential Defendants are located outside of the state. Of the
4 thirty-nine Doe Defendants listed, only eight of the host IP
5 addresses are in California. (See id. Attach. #2 Ex. 1, at 2-3.)
6 Thirty-one of the IP addresses are outside of California. (Id.)
7 At a minimum, there is a serious question as to whether the claims
8 against the thirty-one out-of-state Doe Defendants can survive a
9 motion to dismiss for lack of personal jurisdiction. See
10 Celestial, Inc. v. Swarm Sharing Hash 8AB508AB0F9EF8B4CDB14C6248F3
11 C96C65BEB882 on December 4, 2011, No. CV 12-00204 DDP(SSx), 2012
12 U.S. Dist. LEXIS 41078, at *5 (C.D. Cal. Mar. 23, 2012).

13 The Plaintiff bears the burden of establishing jurisdictional
14 facts. See Columbia Ins. Co., 185 F.R.D. at 578 (citing Wells
15 Fargo & Co. v. Wells Fargo Express Co., 556 F.2d 406, 430 n.24 (9th
16 Cir. 1977)). Yet, remarkably, in its Motion, 808 Holdings does not
17 discuss whether this Court has personal jurisdiction over the Doe
18 Defendants. In its Complaint, however, Plaintiff asserts that the
19 Defendants are subject to personal jurisdiction in this district
20 because they took the "affirmative action of both downloading and
21 uploading" Plaintiff's motion picture, which "contained Plaintiff's
22 business address in this jurisdiction," (Compl. 2, ECF No.
23 1.) Thus, Plaintiff maintains that "Defendants knew or should have
24 known . . . that the copyright belonged to an entity residing in
25 this jurisdiction and thus [they] expressly targeted their
26 infringing actions and caused damages" in California. (Id.)

27 Personal jurisdiction over a nonresident defendant is
28 determined by a two-part test. First, the exercise of jurisdiction

1 must comply with the state's long-arm statute. Liberty Media
2 Holdings v. Does 1-62, No. 11-CV-575-MMA (NLS), 2012 U.S. Dist.
3 LEXIS 24232, at *6 (S.D. Cal. Feb. 24, 2012). Second, the exercise
4 of jurisdiction must satisfy the requirements of federal due
5 process. Id. at *6-7 (citation omitted). California's long-arm
6 statute extends jurisdiction to the limits of due process. Cal.
7 Code. Civ. P. § 410.10 (West 2004); Dow Chem. Co. v. Calderon, 422
8 F.3d 827, 831 (9th Cir. 2005). "For a court to exercise personal
9 jurisdiction over a nonresident defendant, that defendant must have
10 at least 'minimum contacts' with the relevant forum such that the
11 exercise of jurisdiction 'does not offend traditional notions of
12 fair play and substantial justice.'" Swarzenegger v. Fred Martin
13 Motor Co., 374 F.3d 797, 801 (9th Cir. 2004) (quoting Int'l Shoe
14 Co. v. Washington, 326 U.S. 310, 316 (1945)).

15 While some courts deciding requests for early discovery have
16 considered whether the IP addresses are located in California, at
17 least one other court has determined that merely identifying the
18 host IP addresses – regardless of location – is sufficient.
19 Compare Pink Lotus Entm't, 2011 U.S. Dist. LEXIS 65614, at *6-7
20 (noting that the IP addresses were traced to locations in
21 California), with First Time Videos LLC, 2011 U.S. Dist. LEXIS
22 42376, at *5 (opinion by Judge Beeler) (failing to discuss
23 locations of IP addresses). Judge Beeler did not consider the
24 location of IP addresses in three subsequent cases. See Digital
25 Sin, 2011 U.S. Dist. LEXIS 128033, at *4-5; MCGIP, 2011 U.S. Dist.
26 LEXIS 85363, at *4-5; VPR Internationale v. Does 1-17, No.
27 C-11-01494 LB, 2011 U.S. Dist. LEXIS 45118, at *5 (N.D. Cal. Apr.
28 15, 2011). Other courts have found that without identifying the

1 Doe Defendants, it would be premature to decide whether the court
2 lacks personal jurisdiction when the defendants and their
3 connections to California are unknown. See Liberty Media Holdings,
4 2012 U.S. Dist. LEXIS 24232, at *7-8 (citing IO Group, Inc. v. Does
5 1-10, No. C 10-03851 SI, 2010 U.S. Dist. LEXIS 133717 (N.D. Cal.
6 Dec. 7, 2010); Call of the Wild Movie, LLC v. Does 1-1,062, 770 F.
7 Supp. 2d 332, 347 (D.D.C. 2011)).

8 This Court must balance the need for discovery against the
9 interests of justice, which includes consideration of the prejudice
10 to the ISP and to the Doe Defendants. See Semitool, 208 F.R.D. at
11 276. The judicial process should not be manipulated to obtain
12 confidential information about Defendants not subject to the
13 Court's jurisdiction. The Plaintiff asserts that jurisdiction over
14 the Doe Defendants is proper because the motion picture displayed
15 Plaintiff's California business address. (Compl. 2-3, ECF No. 1.)
16 This is insufficient to support a determination that "'Defendants
17 expressly aimed their tortious acts against' a California company,
18 as required for specific jurisdiction." Celestial, 2012 U.S. Dist.
19 LEXIS 41078, at *6 (citation omitted). It is unlikely that an
20 individual in a distant jurisdiction would envision that the acts
21 alleged would subject him to the jurisdiction of this Court.
22 Similarly, any allegation that personal jurisdiction exists because
23 of the swarming activity is inadequate. Id. at *6-7 & n.2.

24 At a minimum, Plaintiff has not alleged sufficient facts to
25 show that it can withstand a motion to dismiss for lack of personal
26 jurisdiction as to the thirty-one Doe Defendants with IP addresses
27 outside of California. See Celestial, 2012 U.S. Dist. LEXIS 41078,
28 at *5-6 (denying request for early discovery because the complaint

1 could not withstand a motion to dismiss for lack of personal
2 jurisdiction even though all of the IP addresses were located in
3 California).

4 **2. Improper venue**

5 In the same vein, 808 Holdings has not shown that its
6 Complaint can survive a motion to dismiss for improper venue as to
7 the Doe Defendants with IP addresses outside the State of
8 California and outside this judicial district. As discussed,
9 thirty-one of the IP addresses are out-of-state, and only eight are
10 in California. (See Mot. Leave Take Early Disc. Attach. #2 Ex. 1,
11 at 2-3, ECF No. 3.) The Plaintiff has not provided the city in
12 which each of the IP addresses is located. Therefore, it is
13 unclear whether any of the eight in-state IP addresses are within
14 the Southern District of California. (Id.)

15 Plaintiff alleges that venue in this district is proper as to
16 all Defendants under 28 U.S.C. §§ 1391(b)(2), 1400(a). (See Compl.
17 3, ECF No. 1.) "The venue of suits for infringement of copyright
18 is not determined be the general provision governing suits in the
19 federal district courts, rather by the venue provision of the
20 Copyright Act." Goldberg v. Cameron, 482 F. Supp. 2d 1136, 1143
21 (N.D. Cal. 2007). Civil actions for copyright infringement "may be
22 instituted in the district in which the defendant or his agent
23 resides or may be found." 28 U.S.C.A. § 1400(a) (West 2006). An
24 individual "resides" for venue purposes in the district of his
25 domicile. 17 James Wm. Moore, et al., Moore's Federal Practice, §
26 110.39[2], at 110-76 (3d ed. 2011). A defendant is "found" for
27 venue purposes where he is subject to personal jurisdiction. Id.
28 (footnote omitted); see Brayton Purcell LLP v. Recordon & Recordon,

1 606 F.3d 1124, 1126 (9th Cir. 2010) ("This circuit interprets [28
2 U.S.C. § 1400(a)] to allow venue in any judicial district where, if
3 treated as a separate state, the defendant would be subject to
4 personal jurisdiction.").

5 Plaintiff fails to address venue in its Motion. In the
6 Complaint, however, 808 Holdings asserts venue is proper because
7 although the true identities of the Defendants are unknown, "on
8 information and belief, each Defendant may be found in this
9 District and/or a substantial part of the infringing acts
10 complained of occurred in this District." (Compl. 3, ECF No. 1.)
11 This allegation may run afoul of Rule 11 of the Federal Rules of
12 Civil Procedure, given that only eight of the thirty-nine
13 Defendants have IP addresses in California, and Plaintiff has not
14 indicated where in the state the eight IP addresses are located.
15 Venue in this judicial district for these eight Defendants is not
16 clearly established.

17 Plaintiff has not demonstrated that its Complaint can
18 withstand a motion to dismiss for lack of personal jurisdiction as
19 to the thirty-one Doe Defendants located outside of California. It
20 also appears that venue in this judicial district would be improper
21 for these Defendants. Similarly, the Plaintiff has not shown that
22 the eight California Defendants are subject to suit in the Southern
23 District of California. It is uncertain that 808 Holdings's
24 Complaint can survive a motion to dismiss for improper venue by
25 these eight Doe Defendants. Consequently, Plaintiff has not shown
26 that it can withstand a motion to dismiss for improper venue
27 pursuant to 28 U.S.C. § 1406(a) for all thirty-nine Doe Defendants,
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1 especially when there is no alternate district to which a transfer
2 would be appropriate. See 28 U.S.C.A. § 1406 (West 2006).

3 **3. Misjoinder**

4 In addition to personal jurisdiction and venue, 808 Holdings
5 has failed to show that its claims can withstand a motion to
6 dismiss for improper joinder. Fed. R. Civ. P. 20(a); see
7 Celestial, 2012 U.S. Dist. LEXIS 41078, at *7 n.3. Although the
8 Ninth Circuit has not ruled on whether permissive joinder is proper
9 in cases where Doe defendants collectively download and upload the
10 same file using BitTorrent technology, several recent district
11 court cases in the circuit have found joinder improper. See
12 Celestial, 2012 U.S. Dist. LEXIS 41078, at *7 n.3 (citing recent
13 cases finding misjoinder); see also Liberty Media Holdings v. Does
14 1-62, 2012 U.S. Dist. LEXIS 24232, at *16-17. In its conclusory
15 pleading and motion, 808 Holdings has not established that the
16 Complaint can withstand a motion to dismiss for the misjoinder of
17 out-of-state and out-of-district Doe Defendants.

18 **v.**

19 **CONCLUSION**

20 For all of these reasons, Plaintiff's Motion for Leave to Take
21 Early Discovery [ECF No. 3] is **DENIED**. See Columbia Ins. Co., 185
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1 F.R.D. at 578 (stating that a whether to grant discovery to
2 determine jurisdictional facts is a matter of discretion).

3 **IT IS SO ORDERED.**

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5 Dated: May 4, 2012


RUBEN B. BROOKS
United States Magistrate Judge

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7 cc: Judge Anello
8 All Parties of Record

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