

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

<b>FIRST TIME VIDEOS, LLC</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	<b>11-cv-3831</b>
<b>v.</b>	)	
<b>DOES 1-76,</b>	)	<b>Judge Hon. Elaine E. Bucklo</b>
	)	
<b>Defendants.</b>	)	<b>Magistrate Judge: Hon. Michael T. Mason</b>

**MOTION BY JOHN/JANE DOE 98.215.224.86 TO QUASH SUBPOENA, FOR SEVERANCE,  
AND FOR COST AND FEES PURSUANT TO 17 USC § 505**

NOW COMES Movant, John/Jane Doe, identified by IP Address number 98.215.224.86 (hereinafter referred to as "Doe" or "Movant"), by and through its attorneys, Mirsafian Law Group, LLC, moves this Court, on behalf of this Movant only, to quash the portion of the Subpoena dated June 16, 2011, where said Subpoena directs the Internet service provider Comcast to produce, among other things, Movant's personal and identifiable information on the grounds of jurisdictional issues with the Subpoena, on the grounds of lack of personal jurisdiction, to sever Movant from the other defendants on the grounds of misjoinder, and for costs and fees pursuant to 17 USC § 505.

**JURISDICTIONAL ISSUES WITH PLAINTIFF'S SUBPOENA**

1. Sometime after June 24th, 2011, the Defendant was served with a copy of a Subpoena for Documents Plaintiff Served on Comcast (attached hereto as Exhibit A).
2. The Subpoena was issued from the United States District Court for the Northern District of Illinois. The Subpoena was served on Comcast's Illinois registered agent. Plaintiff's Subpoena commands Comcast to produce certain documents for inspection on August 16, 2011 at 10:00am at

Plaintiff's counsel's office, located in Chicago, Illinois. However, the Subpoena seeks to have documents produced that are likely located in the state of New Jersey and not Illinois.

3. Fed. R. Civ. P. 45(a)(2), and the case law cited below, requires that subpoenas be issued by a court located in the district where the documents are physically located. Thus, the subpoena should have been issued by the U.S. District Court of New Jersey.

4. Pursuant to Fed. R. Civ. P. 45(c)(2)(B), the Subpoena was issued by the wrong court. Subpoenas must be issued by a court from the district where the documents are located, regardless of where the entity does business or has an agent for service of process.

5. “[T]he geographic limitation in Rule 45(a)(2)(C) relates principally to the location of the documents to be produced, rather than the specified location on the subpoena.” *Managed Care Solutions, Inc. v. Essent Healthcare, Inc.*, 2010 WL 3419420 \*2 (S.D. Fla. Aug. 27, 2010). In *Ariel v. Jones*, 693 F.2d 1058, 1059-61 (11th Cir. 1982), the Eleventh Circuit affirmed a Southern District of Florida order “quashing. . . a subpoena for documents issued from this Court [the S.D. Fla.] and directed to a non-party . . . that had an agent for process in this District, but where the documents subpoenaed were located in the District of Colorado. The Eleventh Circuit based its ruling upon its finding that the agent, CT Corporation, did not control the documents sought by the subpoena. . .” *Gutescu v. Carey Int’l, Inc.*, 2003 WL 25589034 \*2 (S.D. Fla. June 24, 2003).

## **II. MOVANT'S OBJECTION TO THE SUBPOENA IS TIMELY**

6. Movant received Exhibit A, via UPS Delivery, from its Internet service provider Comcast which contained the Subpoena dated June 16, 2011. Comcast further advised Movant that "Comcast will provide [Movant's] name, address, and other information as directed in the Order unless [Movant or its attorney] file a motion to quash or vacate the Subpoena no later than July 25, 2011." Further, as per this Court's Order in Exhibit A, "if any entity subpoenaed pursuant to this Order wishes to move to

quash the subpoena, it must do so before the return date of the subpoena, which shall be 30 days from the date of service;". Said letter from Comcast having been dated June 24, 2011, Movant could not have been served with the Subpoena until at least June 25, 2011 which allows Movant until July 26, 2011 to file this Motion. Further, On July 25, 2011, Movant's attorney reached an agreement with Comcast where Comcast agreed that Movant's information would be withheld by Comcast until the filing of this Motion on July 26, 2011.

### **III. PERSONAL JURISDICTION HAS NOT BEEN PLED**

7. Plaintiff's Complaint has insufficiently pled personal jurisdiction. Specifically, Plaintiff has not stated with particularity, through a means established this Court or any other court, that a relationship or any type of contact between Plaintiff and Movant exists in the state of Illinois to justify this Court's exercise of jurisdiction over the Movant.

8. Due process requires that a defendant be sued in a jurisdiction where the Court has personal jurisdiction over that defendant. World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297 (1980).

9. Plaintiff has not alleged any direct contact between the Movant and this jurisdiction. Rather, the Complaint merely contains general allegations of jurisdiction because "Plaintiffs used geolocation technology to trace IP addresses of each Defendant to a point of origin within the State of Illinois" through the use "of a proprietary peer-to-peer network forensic software....." See Plaintiff's Complaint, ¶6 and 22. However, and by Plaintiff's own admission in its Complaint, this software was developed by the Plaintiff for the benefit of the Plaintiff. Further, the technology of the software, along with its accuracy and precision, has not been established by either this Court of the Plaintiff and therefore cannot be used to establish personal jurisdiction. Instead, the plaintiff must plead specific facts showing contact with the Plaintiff's chosen forum in order to establish jurisdiction. Merely reciting

personal jurisdiction requirements is not sufficient, nor are the assertions of naked legal conclusions. Indeed, Plaintiff must assert the factual basis underlying its claims. See, e.g., Clemens v. McNamee, 615 F.3d 374, 378 (5th Cir. 2010) (holding that "plaintiff bears the burden of establishing personal jurisdiction and that burden is met by making a prima facie showing." )

10. In the matter at hand, Plaintiff has offered a tenuous theory for the Court's exercise of personal jurisdiction over the Defendants by making conclusory statements, based on software developed by Plaintiff and for the benefit of the Plaintiff, where software has not been established as credible to plead jurisdiction. Therefore, for the above reasons, Movant's Motion to Quash should be granted.

#### **IV. MAVANT IS IMPOPERLY JOINED**

11. The Movant is improperly joined in the Plaintiff's Complaint with other Defendants because the alleged acts of infringement do not arise out of the same transaction or facts common to all Defendants. Federal Rules of Civil Procedure 20(a)(2) provides that multiple defendants may be joined if "(A) any right to relief is asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and (B) any question of law or fact common to all defendants will arise in the action."

12. The Plaintiff describes the BitTorrent protocol, including the groups of peers (individual users), called swarms, which allow users to download files. Complaint, ¶11 and ¶12. The Plaintiff further alleges, "Defendants, without Plaintiff's authorization or license, intentionally downloaded a torrent file, particular to Plaintiff's Video, purposefully loaded that torrent file into their BitTorrent clients, entered a BitTorrent swarm particular to Plaintiff's Video, and reproduced and distributed the Video to numerous third parties." Id. at ¶23.

13. However, Plaintiff fails to allege that the acts of infringement are part of the same transaction, occurrence or series of transactions, or occurrences. Further, as indicated in Exhibit B of the Complaint,

the Defendants are accused of downloading different files, with different ISPs, and at different times and days. Therefore, the Defendants in this case were not engaged in the same alleged acts of infringement or series of transactions.

14. Federal Rule of Civil Procedure 20(a)(2) also requires commonality with respect to questions of law or fact. However, there is very little commonality of fact or law in this case. There must be many factual differences among the Defendants in network configurations, differences in levels of Internet security, differences between encrypted and unencrypted wireless access points, differences in levels of encryption, to name just a few, which will each require a different defense by each Defendant.

15. Many courts have found improper joinder in similar file sharing copyright infringement cases, including several in the Northern District of Illinois. These decisions include Millenium TGA, Inc. v. Does 1-800 [10-CV-05603], Lightspeed Media v. Does 1-1000 [10-CV-05604], and most most recently Future Blue, Inc. v. Does 1-300 [10-CV-06256]. Movant requests that this Court consider this related authority when considering this Motion to Sever. For the above stated reasons, Movant requests that it be severed from the other Defendants.

#### **V. MOVANT IS ENTITLED TO ATTORNEYS FEES AND COST AS A PREVAILING PARTY**

16. In the event that this Motion to Quash is granted, Movant would be the prevailing party. Pursuant to Section 17 U.S.C. §505, Movant is entitled to the recovery of full costs, and requests reasonable attorneys fees.

#### **CONCLUSION**

Accordingly, for all the aforementioned reasons, Movant, one of the John/Jane Does, requests that the Court issue an order to quash the portion of the Subpoena dated June 16, 2011 where said Subpoena directs the Internet service provider Comcast to produce, among other things, Movant's

personal and identifiable information on the grounds of jurisdictional issues with the Subpoena, on the grounds of lack of personal jurisdiction, to sever Movant from the other defendants on the grounds of misjoinder, and for costs and fees pursuant to 17 USC § 505.

Respectfully submitted,

JOHN/JANE DOE 98.215.224.86

By: /s/ Masoud Mirsafian  
Attorney of Record

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**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing MOTION BY JOHN/JANE DOE 98.215.224.86 TO QUASH SUBPOENA, FOR SEVERANCE, AND FOR COST AND FEES PURSUANT TO 17 USC § 505 was filed with the Clerk of Court using the ECF system on July 26, 2011, and thereby served on all counsel of record.

By: /s/ Masoud Mirsafian  
Attorney of Record