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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

NEW SENSATIONS, INC., a California corporation,

Plaintiff,

v.

DOES 1-1745,

Defendants.

No. C 10-05863 WHA

ORDER DENYING MOTIONS TO QUASH SUBPOENA, DISMISS FOR LACK OF PERSONAL JURISDICTION, REMOVE, AND SEVER FOR IMPERMISSIVE JOINDER, AND VACATING HEARING

INTRODUCTION

In this copyright-infringement action, *pro se* putative defendant Ronald Burr, Jr., moves to quash and/or vacate a subpoena, to dismiss for lack of personal jurisdiction, to “remove” the action to a different venue, and to sever for impermissive joinder. For the following reasons, the motions are **DENIED**.

STATEMENT

Plaintiff New Sensations, Inc. is the exclusive owner of the copyrighted motion picture “The Office: A XXX Parody.” Doe defendants allegedly have acted in concert to reproduce and distribute the motion picture without plaintiff’s permission through BitTorrent, a peer-to-peer network. In doing so, plaintiff avers that Does have violated the Copyright Act of 1976, 17 U.S.C. 101 *et seq.* Plaintiff seeks to enjoin defendants from reproducing and distributing the motion picture, to destroy all illicit copies, and to recover monetary damages.

1 Plaintiff contracted Copyright Enforcement Group, LLC to inspect file-sharing networks
2 for computers that were distributing substantial parts of plaintiff's copyrighted work. When CEG
3 found such illicit distributions, it recorded the IP addresses used and the dates and times of the
4 recordings (Opp. 5). Plaintiff sued the owners of the IP addresses as Does. In order to identify
5 their names, plaintiff subpoenaed internet service providers, including Cavalier Telephone, to
6 provide the identities behind those IP addresses. In May 2011, Cavalier Telephone complied with
7 the subpoena and provided plaintiff with the identifying information corresponding to the found
8 IP addresses. One of those IP addresses belonged to Ronald Burr, Jr. Plaintiff notified Burr of
9 the pending case, but has yet to name Burr as a defendant (Siegel Decl. ¶¶ 2–3). Burr has since
10 filed a motion for a protective order, which was denied on June 22 (Dkt. No. 19), as well as the
11 instant motions to quash the subpoena, dismiss for lack of personal jurisdiction, “remove” the
12 action, and sever for impermissive joinder.

13 ANALYSIS

14 1. MOTION TO QUASH THE SUBPOENA.

15 Pursuant to FRCP 45(c)(3), if the subpoena would cause undue burden to Burr, it must be
16 quashed. The subpoena, however, did not require *any* obligation from Burr. Rather, it was
17 directed at the putative defendants' ISPs. More importantly, Cavalier Telephone already
18 complied with the subpoena in May 2011. As such, the motion is **DENIED AS MOOT**.

19 2. MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION.

20 This motion is premature. Although our circuit has yet to address this particular issue,
21 Judge Howell of the D.C. Circuit has repeatedly held that in infringement actions, dismissal for
22 lack of personal jurisdiction of unnamed defendants is premature. *See, e.g., Call of the Wild*
23 *Movie, LLC v. Smith*, No. 10-0455, 2011 WL 1807416, at *9 (D.D.C. May 12, 2011); *Voltage*
24 *Pictures, LLC v. Does 1–5,000*, No. 10-0873, WL 1807438, at *8 (D.D.C. May 12, 2011). His
25 analysis makes sense.

26 Rule 12(b)(2) permits *defendants* to move to dismiss for lack of personal jurisdiction.
27 Burr moves the court to dismiss the action against him for lack of personal jurisdiction. Yet, he is
28 not yet a defendant. If and when plaintiff names him as a defendant, he will be able to raise this

1 defense. Currently, plaintiff has limited information about putative defendants. Once plaintiff
2 amasses enough evidence and names the Does, it will then have the burden to present a prima
3 facie case supporting personal jurisdiction over defendants. *See Harris Rutsky & Co. Ins. Servs.,*
4 *Inc. v. Bell & Clements Ltd.*, 328 F.3d 1122, 1129 (9th Cir. 2003). At that time, Burr may present
5 his affidavit asserting that he has never engaged in business with plaintiff and that his activities
6 with the forum state do not meet the requisite minimum contacts to establish personal jurisdiction.
7 With evidence from both sides, jurisdiction will be decided on a full record. At this time, without
8 any named defendants, the motion is not yet ripe. The motion is **DENIED WITHOUT PREJUDICE**
9 and may be brought again once plaintiff names Burr as a defendant or when Burr has identified
10 himself as a specific Doe.

11 3. MOTION TO “REMOVE.”

12 If personal jurisdiction were found and the claim were not dismissed, Burr alternatively
13 asks to “remove” the action to a “proper location.” Yet, he does not specify what a “proper
14 location” would be or why the action should be “removed.” As personal jurisdiction has yet to be
15 decided and as Burr provides no legal basis for removal, the motion to remove is **DENIED**
16 **WITHOUT PREJUDICE.**

17 4. MOTION TO SEVER FOR IMPERMISSIVE JOINDER.

18 Burr moves to sever all defendants, or at least to sever the claims against him from the
19 claims against the rest of the Does. The issue of joinder of unnamed Does has already been
20 considered. Magistrate Judge James ordered that “joinder of all defendants at this stage of the
21 litigation is proper. This decision is without prejudice to any motion for severance by a current
22 Doe defendant who is later included in this action by his or her name” (Dkt. No. 8). As Burr is
23 not yet named and might not be named as a defendant, this motion is premature and is **DENIED**
24 **WITHOUT PREJUDICE.**

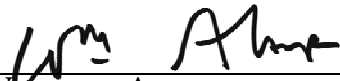
25 CONCLUSION

26 For the above reasons, Burr’s motions are denied. The motion to quash the subpoena is
27 **DENIED AS MOOT.** The motions to dismiss for lack of personal jurisdiction, to remove, and to
28

1 sever are **DENIED WITHOUT PREJUDICE** and may be brought if and when Burr becomes a named
2 defendant. The hearing scheduled for August 4, 2011, is **VACATED**.

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4 **IT IS SO ORDERED.**

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6 Dated: July 18, 2011.

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WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE