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6   UNITED STATES DISTRICT COURT

7   Northern District of California

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10   PATRICK COLLINS, INC.,   No. C 11-2766 MEJ

11   Plaintiff,   **ORDER DENYING MOTION TO**
           v.   **QUASH (IP ADDRESS 75.139.87.233)**

12   DOES 1-2,590,   **Re: Docket No. 70**

13   Defendants.
     _____/

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15   On June 7, 2011, Plaintiff Patrick Collins, Inc. filed this lawsuit against 2,590 Doe

16   Defendants, alleging that Defendants illegally reproduced and distributed a work subject to

17   Plaintiff's exclusive license, ("*Real Female Orgasms 10*"), using an internet peer-to-peer file sharing

18   network known as BitTorrent, thereby violating the Copyright Act, 17 U.S.C. § 101-1322. Compl.

19   ¶¶ 6-15, Dkt. No. 1. On September 22, 2011, the Court granted Plaintiff's Application for Leave to

20   Take Limited Expedited Discovery. Dkt. No. 12. The Court permitted Plaintiff to serve subpoenas

21   on Does 1-2,590's Internet Service Providers ("ISPs") by serving a Federal Rule of Civil Procedure

22   45 subpoena that seeks information sufficient to identify the Doe Defendants, including the name,

23   address, telephone number, and email address of Does 1-2,590. *Id.* at 11. Once the ISPs provided

24   Does 1-2,590 with a copy of the subpoena, the Court permitted Does 1-2,590 30 days from the date

25   of service to file any motions contesting the subpoena (including a motion to quash or modify the

26   subpoena). *Id.*

27   Now before the Court is a Motion to Quash/Dismiss, filed by William Triplett. Dkt. No. 70.

28   In the motion, Mr. Triplett argues that the Court lacks jurisdiction. However, the Court finds that

UNITED STATES DISTRICT COURT
For the Northern District of California

1   any motion to dismiss based on jurisdictional grounds is premature. *See, e.g., New Sensations, Inc.*

2   *v. Does 1-1,745*, 2011 WL 2837610, at *1 (N.D. Cal. Jul. 18, 2011); *Call of the Wild Movie, LLC v.*

3   *Smith*, No. 10-0455, 2011 WL 1807416, at *9 (D.D.C. May 12, 2011); *Voltage Pictures, LLC v.*

4   *Does 1–5,000*, No. 10-0873, WL 1807438, at *8 (D.D.C. May 12, 2011). Rule 12(b)(2) permits

5   defendants to move to dismiss for lack of personal jurisdiction. Although the Doe Defendant moves

6   the Court to dismiss the action against him for lack of personal jurisdiction, he is not yet a

7   defendant. If and when Plaintiff names him as a defendant, he will be able to raise this defense.

8   Once Plaintiff amasses enough evidence and names the Does, it will then have the burden to present

9   a prima facie case supporting personal jurisdiction over defendants. *See Harris Rutsky & Co. Ins.*

10   *Servs., Inc. v. Bell & Clements Ltd.*, 328 F.3d 1122, 1129 (9th Cir. 2003). At that time, the Doe

11   Defendant may present his affidavit asserting that he has never engaged in business with Plaintiff

12   and that his activities with the forum state do not meet the requisite minimum contacts to establish

13   personal jurisdiction. With evidence from both sides, jurisdiction will be decided on a full record.

14   At this time, however, without any named defendants, the motion is not yet ripe. The motion is

15   DENIED WITHOUT PREJUDICE and may be brought again once Plaintiff names the Doe

16   Defendant as a defendant or when the Doe Defendant has identified himself.

17   **IT IS SO ORDERED.**

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19   Dated: December 5, 2011

20   Maria-Elena James
                                                                     Chief United States Magistrate Judge

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UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

PATRICK COLLINS INC,

        Plaintiff,

  v.

DOES 1-2590 et al,

        Defendant.

Case Number: CV11-02766 MEJ

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on December 5, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

William Triplett
646 South Main St
San Antonio TX 78204

Dated: December 5, 2011

Richard W. Wieking, Clerk
By: Brenda Tolbert, Deputy Clerk

UNITED STATES DISTRICT COURT
For the Northern District of California

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