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UNITED STATES DISTRICT COURT
For the Northern District of California

UNITED STATES DISTRICT COURT
Northern District of California

PATRICK COLLINS, INC.,
Plaintiff,
v.
DOES 1-2,590,
Defendants.

No. C 11-2766 MEJ

**ORDER DENYING MOTION TO
QUASH**

Re: Docket No. 73

On June 7, 2011, Plaintiff Patrick Collins, Inc. filed this lawsuit against 2,590 Doe Defendants, alleging that Defendants illegally reproduced and distributed a work subject to Plaintiff’s exclusive license, (“*Real Female Orgasms 10*”), using an internet peer-to-peer file sharing network known as BitTorrent, thereby violating the Copyright Act, 17 U.S.C. § 101-1322. Compl. ¶¶ 6-15, Dkt. No. 1. On September 22, 2011, the Court granted Plaintiff’s Application for Leave to Take Limited Expedited Discovery. Dkt. No. 12. The Court permitted Plaintiff to serve subpoenas on Does 1-2,590’s Internet Service Providers (“ISPs”) by serving a Federal Rule of Civil Procedure 45 subpoena that seeks information sufficient to identify the Doe Defendants, including the name, address, telephone number, and email address of Does 1-2,590. *Id.* at 11. Once the ISPs provided Does 1-2,590 with a copy of the subpoena, the Court permitted Does 1-2,590 30 days from the date of service to file any motions contesting the subpoena (including a motion to quash or modify the subpoena). *Id.*

Now before the Court is a Motion to Quash filed by an anonymous Doe Defendant.¹ Dkt.

¹Under 28 U.S.C. § 636(b)(1)(A), a magistrate judge has jurisdiction to hear and decide nondispositive matters without the consent of the parties. A motion to quash is normally considered a non-dispositive matter, *Arista Records, LLC v. Doe 3*, 604 F.3d 110, 116 (2d Cir. 2010), and therefore, the undersigned has jurisdiction to rule on the Defendant’s motion(s) to the extent they

1 No. 73. Under Rule 45(c)(3), a court must modify or quash a subpoena that, inter alia, “requires
2 disclosure of privileged or other protected matter, if no exception or waiver applies, or subjects a
3 person to undue burden.” Fed. R. Civ. P. 45(c)(3)(A). A court may modify or quash a subpoena
4 that, inter alia, requires disclosing confidential information. Fed.R.Civ.P. 45(c)(3)(B).

5 In her filing, the Doe Defendant argues that she did not download “*Real Female Orgasms*
6 *10*.” She also states that she did not have her wireless internet secured, but she is now hiring
7 someone to secure it. While the Doe Defendant’s argument might ultimately prevail in this case, the
8 Court finds that it is premature to consider any factual defenses based on the merits of the case,
9 where no defendants have been named and/or served. If and when Plaintiff names her as a
10 defendant, she will be able to raise such a defense. At that time, with evidence from both sides, the
11 case can be decided on a full record. At this time, however, without any named defendants, the
12 motion is not yet ripe. The motion is DENIED WITHOUT PREJUDICE and may be brought again
13 once Plaintiff names the Doe Defendant as a defendant.

14 **IT IS SO ORDERED.**

15
16 Dated: December 6, 2011

17 
18 _____
19 Maria-Elena James
20 Chief United States Magistrate Judge

21 _____
22 seek to quash Plaintiff’s subpoena. In addition, a magistrate judge has jurisdiction to consider the
23 question of whether joinder of unserved defendants is proper, including whether unserved
24 defendants should be severed and dismissed from the action, because defendants who have not been
25 served are not considered “parties” under 28 U.S.C. § 636(c). *Neals v. Norwood*, 59 F.3d 530, 532
26 (5th Cir. 1995) (holding that magistrate judge had jurisdiction to dismiss prison inmate’s action
27 under 42 U.S.C. § 1983 as frivolous without consent of defendants because defendants had not been
28 served yet and therefore were not parties); *see also United States v. Real Property*, 135 F.3d 1212,
1217 (9th Cir. 1998) (holding that magistrate judge had jurisdiction to enter default judgment in an
in rem forfeiture action even though property owner had not consented to it because 28 U.S.C. §
636(c)(1) only requires the consent of the parties and the property owner, having failed to comply
with the applicable filing requirements, was not a party). Here, Plaintiff has consented to magistrate
jurisdiction and the Doe Defendants have not yet been served. Therefore, the Court finds that it has
jurisdiction under 28 U.S.C. § 636(c) to decide the issues raised in the instant motion(s).