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11
12 IN THE UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14

15 NEW SENSATIONS, INC.,

16 Plaintiff,

17 vs.

18 DOES 1-1474,

19 Putative Defendants.
20

Case No. 3:11-CV-02770-MEJ

MOTION TO PROCEED ANONYMOUSLY

21 **I. INTRODUCTION**
22

23 Doe 305 submits this Motion to Proceed Anonymously and hereby moves this Court to allow
24 their person to proceed anonymously in the filing of its Motion to Quash Subpoena, filed simultaneously
25 with this motion.

26 **II. FACTS**
27

28 Doe 305 (IP Address: 207.68.252.6) (“Doe 305” or “Doe”) is one of 1,474 anonymous putative

1 defendants named in the above captioned action for the alleged copyright infringement of Plaintiff New
2 Sensation, Inc.'s ("Plaintiff") movie "Big Bang Theory: A XXX Parody" (the "work"). Plaintiff broadly
3 alleges that each and every anonymous defendant reproduced or distributed a substantial portion of
4 Plaintiff's work via the BitTorrent file-sharing protocol.

5 With permission of this Court, Plaintiff served subpoenas on multiple Internet Service Providers
6 ("ISP"), including Doe 305's ISP, seeking the name and contact information of each anonymous
7 defendant so that Plaintiff could render process of service on the putative defendants. Doe's Internet
8 Service Provider, MetroCast Communications, received such a letter on September 14, 2011. See
9 **Exhibit A.**

10 On October 11, 2011, Doe 305 (IP Address: 207.68.252.6) received a letter from MetroCast
11 Communications. The letter explained that MetroCast Communications had received a subpoena from
12 Plaintiff requesting Doe's name and address. In light of this subpoena and Doe 305's concerns with
13 privacy in this stage of the litigation prior to defendants being named, this Motion to Proceed
14 Anonymously in the filing of a Motion to Quash Subpoena and a Memorandum of Points and Authorities
15 in Support of Putative Defendant Doe 305's Motion to Quash Subpoena is being filed.

16 17 **III. ARGUMENT**

18 While the public has a strong interest in knowing the identities of litigants, permission to proceed
19 anonymously may be granted for good cause shown. The Court must balance the Doe's right to privacy
20 versus the constitutionally embedded presumption in the openness of judicial proceedings. This
21 balancing often must occur in actions where putative defendants, like Doe 305, have yet to be named as a
22 party to the action but where expedited discovery is sought to discover the Doe's true identity and contact
23 information.

24 In the present case, the Does are not yet named Defendants in the matter. Plaintiff seeks expedited
25 discovery to find out the Does' identities, but then would have to properly name and serve each of the
26 Does for them to become Defendants. See Order on Granting Ex Parte Application for Leave to Take
27 Expedited Discovery.

28

1 The subject matter of the present complaint, copyright infringement, specifically, the
2 downloading of a pornographic movie through the online file-sharing protocol BitTorrent, involves
3 content that if associated publicly with Doe 305 would serve to harm his reputation and serve as an
4 intrusion upon their privacy. See Complaint. This reputational harm is unnecessary and would place a
5 burden on a Doe who may or may not become a Defendant in the present action.

6 As Doe #305 is filing a Motion to Quash the subpoena served by Plaintiff to MetroCast
7 Communications on September 14, 2011, and an order has yet to issued on that Motion, as it has been
8 filed simultaneously with the present Motion, it is not the proper time in the case for the Doe to exercise
9 the option of disclosing his or her identity under seal.

10 A similar order was granted in this case to Doe Defendant #1039, on November 14, 2011, to
11 proceed anonymously with his Motion to Dismiss for Lack for Personal Jurisdiction and/or Misjoinder
12 and Motion to Quash Subpoena. In a similar manner, Doe #305 invokes this Court, in lieu of the
13 pornographic content being advanced in the copyright infringement violations, to grant their person the
14 same right at this stage in the litigation.

15 This Court has every reason to protect privacy rights to remain anonymous in the filing of the
16 Motion to Quash the Subpoena. **The Motion to Proceed Anonymously should be granted.**

17
18 **IV. CONCLUSION**

19 For the foregoing reasons, Doe 305 respectfully moves this Court to allow Doe 305 to proceed
20 anonymously.

1 Dated: November 21, 2011

Respectfully Submitted,

2
3 /s/ Jerome Pandell
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CERTIFICATE OF SERVICE

The undersigned certifies that on November 21, 2011, the foregoing document was filed with the Clerk of the U.S. District Court for the Northern District of California, using the court's electronic filing system (ECF), in compliance with Civil L.R. 5-4 and General Order 45. The ECF system serves a "Notice of Electronic Filing" to all parties and counsel who have appeared in this action, who have consented under Civil L.R. 5-5 and General Order 45 to accept that Notice as service of this document.

GAGNIER MARGOSSIAN LLP

Dated: November 21, 2011

By: /s/ Jerome Pandell
Jerome Pandell

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