

UNITED STATES DISTRICT COURT  
Northern District of California

NEW SENSATIONS, INC.,

No. C 11-2770 MEJ

Plaintiff,

**ORDER DENYING MOTION TO  
QUASH**

v.

DOES 1-1,474,

**Re: Docket No. 87**

Defendants.

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On June 7, 2011, Plaintiff New Sensations, Inc. (“Plaintiff”) filed this lawsuit against 1,474 Doe Defendants, alleging that Defendants illegally reproduced and distributed a work subject to Plaintiff’s exclusive license, (“*Big Bang Theory: A XXX Parody*”), 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. 13. The Court permitted Plaintiff to serve subpoenas on Does 1-1,474’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 1-1,474. *Id.* at 11. Once the ISPs provided Does 1-1,474 with a copy of the subpoena, the Court permitted Does 1-1,474 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/Objection filed by Edwina Seidel.<sup>1</sup> Dkt. No. 87.

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<sup>1</sup>Under 28 U.S.C. § 636(b)(1)(A), a magistrate judge has jurisdiction to hear and decide non-dispositive 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 seek to quash Plaintiff’s subpoena. In addition, a magistrate judge has jurisdiction to consider the

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

5 In her filing, the Doe Defendant argues that she does “not have any idea how this could have  
6 occurred” because she “wouldn’t know how” and she was in Los Angeles at the time it occurred.  
7 While Ms. Seidel’s argument might ultimately prevail in this case, the Court finds that it is  
8 premature to consider any factual defenses based on the merits of the case, where no defendants  
9 have been named and/or served. If and when Plaintiff names her as a defendant, she will be able to  
10 raise such a defense. At that time, with evidence from both sides, the case can be decided on a full  
11 record. At this time, however, without any named defendants, the motion is not yet ripe. The  
12 motion is DENIED WITHOUT PREJUDICE and may be brought again once Plaintiff names Ms.  
13 Seidel as a defendant.

14 **IT IS SO ORDERED.**

15  
16 Dated: December 5, 2011

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

21 \_\_\_\_\_  
22 question of whether joinder of unserved defendants is proper, including whether unserved  
23 defendants should be severed and dismissed from the action, because defendants who have not been  
24 served are not considered “parties” under 28 U.S.C. § 636(c). *Neals v. Norwood*, 59 F.3d 530, 532  
25 (5th Cir. 1995) (holding that magistrate judge had jurisdiction to dismiss prison inmate’s action  
26 under 42 U.S.C. § 1983 as frivolous without consent of defendants because defendants had not been  
27 served yet and therefore were not parties); *see also United States v. Real Property*, 135 F.3d 1212,  
28 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).

UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

NEW SENSATIONS INC,

Case Number: CV11-02770 MEJ

Plaintiff,

**CERTIFICATE OF SERVICE**

v.

DOES 1-1474 et al,

Defendant.

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.

Edwina Seidel  
7121 W San Madele  
Fresno CA 93723

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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