

1 Name: Doe #918
I.P. Address 71.90.91.100
E-mail Address: jdoevs@yahoo.com

2 Pro Se
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4
5 **UNITED STATES DISTRICT COURT**
NORTHERN DISTRICT OF CALIFORNIA

6	NEW SENSATIONS, INC.,)	Case Number: C 11-2770 MEJ
7)	
8	Plaintiff(s),)	
9	vs.)	NOTICE OF MOTION AND MOTION TO DISMISS
10	DOES 1-1,474)	
11)	
12	Defendant(s).)	
13)	
14)	
15)	

16
17 PLEASE TAKE NOTICE than on November 12, 2011, or as soon thereafter as the
18 matter can be heard, in the courtroom of the Honorable Maria-Elena James.

19 I will, and hereby do, move for an order granting the attached MOTION TO DISMISS.
20

21 The motion will be based on this Notice of Motion and Motion, the Memorandum of
22 Points, geolocated Internet Protocol ("IP") address, the Declaration of Doe #918, and the
23 [Proposed] Order filed herewith.
24
25
26

27 NOTICE OF MOTION AND MOTION TO DISMISS;

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2 **MEMORANDUM OF POINTS**

3 **I. INTRODUCTION**

4 I received a letter from my ISP regarding a subpoena, which included a copy of the
5 Order Granting Plaintiff's Ex Parte Application for Leave to take Limited Expedited Discovery.
6 (Dkt. No. 5.)

7 In this motion I, Doe #918, request that the subpoena be quashed and the case against me
8 dismissed on the grounds of lack of personal jurisdiction and improper venue.

9 **II. DISCUSSION**

10 I do not reside, work, or conduct business in California, the likely-hood of which the
11 Plaintiff should already be aware since the Plaintiff stated that while "...CEG is unable to
12 determine their true names, street addresses, telephone numbers, and email addresses" (Dkt No.
13 5 ¶5), "...CEG uses available databases to record the name of the ISP having control of the IP
14 address and **the state (and often the city or county)** associated with that IP address." (Id ¶7).
15 (emphasis added) .

16
17 Furthermore IP geolocation services are generally available to the public. The IP address
18 that is identified as assigned to me, 71.90.91.100, is not located within the jurisdiction of this
19 Court. In addition, I have no property in California. I have no business or personal contacts in
20 California and I have no significant relationship with California.

21
22 Despite the Plaintiff's statement that the "Venue in this District is proper ... [and] ... each
23 Defendant may be found in this District", my IP addresses is not located in California, let alone
24 the Northern District of California. (Pl. Comp. ¶2). In similar cases the Plaintiff is responsible
25 for using geolocation to establish the personal jurisdiction of each Doe Defendant, as in *Raw*
26

27 NOTICE OF MOTION AND MOTION TO DISMISS;

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1 *Films, LTD., v. John Does 1-32*, No. 3:11cv532-JAG (does 2-32 severed), where “the plaintiff
2 used geolocation technology and traced the Internet Protocol (“IP”) addresses of each defendant
3 to acquire the general location and time of the alleged infringement.” Of the 1,474 Doe
4 defendants in this case, the majority of them are likely outside this Court's jurisdiction and have
5 been improperly joinded.

6 The Plaintiff's council, Ira Siegel, has a nearly identical case in this District that has also
7 been dismissed on similar grounds, *On the Cheap, LLC v. Does 1-5011* case 3:10cv04472-BZ
8 (N.D. Cal.; Oct 4th, 2011; dismissed all defendants), and in this case Judge Zimmerman states
9

10 Plaintiff, well aware of the difficulties out-of-state and out-of-district defendants
11 would face if required to appear in San Francisco, has nonetheless sent them
12 settlement demands which apparently inform them that they have been sued in
13 this District. The defendants are left with a decision to either accept plaintiff's
14 demand or incur significant expense to defend themselves in San Francisco or
15 hire an attorney to do so. This does not comport with the “principles of
16 fundamental fairness,” ...

17 Knowing that most defendants were not from this District, plaintiff nonetheless
18 asserted that venue was proper and omitted from the complaint any allegation
19 that would support personal jurisdiction over any defendant. ...

20 [P]laintiff appears to have used the information from the subpoena for a different
21 purpose: to extract settlements from out-of-state defendants by notifying them
22 that they have been sued in California, knowing that it is highly unlikely that
23 many of them will be amenable to suit in California.

24 The Plaintiff's council argues that “they cannot demonstrate any harm that is occurring to
25 them” by not proceeding anonymously, however as shown in the previous quote from
26 *On the Cheap, LLC v. Does 1-5011* (Id.), harassment has been demonstrated by recent
27 behavior by Plaintiff's council. (Dkt. No. 36 ¶3). Furthermore, the request to remain
anonymous at this point and in this Court should be weighted against the fact that the
Plaintiff has data derived from each Doe's IP address relevant to jurisdiction: “[In] this

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1 very case, 1 out of every 25 defendants is believe to be in this very district. Nicolini

2 Decl., par. 23.” (Dkt No. 36 Pg.9 ¶1).

3
4 In yet another case in this District and by the Plaintiff's council, similar jurisdictional points are
5 raised and Defendants severed, see *Zero Tolerance Entertainment, Inc. v. Does 1-2943* case
6 3:2011cv02767-EDL (N.D. Cal.;Sept. 15, 2011;dismissed does 2-2942):

7 Plaintiff alleges that it believes that “each Defendant may be found in this
8 district.” Compl. ¶ 2. However, Plaintiff also states in a declaration supporting
9 this ex parte application that: “[W]e could determine that of the 2943 Doe
10 Defendants in this case, at least 1 out of every 5 of the IP addresses is associated
11 with a physical address that is likely in California, and of those more than 1 out
12 of every 5 is likely in one of the counties within the Northern District of
13 California.” Nicolini Decl. ¶ 23.

14 In another similar case in this District, the court finds that a small percentage of the Does
15 listed are located within the District as claimed by the Plaintiff.

16 Furthermore, in this case, Plaintiff admits that only one of six of the Doe
17 defendants likely is located in this district. Nicolini Decl., ECF No. 6-1 at 9, ¶ 23.
18 *Third Degree Films v Does 1-3577* case 4:2011cv02768-LB (N.D. Cal.;Nov 4th,
19 2011;severed 2-3577)

20 Other states have also recognized the jurisdictional flaws in these types of cases and severed the
21 Does.

22 As far as the plaintiff knows, none of the defendants are located in Illinois and it
23 merely alleged, without any basis the court can discern, that “on information and
24 belief each Defendant may be found in this district and/or a substantial part of the
25 acts of infringement complained of herein occurred in this District.” Amended
26 Comp. at ¶7. Indeed, apparently none of the Doe defendants who have filed
27 motions to quash are located in Illinois and it appears that easily accessible tools
exist to verify the locations of the IP addresses of the other named Doe
defendants, see, e.g.,<http://whois.arin.net/ui/>, many (if not all) of which are not
located in Illinois.

Millennium TGA Inc. v. Does 1-800 case 1:10cv05603-BMM (N.D. Ill.;Mar. 31,
2011;dismissed all defendants)

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1 The Plaintiff argues that dismissal at this stage it refiled in appropriate districts
2 would “deny Plaintiff the opportunity to obtain redress from an infringer” because “the
3 ISP may no longer have the required information”, however with respect to Doe #918
4 the Plaintiff waited 9 months before filing the complaint with the Court. (Dkt. No. 36
5 ¶2).

7 **III. CONCLUSION**

8 I respectfully request that Doe #918, based on lack of personal jurisdiction and improper
9 venue, be severed from this case.

14 Respectfully submitted,

15 Date: November 12, 2011

Signature: John Doe #918

16 Printed name: John Doe #918

17 Pro Se

FILED

DEC - 5 2011

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PROOF OF SERVICE

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Case name: New Sensation, Inc. vs. Does 1-1,474

Case number: C 11-2770 MEJ

On the date shown below, I, *Doe #918 - IP 71.90.91.100*, served the following document(s): *NOTICE OF MOTION AND MOTION TO DISMISS*

I served the documents by the following method(s):

FAX. The document(s) listed above were transmitted to the fax number(s) set forth below, or as stated on the attached service list, on this date before 5:00 p.m.

U.S. MAIL. The document(s) listed above were placed in a sealed envelope with postage thereon fully prepaid, in the United States mail, addressed as set forth below.

PERSONAL DELIVERY. The document(s) listed above were delivered personally to the persons at the addresses set forth below by

EXPRESS MAIL. The document(s) listed above were caused to be sent by Federal Express/Express Mail.

Recipients' Names and Addresses or Fax Numbers:

Ira M. Siegel
Law Offices of Ira M. Siegel
433 N. Camden Drive Suite 970
Beverly Hills, CA 90210

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on November 15, 2011

Signature: Doe #918

Printed name: Doe #918