

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

FONOVISA, INC. et al.,
Plaintiffs,
v.

DOES 1-9,,
Defendants.

CIVIL ACTION NO. 07-1515

JUDGE JOY FLOWERS CONTI

ORDER

Defendant Doe #3 appealed (Docket No. 12) United States Magistrate Judge Lisa Pupo Lenihan's order dated April 3, 2008 (Docket No. 11). Upon a review of the matters raised by the appeal, the court, after reviewing the submissions of the parties and the record before it, concludes that the order appealed is affirmed. Defendant Doe #3's motion to dismiss pursuant to Rule 12(b)(6) was properly denied by the magistrate judge. The court concurs with the magistrate judge's rationale supporting the conclusion that the complaint contained sufficient facts to meet the notice pleading and standards set forth in Bell Atlantic Corp. v. Twombly, 127 S.Ct. 1955 (2007). See LaFace Records, LLC v. Does 1-5, No. 2:07-cv-187, 2008 WL 513508 (W.D.Mich. Feb. 22, 2008). With respect to Defendant Doe # 3's motion to dismiss for improper joinder, the magistrate judge's holding that severance is the proper remedy is affirmed. See Elektra Entm't Group, Inc. v. Does 1 - 9, No. O4 Civ. 2289 (RWS), 2004 WL 2095581, at *6 (S.D.N.Y. Sept. 8, 2004).

The magistrate judge did not err in denying Defendant Doe #3's motion to vacate the order granting expedited discovery or in denying the motion to quash subpoena. In

accordance with the magistrate judge's order dated April 3, 2008, the stay of discovery as to Defendant Doe #3 is lifted on the date of entry of this order.

AND NOW, this 28th day of November, 2008, the Court notes that Defendant Doe #3 filed a Notice of Appeal the U.S. Court of Appeals, Third Circuit (Docket No. 12). On June 4, 2008, Magistrate Judge Lisa Pupo Lenihan entered an order (Docket No. 24) stating Defendant Doe #3's appeal will remain pending as an appeal of the Magistrate Judge's April 3, 2008 Order (Docket No. 11) to District Judge Joy Flowers Conti. It is HEREBY ORDERED that the appeal is DENIED. For the reasons set forth above and in the magistrate judge's Opinion and Order dated April 3, 2008, which is adopted as the opinion of this court, the Opinion and Order dated April 3, 2008 (Docket No. 11) is hereby AFFIRMED. The case is referred back to the magistrate judge for further proceedings.

/s/ Joy Flowers Conti
Joy Flowers Conti
United States District Judge