

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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:
PATRICK COLLINS, INC., :
DBA ELEGANT ANGEL :
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Plaintiff, :
 :
v. :
 :
DOES 1-45 :
 :
 :
Defendants. :
 :
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12-cv-3507 (BSJ) (MHD)
Order

BARBARA S. JONES
UNITED STATES DISTRICT JUDGE

Plaintiff filed this copyright lawsuit against forty-five defendants identified only by their internet protocol ("IP") addresses, all of whom allegedly used torrent software to download and share the pornographic film "Big Wet Brazilian Asses 7."¹ Pending before the Court are two motions: (i) Defendant Doe No. 41's Motion to Sever and Dismiss Action As To Defendants Doe 2 Through 45 and Quash Subpoenas and (ii) Defendant Doe No. 8's Motion to Quash Subpoena Served Upon Verizon Internet Services Custodian of Records. For the reasons discussed below, the Court grants Defendant Doe No. 41's motion in its entirety and thus severs and dismisses without prejudice the case against Doe defendants 2 through 45 for improper joinder, and quashes the subpoenas seeking the identity of those

¹ Plaintiff filed an identical complaint against the same forty-five Doe defendants in 12-cv-3505.

defendants. Since granting Defendant Doe No. 41's motion provides the relief requested in Defendant Doe No. 8's motion, Defendant Doe No. 8's motion is dismissed as moot.

BACKGROUND

This is one of many lawsuits recently filed by Plaintiff's attorney in the S.D.N.Y. alleging that each of the Doe defendants used torrent software - a peer-to-peer file sharing network that assembles a complete media file from a "swarm" of aggregate file portions gathered from hundreds of online users - to infringe copyright. Plaintiff alleges the defendants are properly joined in this action under Fed. R. Civ. P. 20(a)(2) because their IP addresses were identified as sharing at least substantial portions of the "Big Wet Brazilian Asses 7" file via torrent software.

DISCUSSION

I. Joinder

The Federal Rules of Civil Procedure permit but do not require joinder where a Plaintiff asserts a claim "with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences." Fed. R. Civ. P. 20(a)(1). In addition, practical considerations, such as whether joinder will foster judicial economy, govern whether a court will permit joinder. SBO Pictures, Inc. v. Does 1-20, No. 12 Civ. 3925,

2012 WL 2304253, at *2 (S.D.N.Y. June 18, 2012) ("The well-established policy underlying permissive joinder is to promote trial convenience and expedite the resolution of lawsuits.") (citing Puricelli v. CNA Ins. Co., 185 F.R.D. 139, 142 (N.D.N.Y. 1999)).

A number of courts in this district have already opined on this issue in similar cases filed by Plaintiff's attorney, and there is some disagreement as to whether Doe defendants who share a file in the same "swarm" – but are otherwise unconnected – satisfy the requirements of Rule 20.² In this case, however, this Court doubts that the facts support joinder, since "the

² Compare Next Phase Distribution, Inc. v. John Does 1-27, No. 12 Civ. 3755 (VM), 2012 WL 3117182, at *4-5 (S.D.N.Y. July 31, 2012) (*sua sponte* dismissing all but one Doe defendant for improper joinder in copyright case alleging torrent file sharing in same swarm), SBO Pictures, Inc. v. Does 1-20, No. 12 Civ. 3925 (SAS), 2012 WL 2034631, at *1 (S.D.N.Y. June 5, 2012), *reconsideration denied*, No. 12 Civ. 3925 (SAS), 2012 WL 2304253, at *2 (S.D.N.Y. June 18, 2012) (same), Zero Tolerance Entm't Inc. v. Does 1-45, No. 12 Civ. 1083 (SAS), 2012 WL 2044593, at *1 (S.D.N.Y. June 6, 2012) (same), and Digital Sins, Inc. v. Does 1-245, No. 11 Civ. 8170 (CM), 2012 WL 1744838, at *1 (S.D.N.Y. May 15, 2012) (same) with Digital Sin, Inc. v. Does 1-176, 279 F.R.D. 239, 244 (S.D.N.Y. 2012) (joinder proper at least in the preliminary pre-trial stage), Malibu Media LLC v. John Does 1-4, No. 12 Civ. 2955 (PAE), 2012 WL 3104887, at *2 (S.D.N.Y. July 31, 2012) (joinder proper where "transactions involved one file, marked by the same hash, traded among geographically centralized individuals over a three-month period"), Digital Sin, Inc. v. Does 1-27, No. 12 Civ. 3873 (JMF), 2012 WL 2036035, at *2 (S.D.N.Y. June 6, 2012) (joinder proper at least in the preliminary pre-trial stage), In re Adult Film Copyright Infringement Litig., No. 11 Civ. 7564 (KBF), 2012 WL 1003581, at *2 (S.D.N.Y. Mar. 26, 2012) (same), and DigiProtect USA Corp. v. Does 1-240, No. 10 Civ. 8760 (PAC), 2011 WL 4444666, at *3 n.3 (S.D.N.Y. Sept. 26, 2011) (indicating that "specific factual allegations connecting [the] defendants to the same specific swarming transaction, or series of transactions" would support joinder).

fact that a large number of people use the same method to violate the law does not authorize them to be joined as defendants in a single lawsuit." Digital Sins, Inc., 2012 WL 1744838, at *2 (citing Nassau Cnty. Assoc. of Ins. Agents, Inc. v. Aetna Life & Casualty, 497 F.2d 1151, 1154 (2d Cir. 1974)). Regardless, joinder here does not promote judicial efficiency since there are few common facts among the Doe defendants and each Doe is likely to have a different defense. SBO Pictures, Inc., 2012 WL 2304253, at *2; Next Phase Distribution, Inc., 2012 WL 3117182, at *4. Joinder is thus inappropriate for this case. Accordingly, Doe defendants 2 through 45 are severed from this action and those cases are dismissed without prejudice.

II. Quashing Subpoenas

Because the claims against the Doe defendants 2 through 45 are severed and dismissed, any outstanding subpoena to an internet service provider seeking information about those defendants is quashed. Consistent with Judge McMahon's memorandum order in Digital Sin, Plaintiff is ORDERED to send a copy of this order within 24 hours of its issuance to any and every internet service provider who has been served with a subpoena for any information concerning Doe defendants 2 through 45. See Digital Sin, 2012 WL 1744838, at *6.

CONCLUSION


Defendant Doe No. 41's Motion to Sever and Dismiss Action As To Defendants Doe 2 Through 45 and Quash Subpoenas is **GRANTED**.

Defendant Doe No. 8's Motion to Quash Subpoena Served upon Verizon Internet Services Custodian of Records is **DISMISSED AS MOOT**.

PLAINTIFF IS ORDERED to send a copy of this order within 24 hours of its issuance to any and every internet service provider who has been served with a subpoena for any information concerning Doe defendants 2 through 45.

The Clerk of the Court is directed to terminate motions no. 6 and 10 on the ECF docket, and to close the cases against Doe defendants 2 through 45.

SO ORDERED:


BARBARA S. JONES
UNITED STATES DISTRICT JUDGE

Dated: New York, New York
August 23, 2012