

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

VOLTAGE PICTURES, LLC,

Plaintiff,

CA 1:10-cv-00873-RMU

v.

DOES 1 – 5,000,

Defendants.

MOTION TO QUASH SUBPOENA PURSUANT TO FRCP 45(C)(3)
AND MOTION TO DISMISS PURSUANT TO FRCP 12(B)(2)

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STATEMENT OF POINTS & AUTHORITES

For purposes of this motion, moving John Doe (IP address 93.36.141.178) joins with the Omnibus Motion and Memorandum to Quash filed by Carey N. Lening, Esq. on behalf of Mark Richards, Salil Kadam, Blake Leverett and John Doe (IP address 97.120.111.248) (Court Docket Entry No. 12), and adopts, relies on, and incorporates by reference as if fully set forth herein the arguments, points and authorities set forth therein, as well as the other motions to quash filed in this action.

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

VOLTAGE PICTURES, LLC,

Plaintiff,

CA 1:10-cv-00873-RMU

v.

DOES 1 – 5,000,

Defendants.

**ATTORNEY'S DECLARATION IN SUPPORT OF
MOTION TO QUASH SUBPOENA ISSUED BY PLAINTIFF
AND TO DISMISS CASE AS AGAINST JOHN DOE (IP ADDRESS 93.36.141.178)**

Oliver N. Blaise, III, Esq., an attorney admitted to practice before this Court, declares as follows under penalty of perjury:

1. I am an attorney licensed to practice before this Court. I have been retained by potential defendant John Doe, who has been identified by the plaintiff as having IP address 93.36.141.178.
2. I make this Declaration in support of my client's motion to quash the subpoena issued by the plaintiff, Voltage Pictures, LLC ("Voltage") to his Internet Service Provider, Charter Communications, Inc. ("Charter"), and to dismiss any actual or potential claims by Voltage against my client. A copy of said subpoena and a redacted copy of the accompanying correspondence my client received from Charter are attached as Exhibit 1 to my client's Declaration.
3. As set forth in my client's Declaration, he denies downloading Voltage's movie *The Hurt Locker* through his account with Charter, or any other Internet Service Provider, and he has limited, if any, contacts with the District of Columbia.

4. My client joins with and supports the motion to quash the plaintiff's subpoena to Charter pursuant to FRCP 45(c)(3), and to dismiss the case against my client for lack of personal jurisdiction pursuant to FRCP 12(b)(2), for the reasons set forth in the Omnibus Motion and Memorandum to Quash filed by Carey N. Lening, Esq. on behalf of Mark Richards, Salil Kadam, Blake Leverett and John Doe (IP address 97.120.111.248) (Court Docket Entry No. 12), as well as the other motions to quash filed in this action, the contents of which are incorporated by reference as if fully set forth herein.
5. Based on the foregoing, I respectfully request that the Court quash the plaintiff's subpoena to Charter and dismiss any claims that Voltage may assert against my client based on a lack of personal jurisdiction.

Pursuant to 28 USC § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 13, 2010

s/Oliver N. Blaise, III, Esq.
D.C. Dist. Ct. Bar No. NY0067
COUGHLIN & GERHART, LLP
Attorneys for John Doe
(IP address 93.36.141.178)
19 Chenango Street
P.O. Box 2039
Binghamton, New York 13902-2039
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E-mail: oblaise@cglawoffices.com

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

VOLTAGE PICTURES, LLC,

Plaintiff,

CA 1:10-cv-00873-RMU

v.

DOES 1 – 5,000,

Defendants.

DECLARATION IN SUPPORT OF
MOTION TO QUASH SUBPOENA ISSUED BY PLAINTIFF
AND DISMISS CASE AS AGAINST JOHN DOE (IP ADDRESS 93.36.141.178)

John Doe (IP address 93.36.141.178), a potential defendant, declares under penalty of perjury, as follows:

1. I make this Declaration in support of my motion to quash the subpoena issued by the plaintiff, Voltage Pictures, LLC (“Voltage”) and to dismiss Voltage’s actual or potential claims against me.
2. I make this Declaration using a pseudonym so as not to disclose my identity or any personally identifying information about me as sought by Voltage through its subpoena to my Internet Service Provider, Charter Communications, Inc. (“Charter”).
3. I have received a copy of a subpoena and correspondence dated November 29, 2010 from Charter stating, among other things, that my IP address is 93.36.141.178, Voltage has asserted its movie *The Hurt Locker* may have been improperly downloaded through my Charter account, Voltage is seeking disclosure of my identity and personally identifying information from Charter, and upon such disclosure I will likely be named as a defendant

in Voltage's lawsuit. A copy of said subpoena and a redacted copy of the accompanying correspondence I received from Charter are attached as Exhibit 1.

4. While I acknowledge that Charter was my ISP at the time identified in Exhibit 1, I deny that I downloaded the movie *The Hurt Locker* through my account with Charter or any other ISP.
5. As set forth in paragraphs 3 through 11 of the October 1, 2010 Declaration of John Doe (IP address 97.120.111.248),¹ which I incorporate by reference as if fully set forth herein, I have never resided in or had any significant contacts with the District of Columbia, nor do I consent to personal jurisdiction therein.

Pursuant to 28 USC § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 13, 2010

s/John Doe (IP address 93.36.141.178)

¹ This Declaration was submitted as part of the Omnibus Motion and Memorandum to Quash Subpoena Pursuant to FRCP 45(c)(3) and Motion to Dismiss Pursuant to FRCP 12(b)(2) filed by Mark Richards, Salil Kadam, Blake Leverett and John Doe (IP address 93.36.141.178) (Court Docket Entry No. 12).

EXHIBIT 1



Charter Communications, Inc.
Legal Department
12405 Powerscourt Dr.
St. Louis, MO 63131
Fax: 314-909-0609

IMPORTANT LEGAL NOTICE: PLEASE READ CAREFULLY

November 29, 2010

OBJECTION DEADLINE

December 13, 2010, 4:00 pm CT

References Used In This Notice

- Court Case: Voltage Pictures, LLC (the "Plaintiff") v. Does 1-5,000; 1:10-cv-00873-RMU
- Court: United States District Court for the District of Columbia
- Charter Case Number: 10-5044
- Copyrighted Work: The Hurt Locker
- Identifying Information: Accountholder Name, Address(es), Telephone Number, Modem MAC Address

Dear Sir or Madam:

Charter has received a subpoena from attorneys for the Plaintiff seeking certain information about your Charter internet account ("Account"), including the Identifying Information listed above. The Court has issued an Order compelling Charter to disclose this information relating to your Charter Account unless you formally oppose disclosure in the Court by the objection deadline stated above. Copies of the court order and subpoena are attached.

Charter records indicate that an IP address listed on an exhibit to the subpoena was assigned to your Account at the listed date and time. Below is a copy of the log that associates the IP address with your Account.

Format: IP Address – Modem MAC – CPE MAC – IP Lease Start Time – IP Lease End Time
96.36.141.178 00:25:9c:11:70:04 00:26:2d:52:f8:36 2010-03-09 16:25:56 2010-04-30 15:26:30

Charter respects the privacy of its subscribers, and will disclose customer information only to the extent required by law, as indicated in Charter's privacy policy on www.charter.com. Because a court order authorizes the Plaintiff to obtain this information, Charter must disclose these records.

Please note: Charter cannot provide you legal representation and cannot object to the subpoena or court order on your behalf. If you wish to take action in this matter, you should contact an attorney immediately, who can advise you of your specific legal rights. Charter must be notified of an objection no later than the objection deadline stated above. If you intend to oppose the order, you should do so without delay. The court is identified in the subpoena and court order.

If you file an opposition to the order, you or your attorney should provide a copy of such to Charter (to the attention of Kelly Starkweather via facsimile at 314-909-0609) by the objection deadline stated above so that Charter may withhold disclosure of your information. **PLEASE**

**NOTE THAT AN OBJECTION MADE SOLELY TO CHARTER IS INSUFFICIENT;
OBJECTIONS MUST BE MADE DIRECTLY TO THE COURT.**

Questions regarding your legal rights should be directed to the attorney of your choice. If you or your attorney has questions regarding the subpoena itself, you should contact the requestor directly. If you have any questions regarding your Account, Charter's policies or this correspondence, you should review the attached FAQs or the named accountholder may call Charter's Security Department directly at 866-228-0195. Please have this letter in hand if you call because you will be asked to confirm the objection deadline stated on at the top of the first page.

Sincerely,

Charter Communications, Inc.

Enclosures

FREQUENTLY ASKED QUESTIONS

Q: Why did I receive this letter?

A: Charter received a subpoena related to the Court Case described below. As part of the subpoena, the Plaintiff sent Charter a list of IP addresses that allegedly downloaded and/or distributed the Copyrighted Work on a specific date and time. An IP address on that list was associated with your Charter internet account; your corresponding IP address log was stated in the letter you received. Because of this association, Charter is required to disclose your Identifying Information pursuant to the subpoena and court order. The MAC address is a unique number assigned to your modem.

Q: What is this Court Case about?

A: The Plaintiff has filed a lawsuit alleging that certain persons have infringed their copyrights by downloading and/or distributing the Copyrighted Work and has issued subpoenas to learn the identities of these persons. However, the Plaintiff does not know the actual identities of these persons – it only knows the Internet Protocol address (“IP address”) of the internet account associated with the alleged activity. Accordingly, the Plaintiff has filed this lawsuit against anonymous “John Doe” defendants and has issued a subpoena pursuant to a court order to determine the identities of the anonymous Doe defendants. As described above, one of these subpoenas has been sent to Charter as your internet service provider. If the Plaintiff receives your Identifying Information, you will likely be added as a named defendant to the lawsuit.

Q: Am I being charged with a crime?

A: This notice relates solely to a civil lawsuit, not a criminal investigation.

Q: Can Charter give me legal advice and/or object to this subpoena on my behalf?

A: NO. This notice does not provide legal advice and Charter cannot advise you on what grounds exist, if any, to object to this subpoena. If you would like legal advice you should consult your own attorney. You can seek legal assistance from several sources, such as private attorneys, community legal aid organizations, bar association referral services, legal clinics at universities, and advocacy groups specializing in making such objections.

Q: Has Charter disclosed my name and contact information to the Plaintiff yet?

A: NO. Your Identifying Information has not been disclosed yet. However, it will be disclosed unless you object to the subpoena by following the steps outlined below before the objection deadline stated in the letter.

Q: What must I do if I do not want my Identifying Information disclosed to the Plaintiff?

A: If you do not want your information disclosed, you must object directly to the court identified in the order and subpoena by the objection deadline stated in the letter. You must also notify Charter by sending a copy of this objection to the attention of Kelly Starkweather via fax to 314-909-0609. If you object to the subpoena directly to the court, your Identifying Information will not be disclosed until the court rules on your motion. Please note that an objection made solely to Charter is insufficient; it must be made to the court.

In summary, to prevent the disclosure of your Identifying Information, the following steps must be taken:

1. You must object to the subpoena directly to the court before the objection deadline.
2. You must notify Charter and send a copy of this objection to the court before the objection deadline. Notice should be sent by fax to 314-909-0609 to the attention of Kelly Starkweather.
3. Remember that objections must be made to the court; objections made solely to Charter will not prevent the disclosure of your Identifying Information..

Q: What if I do nothing?

A: Charter is required to disclose your Identifying Information to the Plaintiff.

AO 25B (Rev. 06/09) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT

for the
District of Columbia

Voltage Pictures, LLC

Plaintiff

v.

DOES 1-5,000

Defendant

Civil Action No. 1:10-cv-00873-RMU

(If the action is pending in another district, state where:)

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Charter Communications, Inc., Attn: Custodian of Records
12405 Powerscourt Drive, St. Louis, MO 63131; Fax: 314-909-0609

Production: YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material: Pursuant to the attached order, provide the name, current (and permanent) addresses, telephone numbers, e-mail addresses and Media Access Control addresses of all individuals whose IP addresses are listed in the attached spreadsheet.

Place: Nicholas A. Kurtz, Dunlap, Grubb & Weaver, PLLC 1200 G Street, NW Suite 800, Washington, DC 20005	Date and Time: 10/18/2013 10:00 am
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Inspection of Premises: YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:
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The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 10/19/2010

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk



Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing *(name of party)* Voltage Pictures, LLC Plaintiff, who issues or requests this subpoena, are:

Nicholas A. Kurtz, Dunlap, Grubb & Weaver, PLLC, 1200 G Street, NW Suite 800, Washington, DC 20005
Tel: 877-223-7212, Fax: 866-874-5101, email: subpoena@dgvlegal.com

Full docket text:

MINUTE ORDER granting [4] motion for order. Upon consideration of the plaintiff's motion for leave to take discovery prior to the Rule 26(f) conference, it is hereby ORDERED that the motion is GRANTED. SO ORDERED. Signed by Judge Ricardo M. Urbina on 06/25/2010. (EN,)

PACER Service Center			
Transaction Receipt			
07/30/2010 14:19:58			
PACER Login:	dg1227	Client Code:	Volume
Description:	History/Documents	Search Criteria:	1:10-cv-00873-RMU
Billable Pages:	1	Cost:	0.08

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

VOLTAGE PICTURES, LLC,

Plaintiff,

CA 1:10-cv-00873-RMU

v.

DOES 1 – 5,000,

Defendants.

PROPOSED ORDER

Upon the issuance of subpoenas by the plaintiff, Voltage Pictures, LLC, to various Internet Service Providers seeking personal information about their customers prior to the discovery conference held pursuant to FRCP 26(f), and

Upon consideration of the motion of John Doe (IP address 93.36.141.178) to quash said subpoenas pursuant FRCP 45(c)(3) and to dismiss the action pursuant to FRCP 12(b)(2), it is hereby

ORDERED that the subpoenas issued by plaintiff in this action are hereby quashed, and it is further

ORDERED that the action is hereby dismissed with prejudice.

So Ordered:

Dated: _____, 20__

Ricardo M. Urbina, USDJ

CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7(m)

On December 13, 2010, within one business day of being retained for this matter and the stated filing deadline for the foregoing motion, I placed two telephone calls to Nicholas A. Kurtz, Esq., counsel for the plaintiff, in an effort to discuss the contents of the foregoing motion. As I was unable to reach Mr. Kurtz, the parties were unable to resolve the issues presented by this motion.

s/Oliver N. Blaise, III, Esq.
D.C. Dist. Ct. Bar No. NY0067

CERTIFICATE OF SERVICE

I am the attorney for John Doe (IP address 93.36.141.178). On December 13, 2010, I sent a true and complete copy of the foregoing Motion to Quash/Dismiss to the following parties and/or their attorneys of record through the Court's ECF system, by first class mail through the U.S. Postal Service, or by fax, as noted below:

Thomas Mansfield Dunlap, Esq.
Nicholas A. Kurtz, Esq.
DUNLAP, GRUBB & WEAVER PLLC
Attorneys for Plaintiff
199 Liberty Street S.W.
Leesburg, VA 20175
Tel: (202) 316-8558
Fax: (202) 318-0242
Email: tdunlap@dglegal.com
Email: nkurtz@dglegal.com

Via ECF

Thomas S. Schaufelberger
SAUL EWING LLP
Attorneys for Verizon Online
2600 Virginia Ave., N.W.
Suite 1000
Washington, DC 20037
Tel: (202) 295-6609
Fax: (202) 295-6709
Email: tschauf@saul.com

Via ECF

Carey N. Lening, Esq.
*Attorney for Mark Richards, Salil Kadam, Blake Leverett,
and John Doe (IP address 97.120.111.248)*
1325 G Street, NW
Suite 500
Washington, DC 20005
(202) 709-4529
Email: carey.lening@careylening.com

Via ECF

Kelly Starkweather
Charter Communications, Inc.
Legal Department
12405 Powerscourt Drive
St. Louis, MO 63131

Via Fax (314) 909-0609

Jeff Kowalski, *Pro Se*
17445 Roosevelt Road
Hemlock, MI 48626
Tel: (989) 607-4572

Via First Class Mail

Janyth D. Girard, *Pro Se*
1017 Market Street
Corvallis, MT 59828
Tel: (406) 961-4191

Via First Class Mail

Margaret Wenzek, *Pro Se*
3626 Fifth Avenue South
Great Falls, MT 59405

Via First Class Mail

AUDREY KALBLINGER, *Pro Se*
15006 North Freya Street
Mead, WA 99021
Tel: (509) 466-5082

Via First Class Mail

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

Executed on December 13, 2010

s/Oliver N. Blaise, III, Esq.
D.C. Dist. Ct. Bar No. NY0067