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**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

DIRECTV, INC.,)
)
 Plaintiff,)
)
 v.)
)
 JOHN BONILLA, STEVE)
 BOOKSTABER, MICHAEL)
 CIGNARELLA, ART CZECOWICZ,)
 DENNIS DOMERSTAD, AARON)
 GRAVES, JEFFREY JACOBS,)
 TRAWON JONES, JAMES SPINOSA,)
 and LINWOOD WELCH,)
)
 Defendants.)
)
 _____)

**CASE NO. SA CV 05-145 DOC
(RNBx)**

**ORDER DENYING MOTION TO
QUASH**

Before the Court is the motion of non-party witnesses Scott Madvig (“Madvig”), Teela Madvig, and Kevin J. Hizon to quash deposition subpoenas, limit the scope of the deposition subpoenas, and for a protective order. This motion was brought in response to subpoenas served on the witnesses by Michael Cignarella (“Cignarella”), a defendant in *DirecTV, Inc. v. Bonilla, et al*, 03CV2384, a suit currently before the Honorable Judge Joseph A. Greenaway, Jr. in the District of New Jersey (hereinafter “the New Jersey case”). The motion to quash was heard on March 14, 2005, and on March 15, 2005 the parties entered into a stipulation to quash the subpoenas of Teela Madvig and Kevin J. Hizon.

1 The parties further stipulated to limit the scope of the Madvig subpoena and that Madvig
2 would appear to be deposed on March 18, 2005, at 8:00 am at the United States Courthouse at
3 411 West Fourth Street in Santa Ana, California. The only remaining dispute regarding the
4 subpoena of Madvig relates to the confidential July 29, 2001 Settlement Agreement and Release
5 entered into between DirecTV and Madvig in an earlier suit (“the Agreement”). The parties
6 agreed that Madvig would provide the Agreement to the Court for *in camera* review on March
7 18, 2005, at 7:30 am, with the understanding that the Court would then determine whether and
8 on what conditions it would be disclosed to Cignarella and his counsel.

9 Under Federal Rule of Civil Procedure 45 a subpoena may be modified on a number of
10 grounds, including that it “requires disclosure of privileged or other protected matter and no
11 exception or waiver applies” Fed. R. Civ. P. 45(c)(3)(A). More generally, under Rule
12 26(c), “[i]f a court finds particularized harm will result from disclosure of information to the
13 public, then it balances the public and private interests to decide whether a protective order is
14 necessary.” *Phillips ex rel. Estates of Byrd v. Gen. Motors Corp.*, 307 F.3d 1206, 1211 (9th Cir.
15 2002) (discussing disclosure standards during discovery). Thus, in examining the Agreement,
16 the Court must first determine whether there is a chance that disclosure will cause any harm to
17 DirecTV or Madvig. Then, it must weigh any potential harm against interests of Cignarella and
18 the public. In order to properly weigh the importance of the Agreement, the Court must examine
19 the role that it may play in the New Jersey case.

20 The complaint in the New Jersey case names ten defendants, who on the face of the
21 complaint have nothing in common other than the laws that DirecTV claims they have violated.
22 Cignarella, like each of the defendants is alleged to have purchased one or more pirate devices
23 allegedly designed to permit viewing of DirecTV’s satellite television programming without
24 proper authorization or payment. DirecTV asserts three causes of action against each of the
25 defendants: (1) unauthorized reception of satellite signals in violation of 47 U.S.C. § 605(a); (2)
26 unauthorized interception of electronic communications in violation of 18 U.S.C. § 2511(1)(a);
27 and (3) possession of pirate access devices in violation of 18 U.S.C. § 2512(1)(b). The remedies
28 sought by DirecTV include injunctive relief and statutory damages of \$10,000 per device.

1 DirecTV bases the allegations in the New Jersey case on records acquired as the result of
2 court-authorized seizures at a mail shipping facility which shipped pirate access devices for a
3 number of companies. That mail shipping facility, Fulfillment Plus, was raided pursuant to an
4 order that issued from this Court in an earlier case, *DirecTV, Inc. v. Trone et al*, SA CV 01-370
5 DOC (RSx). Apparently, shipping and sales records acquired from Fulfillment Plus, and its
6 owner, Madvig, have led DirecTV to file a torrent of lawsuits against individuals who appear in
7 those records. This Court’s inspection of dockets in the Central District of California shows
8 hundreds of lawsuits that are basically carbon-copies of the New Jersey case. Most of the cases
9 filed through 2004 name between four and six defendants, thus placing the number of individual
10 defendants in this district alone at over one thousand. Indeed, the DirecTV Internet site,
11 www.hackhu.com, boldly proclaims “[l]awsuits filed against over 24,000 end-user defendants.”
12 A Google search of the Internet reveals that groups as diverse as the Electronic Frontier
13 Foundation, www.directvdefense.org, and the grassroots forums at wumarkus.com are engaged
14 in efforts to aid and educate those sued by DirecTV.

15 In the New Jersey case, it appears from the docket that six of the defendants have
16 stipulated dismissals (presumably through settlement with DirecTV), and one defendant has
17 defaulted. A similar pattern of settlement and/or default by defendants in DirecTV cases appears
18 in a vast number of the Central District cases that this Court has examined. Very few cases seem
19 to progress far beyond the initial pleadings, and when they do, it is not clear from the docket
20 entries how successful defendants are in their discovery efforts. What *is* clear from the docket in
21 the New Jersey case is that Cignarella is vigorously attempting to defend himself, first acting *pro*
22 *se*, and eventually through counsel. The docket shows that Cignarella has twice failed to compel
23 discovery, while DirecTV has gained access to both his Visa and Paypal records despite efforts
24 by Cignarella to quash subpoenas issued to those companies. Whether Cignarella’s defense case
25 has merit or not, after its journey through DirecTV case dockets this Court has a nagging sense
26 of inequity. Given the number of individuals sued, and the zealous manner in which DirecTV
27 has guarded its sources, it seems likely that some erroneously named defendants chose to settle
28 for a few thousand dollars instead of litigating. This may be a wholly rational decision from an

1 economic standpoint, but from the standpoint of justice it raises grave questions about the
2 misuse of the power of the courts.

3 Let us be clear: the purchase and use of a device to receive pirated DirecTV is illegal,
4 and those who have done so should rightly be subject to suit and liability. The existence of a
5 right to sue does not, however, mean that this or any other court need countenance what appear
6 to be litigation tactics aimed at hindering discovery and forcing monetary settlements from those
7 unable to fight a drawn-out legal battle. Cignarella and other defendants who choose to litigate
8 rather than capitulate are entitled to their day in court and the discovery of information from
9 DirecTV and cooperators like Madvig. While DirecTV may view the 24,000 defendants as an
10 undifferentiated mass of thieves, it is imperative that the courts ensure the adequacy of legal
11 process for each and every defendant.

12 It is against this backdrop that the Court has examined the Agreement *in camera*.
13 Nothing in the Agreement appears to merit the veil of secrecy that has shrouded it to date. The
14 Court has struggled to find any harm to either Madvig or DirecTV if the Agreement is made
15 public. There are no private details about Madvig in the Agreement. There are no trade secrets
16 in the Agreement. It merely sets forth the terms of Madvig's cooperation and forfeiture of his
17 assets. The Agreement, by its own terms will not be voided if revealed subject to court order, so
18 Madvig cannot be re-prosecuted by DirecTV as a result of disclosure. Thus, this Court deems
19 that there is no particularized harm to Madvig. The only harm that this Court can conceive of to
20 DirecTV is the "harm" of revelation of a probative document that may be of use to defendants in
21 DirecTV suits that rely on evidence or testimony gained from Madvig under the Agreement.

22 On the contrary, since Madvig is the source of the information that allegedly implicates
23 Cignarella, there may be great harm to his defense case if documents that are probative of
24 Madvig's credibility are withheld. Accordingly, the Court finds that any putative harm to
25 Madvig or DirecTV it is outweighed by the interests of Cignarella and the public interest in a
26 just and fair determination of the liability of the numerous people sued by DirecTV. When
27 evidence used against defendants comes from sources who have entered into settlement
28 agreements with DirecTV, it is imperative that defendants be given the opportunity to question

1 the authenticity of that evidence, and the accuracy and veracity of the alleged violations and
2 damages.

3 The Court sees no reason for the Agreement between DirecTV and Madvig to remain
4 under lock and key. Thus, the Court ORDERS disclosure of the Agreement to Cignarella and his
5 counsel without limitation.

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8 IT IS SO ORDERED.

9 DATED: March 21, 2005

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DAVID O. CARTER
United States District Judge