

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

AF HOLDINGS, LLC,

Plaintiff,

v.

MATTHEW CICCONE,

Defendant.

Civil Action No.
2:12-cv-14442-GKD-MJM

Hon. Gershwin A. Drain
United States District Judge

Hon. Mona K. Majzoub
United States Magistrate Judge

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**NOTICE OF WITHDRAWAL OF MOTION
TO INTERVENE AND TO SUSPEND
DISCOVERY ORDER, in AF Holdings v.
Ciccione, No. 2:12-cv-14442 (E.D. Mi.).**

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**NOTICE OF WITHDRAWAL OF
MOTION OF WOW SUBSCRIBER ALPHA, WOW SUBSCRIBER BETA,
AND CHARTER SUBSCRIBER ALPHA, FOR LEAVE TO INTERVENE,
FOR SUSPENSION OF DISCOVERY ORDER (R.E. No. 11) TO PRESERVE
STATUS QUO ANTE, AND FOR OTHER RELIEF**

Movants – namely, cable subscribers Charter Subscriber Alpha, WOW Subscriber

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Alpha, and WOW Subscriber Beta – through counsel, respectfully notify this honorable Court that their prior motion (Record Entry No. 33), is withdrawn due to an intervening material change in the circumstances of each of these three movants.

Each of the three movants no longer is threatened – either imminently, or ever – with the release of any personally-identifiable information in connection with this case.

Accordingly, they no longer are similarly-situated to the multitude of cable subscribers whose personal information remains subject to the three subpoenas issued in this case.

The three movants, and counsel, due to this change of circumstances, cannot by way of a motion continue to claim that they are similarly-situated to others, or continue to claim they are personally interested in the matters they previously raised. Accordingly, our capacity to continue seek to intervene, or to use a motion as a vehicle to urge this honorable Court to quash the three subpoenas in their entirety, has changed.

That said, to the extent it matters when not presented in the form of a motion, we respectfully continue to urge the court to quash all three subpoenas completely and protect the identities of all 300 or so cable subscribers who have been made targets of the three subpoenas. We also respectfully urge the Court to continue making reasonable inquiry into the facts. We trust that the information already provided has proven helpful to the Court.

Because the three movants no longer can claim to be similarly situated to the other subpoena targets in this case, it only makes sense for all three of them not to pay legal counsel to drive across the state and back to argue a motion that – as to these clients, at least

– has become moot.

Legal counsel has not undertaken this representation on a *pro bono publico* basis, but on an hourly paid basis, for these clients. It would not be fair to these clients to require them to pay more in attorney fees for argument on a motion, and related travel, when the clients already have secured the central objective of the representation.

Accordingly, counsel shall only appear for a hearing on February 12, 2013, if this honorable Court so directs. Otherwise, counsel respectfully requests to be excused from having to appear in mid-February because the motion has become moot, at least with respect to the three movants.

If and to the extent that the Court wishes to hear from an advocate for the shared interests of targeted cable subscribers generally, one possible approach is to follow the example of Hon. David C. Godbey, of the U.S. District Court for the Northern District of Texas, described in Mick Haig Productions, E.K.v. Does 1-670, 687 F.3d 649 (5th Cir. 2012), and to invite specialized counsel to appear for the purpose of addressing the third-party, privacy, due process, technical, and other issues in this case with the care they require.

Such an approach would not necessarily require attorneys to fly in from Washington, D.C., or San Francisco, see id., because the Detroit Metro area happens to be blessed with several fine law schools, that also happen to have nationally-known Internet and copyright specialists among their respective faculties. Alternatively, one or more attorneys in private practice from the Detroit Metro area, also would appear to be up to the challenge.

We respectfully thank this honorable Court for its careful attention to these matters.

Dated: February 1, 2013

Respectfully submitted,

/s/ Eric C. Grimm

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CERTIFICATE OF SERVICE

I certify that on February 1, 2013, I filed electronically this Notice of Withdrawal with the Court's ECF system, which will automatically send notice to each of the following:

Johnathan Tappan
Bernard J. Fuhs
Jennifer A. Dukarski
John T. Hermann
Kenneth M. Mogill
Robert J. Sayfie
Richelle C. Hall
Alexander E. Kuhne
Timothy J. Harrington

On February 1, 2013, a paper copy of this filing also is being served on JAMES C. TOTH (P44990); Great Lakes Legal Team; 117 S Main Street; P.O. Box 470; Almont, MI 48003, by first class mail, postage prepaid.

An electronic version of this filing also has been emailed to < Lz2009@outlook.com > – the email address for the movant self-identified as John Doe (50.4.160.247), but compliance with R8(e) of the Electronic Filing Policies and Procedures cannot presently be accomplished. Some of the other self-represented individuals using their IP addresses as pseudonyms, cannot be served because insufficient information presently is available to enable service to take place.

/s/ Eric C. Grimm
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