

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA**

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Melissa Brown and Ben Jenkins,

: Civil Action No.: 3:15-cv-12

Plaintiffs,

v.

Rightscorp, Inc., a Nevada Corporation, f/k/a  
Stevia Agritech Corp.; Rightscorp, Inc., a  
Delaware Corporation; and DOES 1-10,  
inclusive,

: **COMPLAINT  
JURY TRIAL DEMANDED**

Defendants.

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For this Complaint, the Plaintiffs, Melissa Brown and Ben Jenkins, by undersigned  
counsel, state as follows:

**NATURE OF CASE**

1. Rightscorp describes itself to investors as a “leading provider of monetization services” for copyright owners.
2. Rightscorp blasts consumers with automated telephone calls and text messages in an effort to pressure consumers to settle purported copyright infringement claims.
3. Rightscorp employs an automatic telephone dialing system (“ATDS”) and/or a prerecorded or artificial voice in its calls and text-messages to reach consumers on their landline and cellular telephones.
4. Rightscorp does so without obtaining consumers’ prior express consent, in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.* (“TCPA”).

5. Rather than obtain consumers' prior express consent, Rightscorp obtains target-consumers' contact information through issuance of subpoenas to various Internet Service Providers ("ISPs") pursuant to the Digital Millennium Copyright Act, 17 U.S.C. § 512(h).<sup>1</sup>

6. Once Rightscorp obtains a consumer's contact information, it commences auto-calls and text messages in an attempt to intimidate the consumer into "settlement."

7. Rightscorp's receipt of contact information from ISPs does not constitute obtaining consumers' prior express consent as required by the TCPA. Accordingly, Rightscorp's auto-calls and text messages to consumers violate the TCPA.

### **JURISDICTION**

8. This action arises out of Defendants' repeated violations of the Federal Telephone Consumer Protection Act, 47 U.S.C. § 227, *et. seq.* Federal question subject matter jurisdiction is established.

9. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), in that a substantial portion of the acts giving rise to this action occurred in this District.

### **PARTIES**

10. Plaintiff Melissa Brown ("Brown") is an adult individual residing in Monroe, Georgia, and is a "person" as defined by 47 U.S.C. § 153(10).

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<sup>1</sup> The legality of Rightscorp's subpoenas is highly questionable. Under 17 U.S.C. § 512(h), a subpoena may not be issued to an ISP which does not store information on its system but rather acts as a mere "conduit" for electronic communications. *See In re Charter Commc'nns, Inc.*, 393 F.3d 771, 776-78 (8th Cir. 2005); *Recording Indus. Assoc. of Am. v. Verizon Internet Servs., Inc.*, 351 F.3d 1229, 1236-39 (D.C. Cir. 2003). Rightscorp willfully disregards this requirement, issuing such subpoenas to conduit ISPs and storage ISPs alike. In *In re Subpoena Issued to Grande Commc'nns Networks LLC*, 1:14-mc-00848, Doc. No. 1 (W.D. Tex. Sept. 5, 2014), the plaintiffs moved to quash a subpoena issued by Rightscorp to its internet service provider. Rather than defend its subpoena's legality, Rightscorp packed up its bags and withdrew its subpoena the very next day. *See id.*, Doc. No. 3 (Sept. 10, 2014). The case was dismissed in result. *See id.*, Doc. No. 4 (Sept. 12, 2014). The *Grande* documents are attached hereto as Exhibit A.

11. Plaintiff Ben Jenkins (“Jenkins”) is an adult individual residing in Monroe, Georgia, and is a “person” as defined by 47 U.S.C. § 153(10).

12. Defendant Rightscorp, Inc. is a Nevada business entity with its headquarters and principal place of business located at 3100 Donald Douglas Loop North, Santa Monica, CA 90405 (“Rightscorp Nevada”). On information and belief, Rightscorp was formerly known as Stevia Agritech Corp.

13. Defendant Rightscorp, Inc. is a Delaware business entity with its headquarters and principal place of business located at 3100 Donald Douglas Loop North, Santa Monica, CA 90405 (“Rightscorp Delaware” and together with Rightscorp Nevada, “Rightscorp”). On information and belief, Rightscorp Delaware is a wholly owned subsidiary of Rightscorp Nevada.

14. Does 1-10 (the “Clients”) are individual clients of Rightscorp on whose behalf Rightscorp was acting, as an agent, in doing the wrongful acts alleged in this complaint, and whose identities are currently unknown to the Plaintiff. One or more of the Clients may be joined as parties once their identities are disclosed through discovery.

### **FACTS**

15. The City of Monroe, Georgia offers “cable internet” services to its residents.

16. In or around September of 2014, Rightscorp sent the City of Monroe a certified letter containing a subpoena issued by a California court, which ordered the city to turn over information regarding its internet customers’ possible copyright infringements and personal contact information.

17. The city complied with the subpoena, sending the personal contact information of thousands of its internet customers to Rightscorp.

18. In or around October of 2014, Brown received a letter from Rightscorp stating “You Have Unpaid Copyright Infringements,” and encouraging Brown to call “1(888) 851-3801” to “avoid interruption of [her] Internet service, or other possible legal consequences.” A copy of the letter is attached hereto as Exhibit B.

19. The letter further provided: “We have evidence that a computer on your Internet account was used to illegally distribute (‘file share’) one or more of our clients’ copyrighted works. More than 200,000 people have been sued since 2010 for peer to peer file sharing copyright infringements. Forty-six such new lawsuits were filed in August 2013 alone.”

20. Jenkins called the number included in the letter to inquire why Brown had received the letter.

21. Thereafter in October of 2014, Jenkins began receiving emails from Rightscorp addressed to Brown. The emails reiterated the threats from the initial letter.

22. In an email to Jenkins’s email address dated October 20, 2014, an agent of Rightscorp named “Marina” wrote:

Dear Melissa Brown,

Attached is the evidence of 26 copyright infringements that have occurred as a direct result of a file sharing program operating under your internet connection: [REDACTED]. I have also included all 26 e-mail notifications that were automatically sent to your internet service provider regarding federal law being broken under their services.

Any further questions or concerns you may contact my direct line at (310) 405-0102. I do ask that you refrain from derogatory language when speaking with a DMCA Agents, as the transactions are kept on file.

Thank you for your cooperation,

Marina

23. Attached to the email was a copy of the 26 “email notifications” that had been sent to Jenkins’s email address, as well as a list of the 26 alleged copyright infringements.

24. Plaintiffs did not remit payment to Rightscorp in response to Rightscorp’s emails.

25. Thereafter, Rightscorp became more aggressive in its solicitations, and began placing calls to Brown’s cellular phone, Jenkins’s cellular phone, as well as Plaintiffs’ home phone.

26. At all times mentioned herein, Rightscorp placed calls to Plaintiffs’ phones using an ATDS and/or an artificial or prerecorded voice.

27. When Plaintiffs answered calls from Rightscorp, they were met with an automated prompt.

28. On other calls from Rightscorp, Plaintiffs experienced a brief period of silence before being connected to a live agent.

29. Further, Rightscorp began placing text messages to Brown’s cell phone, a reproduction of which is included here:



30. The FCC has clarified that text messages qualify as “calls” under the TCPA. *See In re Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Report and Order*, 18 FCC Rcd. 14014, 14115 (July 3, 2003); *see Satterfield v. Simon & Schuster, Inc.*, 569 F.3d 946, 953 (9th Cir. 2009).

31. The text messages sent to Brown’s cellular phone were made with an ATDS as defined by 47 U.S.C. § 227(a)(1).

32. The telephone number messaged by Rightscorp was assigned to a cellular telephone service for which Brown incurs charges for incoming messages pursuant to 47 U.S.C. § 227(b)(1).

33. The messages from Rightscorp to Brown were not placed for “emergency purposes” as defined by 47 U.S.C. § 227(b)(1)(A)(i).

34. Plaintiffs never provided Rightscorp with their phone numbers. Plaintiffs never provided Rightscorp with prior express consent to call Plaintiffs using automated technology. On information and belief, Rightscorp obtained Plaintiffs’ phone numbers through subpoena to the City of Monroe.

35. On numerous occasions, Jenkins called Rightscorp and informed that he and Brown never provided their numbers to Rightscorp, never provided their consent to be contacted by Rightscorp, and further instructed Rightscorp to cease the calls, text messages, emails and letters to both him and Brown. Jenkins provided sufficient information for Rightscorp to identify their communications to him and Brown in order to make such communications stop.

36. Jenkins sent Rightscorp numerous emails instructing Rightscorp to cease their calls, text messages, emails and letter solicitations to him and Brown.

37. Regardless, Rightscorp continued to place calls and text messages to Plaintiffs' cellular and home phones.

38. Rightscorp also continued to send Plaintiffs email and letter solicitations.

**COUNT I**

**VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT –**

**47 U.S.C. § 227, et seq.**

39. Plaintiffs incorporate by reference all of the above paragraphs of this Complaint as though fully stated herein.

40. At all times mentioned herein and within the last four years, Rightscorp called Plaintiffs on their cellular and home phones using an ATDS and/or a prerecorded or artificial voice.

41. Further, Rightscorp sent multiple automated text messages to Brown's cell phone number without her prior express consent.

42. Each of the aforementioned messages by Rightscorp constitutes a violation of the TCPA.

43. The telephone numbers called by Rightscorp were assigned to cellular telephone services for which Plaintiff incurs charges for incoming calls pursuant to 47 U.S.C. § 227(b)(1).

44. The calls from One to Plaintiff were not placed for "emergency purposes" as defined by 47 U.S.C. § 227(b)(1)(A)(i).

45. Pursuant to 47 U.S.C. § 227(b)(3)(B), Plaintiffs are entitled to an award of \$500.00 in statutory damages for each call or text message made in violation of the TCPA.

**COUNT II**

**KNOWING AND/OR WILLFUL VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT –**

**47 U.S.C. § 227, et seq.**

46. Plaintiffs incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

47. Rightscorp knew it employed an ATDS and/or a prerecorded or automated voice.

48. Rightscorp knew it was calling and text-messaging Plaintiffs with such technology.

49. Rightscorp knew it did not have Plaintiffs' prior express consent to contact Plaintiffs with such technology.

50. Rightscorp made the aforementioned contacts for an improper purpose, *i.e.* to intimidate Plaintiffs into "settlement" for a nonexistent copyright infringement.

51. Accordingly, Rightscorp knowingly and/or willfully violated the TCPA.

52. As a result of each call made in knowing and/or willful violation of the TCPA, Plaintiffs are entitled to an award of treble damages in an amount up to \$1,500.00 pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

**PRAAYER FOR RELIEF**

**WHEREFORE**, the Plaintiffs pray that judgment be entered against Defendant:

1. Statutory damages of \$500.00 for each violation determined to be negligent pursuant to 47 U.S.C. § 227(b)(3)(B);
2. Treble damages for each violation determined to be willful and/or knowing pursuant to 47 U.S.C. § 227(b)(3)(C); and
3. Such other and further relief as may be just and proper.

**TRIAL BY JURY DEMANDED ON ALL COUNTS**

Dated: February 17, 2015

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# EXHIBIT A

FILED

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

CLERK US DISTRICT COURT  
WESTERN DISTRICT OF TEXAS

A14 MC0848 LY

**In re Subpoena issued to  
Grande Communications Networks LLC**

Miscellaneous Case No: \_\_\_\_\_

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**GRANDE COMMUNICATIONS NETWORKS LLC'S  
MOTION TO QUASH SUBPOENA**

Internet service provider Grande Communications Networks LLC (“Grande”) hereby files this Motion to Quash and respectfully requests that this Court quash an improper subpoena issued from a miscellaneous proceeding in California federal court by Rightscorp, Inc. (“Rightscorp”) pursuant to 17 U.S.C. § 512(h) and Rule 45 of the Federal Rules of Civil Procedure. The subject subpoena (the “Subpoena”) seeks the personal information of hundreds (and possibly thousands) of Grande subscribers – all located in Texas – associated with Internet accounts that Rightscorp alleges were used to commit copyright infringement over the Internet. A true and correct copy of the Subpoena, including excerpts from a spreadsheet that reflects the more than 30,000 subscriber lookups that Rightscorp seeks to have Grande perform, is attached as Exhibit 1 to the Declaration of Jeanne Mulcahy (“Mulcahy Decl.”).<sup>1</sup>

The Subpoena may not be properly issued to an Internet service provider pursuant to 17 U.S.C. § 512(h), because the Internet service provider is a mere conduit. For this and other reasons, the Subpoena is unduly burdensome, and Rightscorp has also failed and refused to honor and abide by Rule 45 as well as the Cable Communications Act. The Subpoena – like

<sup>1</sup> The Mulcahy Declaration is submitted herewith as Attachment 1.

dozens of other subpoenas issued by Rightscorp from California miscellaneous proceedings – is an obvious ploy to circumvent even the most fundamental procedural protections (notice, personal jurisdiction, venue, and joinder considerations) that would be afforded to the hundreds or thousands of implicated Texas subscribers if Rightscorp were to file individual lawsuits against them instead of misusing a statutory subpoena procedure that is not available under these circumstances as per clearly-established law.

#### Introductory Statement

Grande is a regional Internet service provider (“ISP”) and cable operator, and as such acts as a communications conduit for its Texas subscribers’ use of the Internet via cable and other communications systems. In its role as an ISP, Grande does not provide or host content.

Rightscorp’s Subpoena to Grande was signed by the Clerk of Court for the U.S. District Court for the Central District of California on August 6, 2014. It purports to require compliance in Austin, Texas on September 5, 2014, and lists Dennis J. Hawk as counsel for Rightscorp. Grande’s third-party subpoena-compliance vendor, Neustar, Inc. (“Neustar”), received the Subpoena from Rightscorp on or about August 12, 2014 via Federal Express.<sup>2</sup>

The Subpoena seeks identifying information of Grande subscribers with respect to a list of more than 30,000 Internet Protocol (“IP”) addresses and associated dates and times. (Mulcahy Decl. ¶ 2 & Ex. A.) There is no operative pleading, but Rightscorp presumably would contend that unidentified individuals used the subscribers’ Internet accounts to infringe copyrights in numerous works. Rightscorp submitted a spreadsheet listing numerous works, (*id.*); however, Rightscorp has not provided any evidence that it actually owns any particular copyrights in those or any other works (or, for that matter, any evidence of the infringement that Rightscorp says

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<sup>2</sup> As discussed further below, repeated attempts to confer with Mr. Hawk did not result in any productive response.

occurred in its “notifications” and spreadsheets). In fact, Rightscorp’s counsel supporting declaration vaguely states only that Rightscorp is a “representative of various copyright owners.” (Mulcahy Decl. ¶ 2 & Ex. A (fourth page of Exhibit document, first numbered paragraph).)

The Subpoena is part of an ongoing campaign by Rightscorp to harvest “settlements” from Internet subscribers (who may or may not have been the users of their accounts at the times and dates in question) located across the nation through an abuse of the subpoena power of the federal courts in California. According to PACER, Rightscorp has filed approximately 100 miscellaneous actions this year, seeking the identifying information of Internet service subscribers alleged to have committed copyright infringement over the Internet. (Declaration of Charles M. Salmon (“Salmon Decl.”) ¶ 2 & Ex. A.)<sup>3</sup> It is unclear from PACER that any actual litigation has emanated from these miscellaneous actions. (*See id.*) As can be seen from the PACER listing, Rightscorp has avoided sending subpoenas to any of the national ISPs (such as Verizon, AT&T, or Comcast), but instead has sent subpoenas to regional ISPs in various locations around the nation. (*Id.* (reflecting miscellaneous proceedings with respect to Cable America Missouri, LLC; Hawaiian Telecom, Inc.; Florida Cable, Inc.; *etc.*)) Presumably, Rightscorp is hoping that the regional ISPs, with smaller in-house legal departments, will be likely to simply comply with its subpoenas, especially given that those subpoenas bear the signature of the Clerk of the Court (as discussed further below).

As is typical in Rightscorp’s campaign, the Subpoena was issued pursuant to 17 U.S.C. § 512(h), which is a section of the Digital Millennium Copyright Act that provides for the issuance of subpoenas in miscellaneous actions upon the signature of the Clerk of the Court.

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<sup>3</sup> The Salmon Declaration is submitted herewith as Attachment 2.

However, as Rightscorp knows, but is hoping that the ISPs will overlook, it is established law that a Section 512(h) subpoena cannot be issued to an ISP acting as a conduit.

### Argument

The Subpoena should be quashed because it (i) imposes an undue burden on Grande, both because it is an improper subpoena (and therefore necessarily unduly burdensome) and also because of the extraordinary burden that would be imposed on Grande to comply; and (ii) is not accompanied by a court order as required for a subpoena seeking subscriber information from a cable operator. In addition, Grande requests that the Court order Rightscorp or its counsel to pay Grande's costs and fees associated with the handling of the Subpoena (including the filing of this Motion) as a sanction for Rightscorp's and its counsel's failure to take reasonable steps to avoid imposing undue burden or expense on Grande.

#### A. The Subpoena should be quashed as improper and unduly burdensome.

Although the Subpoena was issued pursuant to 17 U.S.C. § 512(h), the procedural aspects of the Subpoena are governed by Rule 45 of the Federal Rules of Civil Procedure. *See* 17 U.S.C. § 512(h) (“Unless otherwise provided by this section or by applicable rules of the court, the procedure for issuance and delivery of the subpoena, and the remedies for noncompliance with the subpoena, shall be governed to the greatest extent practicable by those provisions of the Federal Rules of Civil Procedure governing the issuance, service, and enforcement of a subpoena duces tecum.”). Rule 45 provides that, on timely motion, a court must quash a subpoena that is unduly burdensome, or fails to allow a reasonable time to comply. Fed. R. Civ. P. 45(d)(3)(A)(i), (iv).

1. *The Subpoena imposes an undue burden.*

a) The Subpoena is improper therefore and necessarily imposes an undue burden.

It has been well-established for a decade that subpoenas may not be issued under 17 U.S.C. § 512(h) to ISPs merely acting as conduits for electronic communications. *In re Charter Commc'ns, Inc.*, 393 F.3d 771, 776-78 (8th Cir. 2005) (finding that Section 512(h) does not authorize the issuance of subpoenas to ISPs acting as mere conduits for communications between Internet users and vacating order issued by district court enforcing improperly issued Section 512(h) subpoenas); *Recording Indus. Assoc. of Am. v. Verizon Internet Svcs., Inc.*, 351 F.3d 1229, 1236-39 (D.C. Cir. 2003) (Section 512(h) inapplicable where Internet service provider acted as conduit for alleged peer-to-peer file sharing between Internet users).

As the federal courts have explained, any request for the issuance of a subpoena under Section 512(h) must include a copy of a “notification of claimed infringement” that must have been sent to the service provider, which notification must include: “Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit the service provider to locate the material.” 17 U.S.C. § 512(c)(3)(A), (h)(2)(A) (requiring “a copy of a notification described in subsection (c)(3)(A)” as a prerequisite to the issuance of a subpoena under Section 512(h)). This requirement plainly contemplates a situation where accused material is stored by a service provider in such a way that a copyright holder may notify such service provider of the accused infringing material and the location of that material, and the service provider may then remove the accused material or block access to the accused material. 17 U.S.C. § 512(c), (h).

The Section 512 notification-and-takedown process is inapplicable as to a conduit ISP, because the ISP could never “locate” a file that does not reside on its systems but rather was merely transmitted by the ISP. The “notifications” that Rightscorp presumably filed in this action are invalid, never resulted in any notice to subscribers, and could not serve the function required by the statute, as the courts have also explained. *See In re Charter Commc’ns*, 393 F.3d at 777; *Verizon Internet Svcs.*, 351 F.3d at 1235-36 (“any notice to an ISP concerning its activity as a mere conduit does not satisfy the condition of § 512(c)(3)(A)(iii) and is therefore ineffective”).

The reasoning of the federal appellate courts in *In re Charter* and *Verizon* has been uniformly adopted in the federal district courts. *See, e.g.*, Order Granting in Part Mot. for Expedited Disc. and for Extension of Time to Serve Defs., at 2 n.1, *Combat Zone Corp. v. John/Jane Does 1-2*, 12-cv-0142 (N.D. Miss. Dec. 6, 2012), ECF No. 18 (noting that the issuance of a §512(h) subpoena to an ISP acting as a conduit is not supported by the statute);<sup>4</sup> *Interscope Records v. Does 1-7*, 494 F.Supp.2d 388, 391 (E.D. Va. Jul. 12, 2007); *In re Subpoena to University of North Carolina at Chapel Hill*, 367 F.Supp. 2d 945, 952-56 (M.D.N.C. 2005) (providing extensive statutory analysis); *see also Maximized Living, Inc. v. Google, Inc.*, No. 11-cv-80061, 2011 WL 6749017, at \*5-\*6 (N.D. Cal. Dec. 22, 2011) (explicitly agreeing with the D.C. Circuit’s decision in *Verizon*). Grande is not aware of any caselaw since the *In re Charter* and *Verizon* decisions that would support Rightscorp’s issuance of a subpoena under 17 U.S.C. § 512(h) to an ISP acting as a mere conduit.

Because the Subpoena may not be properly issued to Grande under 17 U.S.C. § 512(h), it should be quashed as unduly burdensome, even without regard to the actual amount of burden that would be involved in complying. *See AF Holdings, LLC*, 752 F.3d at 995 (D.C. Cir. 2014) (where a subpoena “compels disclosure of information that is not properly discoverable, then the

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<sup>4</sup> For the Court’s convenience, a copy of this opinion is attached as Exhibit B to the Salmon Declaration.

burden it imposes, however slight, is necessarily undue: why require a party to produce information the requesting party has no right to obtain?"'); *cf. Compaq Computer Corp. v. Packard Electronics, Inc.*, 163 F.R.D. 329, 335-36 (N.D. Cal. 1995) (noting that, "if the sought-after [discovery is] not relevant nor calculated to lead to the discovery of admissible evidence, then *any burden whatsoever* imposed upon [a third party] would be by definition 'undue.'") (emphasis in original).

- b) The time and expense associated with complying with the Subpoena would be unduly burdensome.

Furthermore, the Subpoena should be quashed because of the extraordinary actual burden that compliance would impose on Grande. The Subpoena seeks information relating to more than 30,000 combinations of IP addresses and timestamps, which would require manual lookups of electronic data within Grande's computer systems, as well as notification of affected Grande subscribers (a requirement imposed by 47 U.S.C. § 551, as discussed below), and handling the inevitable responses and inquiries that would result. A conservative estimate of the cost of compliance is approximately \$30,000. (Mulcahy Decl. ¶ 6.) Rightscorp's duties under Rule 45 require that Rightscorp avoid the imposition of undue burden or expense on Grande, and Grande should not be required to bear such an expense without compensation. Fed. R. Civ. P. 45(d)(1); *See, e.g., DigiProtect USA Corp. v. Does 1-240*, 10-cv-8760, 2011 WL 4444666 at \*4 (S.D.N.Y. Sep. 26, 2011) (observing that "Plaintiff should recognize that its approach imposes a substantial burden on parties with no formal interest in the litigation"). Moreover, the electronically stored information requested in the Subpoena is not reasonably accessible because of undue burden or cost, (Mulcahy Decl. ¶ 5) and Rule 45(e)(1)(D) expressly provides that under those circumstances, discovery need not be provided absent a showing of good cause and the imposition of any appropriate conditions.

\* \* \* \* \*

When confronted with the burden issue, counsel for Rightscorp curtly responded that Rightscorp “does not pay to obtain the address details on infringers.” (Mulcahy Decl. ¶ 7 & Ex. B.) The burden imposed on Grande by the Subpoena is extraordinary and undue. The Subpoena should be quashed pursuant to Rule 45(d)(3)(A)(iv).

2. *The Subpoena does not provide a reasonable time to comply.*

The Subpoena directs compliance by September 5, 2014. Grande’s service provider estimates that approximately two months would be required to perform lookups of the subscriber information for the more than 30,000 IP address and timestamp combinations attached to the Subpoena. (Mulcahy Decl. ¶ 6 & Ex. B.) And that estimate does not take into account a period of time for subscribers to object or file a motion after being given notice of the Subpoena.

When Rightscorp’s counsel finally responded (a few days before the compliance date) to repeated inquiries concerning the Subpoena, he summarily pronounced: “We expect compliance by the service providers.” (Mulcahy Decl. ¶ 7 & Ex. B.) Because the Subpoena does not allow Grande an adequate time in which to comply, the Subpoena should be quashed pursuant to Rule 45(d)(3)(A)(i).

B. The Subpoena is not accompanied by a court order as required by statute.

Grande is a “cable operator” under the Cable Communications Act, 47 U.S.C. § 551. As applicable here, Grande could only provide personal information about its subscribers “pursuant to a court order authorizing such disclosure, if the subscriber is notified of such order by the person to whom the order is directed.” 47 U.S.C. § 551(c)(2)(B). The Subpoena was not accompanied by a court order, and thus Grande could not comply, even if the Subpoena were otherwise proper. Rightscorp’s counsel also refused to even respond to this issue. (Mulcahy Decl. ¶ 7 & Ex. B (“We expect compliance by the service providers.”).) The absence of an order

as required under the Cable Communications Act is another independent ground for quashing the Subpoena.

C. Rightscorp and/or its counsel should be held accountable for Grande's costs and attorney's fees in connection with the Subpoena.

Pursuant to Rule 45(d)(1), a party issuing a subpoena has a duty to "take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena." Rightscorp and its counsel, Mr. Hawk, have plainly failed to satisfy this duty by (i) ignoring established legal precedent and abusing the subpoena power of the federal courts, and (ii) failing to productively engage with Grande. Accordingly, Rightscorp and/or its counsel should be required to compensate Grande for its costs and attorney's fees incurred in handling the Subpoena, including in connection with this Motion. Fed. R. Civ. P. 45(d)(1) ("The court for the district where compliance is required must enforce this duty [to take reasonable steps to avoid imposing undue burden or expense] and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply."); *cf. Lightspeed Media Corp. v. Smith*, --- F.3d ---, No. 14-1682, No. 13-3801, 2014 WL 3749128, at \*9 (7th Cir. Jul. 31, 2014) (upholding sanctions against attorneys under 28 U.S.C. § 1927 in connection with litigation conduct in case involving pursuit of subpoena discovery for settlement campaign purposes).

**Conclusion**

Rightscorp's purpose in improperly issuing subpoenas under 17 U.S.C. § 512(h) is clear: to avoid judicial review of the litany of issues that would arise in seeking the requisite authorization from a court for the discovery of the sought-after information, including issues relating to joinder, personal jurisdiction, and venue.

As Rightscorp knows, hundreds of individual Texas Internet subscribers could not be properly made parties to a copyright infringement action in California federal court. In similar contexts and in no uncertain terms, the courts have stated that bypassing procedural rights of individual subscribers in order to harvest personal information *en masse* from a single proceeding will not be tolerated. *See, e.g., AF Holdings, LLC v. Does 1-1,058*, 752 F.3d 990, 995 (D.C. Cir. 2014) (“when the purpose of a discovery request is to gather information for use in proceedings other than the pending suit, discovery properly is denied”), *quoting Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340. at 352 n. 17, 98 S.Ct. 2380, 57 L.Ed.2d 253 (1978)); *Pac. Century Int'l, Ltd. v. John Does 1-37*, 282 F.R.D. 189, 196 (N.D. Ill. 2012) (“What the plaintiffs may not do, however, is improperly use court processes by attempting to gain information about hundreds of IP addresses located all over the country in a single action, especially when many of those addresses fall outside of the court's jurisdiction.”). Rightscorp cannot misuse the § 512(h) subpoena process in order to circumvent the procedural requirements associated with bringing a copyright action in federal court and obtaining a court order to identify a given allegedly infringing individual.

For the foregoing reasons Grande respectfully requests that this Court quash the Subpoena and award Grande its costs and attorney's fees associated with the handling of the Subpoena, including in connection with this Motion.

Date: September 5, 2014

Respectfully submitted,

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CM Salmon  
Charles M. Salmon

ATTORNEYS FOR  
GRANDE COMMUNICATIONS  
NETWORKS LLC

Certificate of Service

I hereby certify that on this 5th day of September, 2014, a true and correct copy of the foregoing is being served by electronic mail and U.S. Certified Mail, RRR on the following counsel:

Dennis J. Hawk  
Business Law Group  
3100 Donald Douglas Loop N.  
Santa Monica, CA 90405

  
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240705417

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

In re Subpoena issued to  
Grande Communications Networks LLC

§ Miscellaneous Case No: 1:14-mc-00848-LY

**ADVISORY TO THE COURT REGARDING WITHDRAWAL OF SUBPOENA**

Internet service provider and cable operator Grande Communications Networks LLC advises the Court that, one (1) business day after Grande filed its Motion to Quash Subpoena (the “Motion,” ECF No. 1) in this proceeding seeking to quash a subpoena served by Rightscorp, Inc. (the “Subpoena”), counsel for Rightscorp, Mr. Dennis J. Hawk withdrew the Subpoena.<sup>1</sup> The abrupt withdrawal of the Subpoena is consistent with the apparent desire of Rightscorp and its counsel to avoid judicial review of their serial misuse of the subpoena power of the federal courts. In addition, the withdrawal comes only after Grande was forced to expend considerable resources handling the Subpoena (and attempting to discuss it with Rightscorp’s counsel) and then preparing and filing the Motion to Quash.

As detailed in Grande’s Motion, the Subpoena presented an extraordinarily undue burden (over 30,000 subscriber lookups) and was issued to a cable operator without an order as required by the Cable Communications Act. (Mot., at 7-8.) Even more egregiously, it appears that the Subpoena is only one of approximately one hundred (100) or more similar subpoenas issued by

<sup>1</sup> Mr. Hawk's withdrawal of the Subpoena was made in a September 8, 2014 e-mail message to Grande's counsel. A copy of that e-mail message is Attachment 1 hereto.

Rightscorp to regional Internet service providers located across the country<sup>2</sup> (presumably chosen because they are less likely to contest the subpoenas than national Internet service providers with larger in-house legal departments) upon the signature of the Clerk of the U.S. District Court for the Central District of California, seeking the personally identifiable information of thousands of individuals beyond the jurisdiction of the California courts, despite the fact that such subpoenas may not be sent and issued under 17 U.S.C. § 512(h) to an Internet service provider acting as a conduit under law that has been established for a decade. (*See id.*, at 5-7, citing cases including *In re Charter Commc'ns, Inc.*, 393 F.3d 771, 776-77 (8th Cir. 2005).)

Under the circumstances, this Court or the U.S. District Court for the Central District of California may consider ordering Rightscorp and its counsel to show cause why they should not be sanctioned for misusing the federal court's subpoena powers. Such an order would be appropriate in connection with Grande's request for costs and attorney's fees in the Motion (*Id.*, at 9; *see also* Fed. R. Civ. P. 45(f) (challenge to subpoena may also be addressed by the court of issuance)).<sup>3</sup> Beyond any doubt, Rightscorp and its counsel failed and refused to "take reasonable steps to avoid imposing undue burden or expense" on Grande. Fed. R. Civ. P. 45(d)(1).

As Grande has explained, before the Motion was filed, Rightscorp's counsel's only response to Grande's efforts to confer was a threat that "[w]e expect compliance by the service providers" and that Rightscorp "does not pay to obtain the address details on infringers." (Mot., at 8 and Mulcahy Decl. ¶ 7 & Ex.B.) The next business day after the Motion was filed,

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<sup>2</sup> (*See* Mot., at 3; Salmon Decl. ¶ 2 & Ex. A.)

<sup>3</sup> In addition, Rightscorp's conduct also raises concerns under Rule 11, and, regardless, may present appropriate circumstances for the imposition of sanctions under the Court's inherent powers. *See, e.g., Chambers v. NASCO, Inc.*, 501 U.S. 32, 50-51.

Rightscorp's counsel made a hasty retreat. If Rightscorp believed it had a good faith basis for the Subpoena, it would have asserted its position before this Court.<sup>4</sup>

But Rightscorp must know that its position and practice would not survive judicial review. If Grande had not challenged the Subpoena, Rightscorp would have improperly obtained the personally identifiable information of hundreds (or thousands) of Texas Internet subscribers using an invalid procedure, without the notice to any of them that would have followed from the court order that Rightscorp refused to seek to obtain, and without the slightest requirement of any showing to the California court whose signature Rightscorp improperly utilized.

It appears clear that Rightscorp and its counsel are playing a game without regard for the rules, and they are playing that game in a manner calculated to avoid judicial review. Hopefully, they will not be permitted to continue much longer.

Date: September 10, 2014

Respectfully submitted,

/s/ Bart W. Huffman

Bart W. Huffman  
State Bar No. 00790930  
bhuffman@lockelord.com  
Charles M. Salmon  
State Bar No. 24070547  
cshalmon@lockelord.com  
LOCKE LORD LLP  
600 Congress Avenue, Suite 2200  
Austin, Texas 78701-4042  
(512) 305-4700 (telephone)  
(512) 305-4800 (facsimile)

ATTORNEYS FOR  
GRANDE COMMUNICATIONS  
NETWORKS LLC

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<sup>4</sup> In all likelihood, if asked, Rightscorp and its counsel would not be able to identify a single instance in which they argued to a court in an adversarial proceeding that any of the numerous subpoenas issued by them to Internet service providers acting as a conduit is proper under 17 U.S.C. § 512(h).

**Certificate of Service**

I certify that on this 10th day of September, 2014, a true and correct copy of this Advisory is being served by electronic mail and U.S. certified mail, return receipt requested on the following counsel:

Dennis J. Hawk  
Business Law Group  
3100 Donald Douglas Loop N.  
Santa Monica, CA 90405

/s/ Bart W. Huffman

Bart W. Huffman

**ATTACHMENT 1**

## Salmon, Charles M.

---

**From:** Dennis Hawk <dennis@dhwk.com>  
**Sent:** Monday, September 08, 2014 2:36 PM  
**To:** Salmon, Charles M.  
**Cc:** Dennis Hawk  
**Subject:** RE: (2 of 2) Motion to Quash Subpoena pending before the Western District of Texas (Austin Division) -- In re Subpoena Issued to Grande Communications Networks LLC

Dear Mr. Salmon:

We are in receipt of your recent filing in Texas. Although we have had considerable success in obtaining compliance by ISP's across the country, it appears that you will counsel your clients to deny our client's requests which we believe are in full compliance with the DMCA. Accordingly, we will seek alternative remedies available to our client and hereby formally withdraw our subpoena.

Any questions, please feel free to contact our office.

Dennis J. Hawk  
Business Law Group  
3100 Donald Douglas Loop N.  
Santa Monica, CA 90405  
Tel: (310) 664-8000  
Fax: (310) 510-6769



Think green - Please consider the environment before printing this email

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**From:** Salmon, Charles M. [<mailto:csalmon@lockelord.com>]  
**Sent:** Friday, September 05, 2014 3:48 PM  
**To:** Dennis Hawk  
**Cc:** Huffman, Bart  
**Subject:** FW: (2 of 2) Motion to Quash Subpoena pending before the Western District of Texas (Austin Division) -- In re Subpoena Issued to Grande Communications Networks LLC

Please see the attached, which were filed along with to Motion to Quash sent via my e-mail below.

---

**From:** Salmon, Charles M.  
**Sent:** Friday, September 05, 2014 5:45 PM  
**To:** 'dennis@dhwk.com'  
**Cc:** Huffman, Bart  
**Subject:** (1 of 2) Motion to Quash Subpoena pending before the Western District of Texas (Austin Division) -- In re Subpoena Issued to Grande Communications Networks LLC

Please see the attached, which was filed this afternoon in the United States District Court for the Western District of Texas (Austin Division). To avoid file-size issues, documents that were filed along with the attached will be sent by separate e-mail.

Regards,

Charles M. Salmon  
**Locke Lord LLP**  
600 Congress, Suite 2200  
Austin, Texas 78701  
512-305-4722 (direct dial)  
512-391-4719 (fax)

Licensed in TX  
Registered Patent Attorney  
[csalmon@lockelord.com](mailto:csalmon@lockelord.com)  
[www.lockelord.com](http://www.lockelord.com)

Atlanta, Austin, Chicago, Dallas, Hong Kong, Houston, London, Los Angeles, New Orleans, New York, Sacramento, San Francisco, Washington DC

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IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

FILED

2014 SEP 12 AM 8:42

IN RE SUBPOENA ISSUED TO  
GRANDE COMMUNICATIONS  
NETWORKS, LCC

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CAUSE NO. 1:14-MC-848-LY

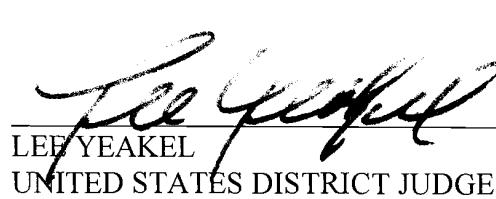
CLERK US DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
BY DEPUTY

ORDER

Before the court is the above-styled and numbered cause. On September 8, 2014, this court referred Grande Communications Networks, LLC's ("Grande") Motion to Quash Subpoena (Clerk's Doc. No. 1), and all motions, responses, replies, and filings related thereto to the United States Magistrate Judge for resolution pursuant to 28 U.S.C. § 636(b)(1)(A), Federal Rule of Civil Procedure 72, and Rule 1(c) of Appendix C of the Local Rules of the United States District Court for the Western District of Texas, as amended. On September 10, 2014, Grande filed an Advisory (Clerk's Doc. No. 3) alerting the court that the subpoena at issue had been withdrawn by the subpoena's proponent, Rightscorp, Inc. As there are no further issues remaining before the court,

**IT IS HEREBY ORDERED** that this case is **CLOSED**.

SIGNED this 11th day of September, 2014.

  
LEE YEAKEL

UNITED STATES DISTRICT JUDGE

# EXHIBIT B



## You Have Unpaid Copyright Infringements

Dear Melissa Brown,

We have evidence that a computer on your Internet account was used to illegally distribute ("file share") one or more of our clients' copyrighted works. More than 200,000 people have been sued since 2010 for peer to peer file sharing copyright infringements. Forty-six such new lawsuits were filed in August 2013 alone.

To avoid interruption of your Internet service, or other possible legal consequences, please call us immediately to clear your case now.

**1(888) 851-3801**

Our clients are offering an opportunity to resolve this legal matter at very little cost to you compared with the costs and inconveniences of potential civil litigation.

Please call us today to close your file with us. If you have received multiple notices, your Internet account is on a list that we send to your Internet Service Provider (ISP) every week requesting that they enforce their acceptable Internet use policy, which could result in your ISP account being terminated or suspended. Many ISPs follow applicable United States copyright law (Title 17 U.S.C. Section 512 (i)) and terminate Internet service of repeat infringers who we identify. Your identity and evidence of your copyright violations will stay on that list until you close this matter with us or our clients decide to escalate.

Please call our office at 1.888.851.3801 immediately to resolve this matter.

For general information about copyright infringements and your potential loss of Internet access, please visit our website at: [www.rightscorp.com](http://www.rightscorp.com).

Robert Stee  
Chief Operating Officer  
Rightscorp, Inc.  
310-751-75  
[support@rightscorp.com](mailto:support@rightscorp.com)

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

<b>I. (a) PLAINTIFFS</b>		<b>DEFENDANTS</b>																														
Melissa Brown and Ben Jenkins		Rightscorp, Inc., a Nevada Corporation, f/k/a Stevia Agritech Corp.; Rightscorp, Inc., a Delaware Corporation; and DOES 1-10, inclusive,																														
(b) County of Residence of First Listed Plaintiff <u>County of Walton</u> <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i>		County of Residence of First Listed Defendant <u>State of California</u> <i>(IN U.S. PLAINTIFF CASES ONLY)</i>																														
(c) Attorneys (Firm Name, Address, and Telephone Number) Sergei Lemberg, Esq., Lemberg Law, LLC, 1100 Summer Street, 3rd Floor, Stamford, CT 06905, (203)653-2250		NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.																														
		Attorneys ( <i>If Known</i> )																														
<b>II. BASIS OF JURISDICTION</b> <i>(Place an "X" in One Box Only)</i>		<b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> <i>(Place an "X" in One Box for Plaintiff and One Box for Defendant)</i>																														
<input type="checkbox"/> 1 U.S. Government Plaintiff	<input checked="" type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i>	Citizen of This State	<input type="checkbox"/> PTF <input type="checkbox"/> DEF <input type="checkbox"/> 1 <input type="checkbox"/> 1 Incorporated or Principal Place of Business In This State <input type="checkbox"/> 4 <input type="checkbox"/> 4																													
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<b>V. ORIGIN</b> <i>(Place an "X" in One Box Only)</i>																																
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<b>VI. CAUSE OF ACTION</b>		Cite the U.S. Civil Statute under which you are filing ( <i>Do not cite jurisdictional statutes unless diversity</i> ): <b>47 USC 227</b>																														
		Brief description of cause: <b>Violations of the Telephone Consumer Protection Act</b>																														
<b>VII. REQUESTED IN COMPLAINT:</b>		<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.	DEMAND \$ 25,000.00	CHECK YES only if demanded in complaint: <b>JURY DEMAND:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No																												
<b>VIII. RELATED CASE(S) IF ANY</b>		(See instructions): JUDGE DOCKET NUMBER																														
DATE 02/17/2015		SIGNATURE OF ATTORNEY OF RECORD /s/ Sergei Lemberg																														
FOR OFFICE USE ONLY																																
RECEIPT # 2017487 AMOUNT \$400.00		APPLYING IFFP JUDGE C.A. Royal MAG. JUDGE																														