

5. At all times relevant, defendant acted as the agent for each of the other potential not yet named defendants in doing the acts complained of herein.

JURISDICTION AND VENUE

6. This court has jurisdiction over this action pursuant to 28 U.S.C. § 1332 because there is complete diversity of citizenship among the parties, and the amount in controversy is in excess of \$75,000, exclusive of interest and costs. The court also has jurisdiction for Plaintiff's declaratory judgment claim under 28 U.S.C. § 2201 to declare a judgment under 18 U.S.C. § 2702 (b)(8) and § 2702 (c)(6) (the Electronic Privacy Communications Act); 47 U.S.C. § 551 (The Communications Act); 47 U.S.C. § 230, (immunity for internet service providers) and 18 U.S.C. § 875 (interstate communication of threats).

7. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) because many of the facts involve Boston domiciliaries and a Boston company with offices in Boston, MA; and because of the *interstate* communication of a death threat on the internet in Boston, MA where plaintiff frequently visits; and where his attorneys are domiciled.

FACTS

8. Plaintiff is involved in international real estate development. In connection with one development, plaintiff has been extensively involved for many years with Cross Harbor Capital ("CHC") having its usual place of business in Boston, MA. Plaintiff and CHC have engaged in hundreds of interstate communications between Boston and wherever Plaintiff is located. Although CHC may not be directly implicated in connection with the death threat which is the subject of this complaint, the real estate development project in which CHC and Plaintiff have been involved is directly related to the threat.

9. On or about Monday, February 9, 2009, an anonymous “blogger” (one who posts messages on an internet website) calling himself “Sharkbait” (past blogs suggest he is a male) posted a blog threatening the life of Plaintiff. The blog stated that when Plaintiff opens his door he will get some “lead between the eyes.” Plaintiff immediately reported the threat to the FBI, which is now conducting an investigation. Plaintiff suspects that the blogger is connected in some manner to the real estate project referenced above.

10. The term “blog” is a contraction of the term “web-log” meaning a website on the internet. A website is a collection of web pages or digital assets hosted on web servers accessible via the internet. The internet is an international network of interconnected computers, similar to - and often using - the United States national network of telephone lines. Use of the internet to threaten “the person of another” constitutes a violation of 18 U.S.C. § 875 (interstate communication of threat to injure).

11. The blogger used an “IP address” of 69 144 25165 in order to communicate the threat to the website. An IP address is an “internet protocol” consisting of a numerical identification that is assigned to devices participating in a computer network

12. The blog was posted on a website called New West Network which distributes and disseminates its website contents internationally via the internet, including every state in the United States. The New West interstate network website has published many blogs from individuals calling themselves “Sharkbait” and “Blockhead.” Both Sharkbait and Blockhead have represented themselves to be former employees, and/or staff members, and/or participants in the above referenced real estate development project which was owned and operated by Plaintiff and his companies.

13. The IP address used to make the interstate death threat was communicated internationally via defendant Bresnan Communications, an “internet service provider,” (“ISP”). An internet service provider is a company like Bresnan Communications that offers its customers access to the internet using data transmission technology delivering internet protocol datagrams . ISP’s provide internet email accounts to users which allow them to communicate with one another, or with websites, by sending and receiving electronic messages through their ISP’s servers. This is usually a contractual arrangement between the user and the ISP, paid for by the user with an account at the ISP.

14. In connection with the death threat at issue, defendant Bresnan happened to be the ISP used by the blogger who sent the threat. The blogger is hereinafter called the “subscriber.”

FIRST CAUSE OF ACTION

(Declaratory Judgment 28 U.S.C. § 2201)

15. Plaintiff seeks a judicial declaration to resolve an apparent conflict between that 18 U.S.C. § 2702 (b)(8) and (c)(6) on the one hand, and 47 U.S.C. § 551 on the other. The first statute authorizes disclosure of an ISP subscriber’s identity without notice to “any person other than a governmental entity.” *Id* at (c)(6). Title 47 U.S.C. § 551 does not permit disclosure without notice and a court order. 47 U.S.C. § 230 does not immunize or prohibit defendant Bresnan Communications from providing the account information to the Plaintiff for the blogger who used the IP address 69 144 25165 to make the death threat at issue communicated interstate via the New West Network in violation of 18 U.S.C. § 875. This matter

involves exigent circumstances potentially involving the life or death of Plaintiff warranting emergency relief by the court pursuant to Local Rule 40.4.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows: That 18 U.S.C. § 2702 (c)(6) permits Bresnan to disclose the identity of its subscriber without notice; that 18 U.S.C. § 551 and 47 U.S.C. § 230 does not prohibit Bresnan Communications from providing to Plaintiff all account information for the subject IP address 69 144 25165. That the Plaintiff is entitled to issue a subpoena duces tecum forthwith served via fax on Bresnan Communications at its corporate headquarters in Purchase, New York requiring the delivery forthwith of said account information; and that Plaintiff is entitled to issue subpoena's duces tecum on individuals and entities having knowledge, information or possessing documents, including computer "logs" for the New West Website, and/or emails and email addresses of bloggers on the New West Website, relevant to these matters. That 18 U.S.C. § 551 and 47 U.S.C. § 230 do not prohibit Plaintiff from acquiring account information, documents, information, or evidence from other ISP's or website providers including but not limited to New West Network, relevant to the subject death threats.

Dated this 13th day of February, 2009

/S/ _____

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