

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
WHITE PLAINS DIVISION

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MALIBU MEDIA, LLC

Plaintiff,

Civil Action No.: 7:15-cv-00560 (KMK)

-against-

AFFIDAVIT IN OPPOSITION

CARLOS GONCALVES,

Defendant.

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STATE OF NEW YORK)
) .ss:
COUNTY OF WESTCHESTER)

CARLOS GONCALVES, being duly sworn, deposes and says:

1. I am the Defendant in the above-referenced action.
2. At all relevant times in this proceeding, I was a resident of Ossining, New York, residing at 38 Pershing Avenue.
3. At that address, I had at all relevant times and continue to have an account with Cablevision/Optimum (hereinafter "Optimum"), which services cover television, telephone and wireless internet. Inasmuch as I am the homeowner and principal income earner, the account is in the name of "Carlos Goncalves". All members of my household use the services provided by Optimum.
4. I am currently 52 years of age. I was born in the country of Portugal, and was raised there by my natural parents. During my childhood I attended school in

Portugal. Due to the difficult economic climate, I was forced to drop out of school in Fourth grade so that I could work to support my family. I have never received any formal education of any sort after Fourth grade. My ability to read and write is limited. I never studied English while in Portugal.

5. By the time I was an adult, the prospect of finding work in Portugal was dire. With no education and a staggering economy, there were literally no job opportunities in Portugal. I made a decision to emigrate to the United States, and settled in the State of New York.

6. With no education and the inability to read, write or speak English, decent jobs were hard to come by. I was fortunate to find work in the construction industry, and began my career as a construction laborer. Due to the fact that I found work with a Portuguese construction company, I was able to communicate in Portuguese and earn a living. Gradually, I picked up English words commonly used in the construction field, and formed a limited vocabulary in the work-related context of construction. While I am now able to communicate on a basic level in English, I do not consider myself to be fluent. My working vocabulary tends to be centered upon words and concepts in the construction field.

7. In my house, Portuguese is the language that we speak. I speak Portuguese to my wife and children, and most of my friends are Portuguese. Due to my lack of education, my ability to read and write in Portuguese is limited. My ability to read and write in English is worse.

8. I do not have my own computer. Others with whom I live have their own computers. I do not own one. I am not versed in the use of a computer, and do not use

one.

9. Sometime in July of 2015 someone came to my house and asked for Carlos Goncalves. I answered, and was given a set of papers. I was never told what the papers were, or why I was receiving them. I was not told that it was a for a court case. I looked at the papers and attempted to understand what they were for. I remember trying to read the first several pages, but was completely unable to understand what the papers said. It did not appear to me that the papers had anything to do with me. Other than seeing my name in the papers one time, the papers appeared to have nothing to do with me.

10. That day, I showed the papers to my family. My wife, while also born in Portugal, speaks English better than I do. We tried to figure out together what the papers were. We thought it might be a bill from a lawyer, but I never used a lawyer other than to buy my house. We saw something about a company from California, but I never did business with anyone from California. I saw language referring to copyrights, but I was convinced that this had nothing to do with me.

11. Later, we learned that something in the papers that had to do with sex and erotic names or titles. I did not recognize any of the names or titles, and did not know why there were included in the papers. This raised my suspicion about the legitimacy of the papers even more.

12. We finally decided that the papers must be from someone trying to trick us into paying money by sending out papers to different people to see if they can get people to pay them, like a scam or a Ponzi scheme. As I try to recall the papers, I remember seeing no type of marking or seal that would suggest that the papers were official papers

from a court. We decided to ignore it.

13. To the best of my recollection, that was all that ever happened with these papers until mid-January, 2016 when I was given more papers. I looked at them again with my family and on the second page my wife said there was a name of a judge and that the judge signed the papers, and I saw that there were dates and addresses written in.

14. I showed the papers to other people, and was told that they appear to be legitimate. I contacted a lawyer in White Plains, who told me that this was a real federal lawsuit and that we had already failed to answer in time, and that if we don't appear I can lose a significant amount of money for something I know nothing about and have nothing to do with.

15. I am a 52 year-old Portuguese immigrant with a 4th grade education. I have worked in the construction industry my whole life. I am not an educated man, and I do not have expertise with technology. When I come home from work, I eat, watch soccer, spend time with my family and go to bed. I do the same thing the next day. That's pretty much it. I go to family parties on the weekend, and to the Portuguese Club in my Town. I don't have a computer, I don't go on the internet, I don't know how to find pornography online, I don't watch pornography online. I don't know what a bit torrent is, what a hash bit is, I don't know what a file bit is. I bought my first smart phone two months ago. I use it as a cell phone.

16. My attorney has shown me a list of titles of movies that are pornography, shown in Exhibit "A" and "B" in the complaint. I can swear that I have never heard of them, never watched them, and never downloaded them onto my computer, because I do not have a computer. I do not know how to turn on any computers in my house, and if

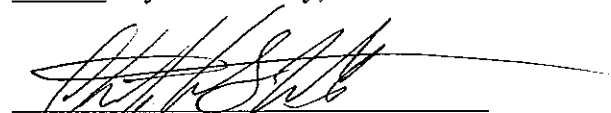
they have passwords, I do not know them. There is absolutely no basis for the allegation that I downloaded these movies, and absolutely no basis for the allegation that I violated anyone's copyright rights.

17. I respectfully request that the Court excuse my default and give me the opportunity to appear and defend the allegations made against me. I believe that I have a valid defense, because I have done nothing of what I am accused of. I don't believe that any party has been prejudiced by my failure to appear in this case the first time.

18. This affidavit has been read to me by my attorney in the presence of my wife to assist in translation.


CARLOS GONCALVES

Sworn to before me this
3rd day of February, 2016


Notary Public

CHRISTOPHER S. WEDDLE
Notary Public, State of New York
No. 02WE6006014
Qualified in Westchester County
Commission Expires April 20, 2018/8