

APPEAL, CLOSED, JURY, TYPE-E

**U.S. District Court  
District of Columbia (Washington, DC)  
CIVIL DOCKET FOR CASE #: 1:11-cv-01833-BAH**

THIRD DEGREE FILMS, INC. v. DOES  
Assigned to: Judge Beryl A. Howell  
Cause: 17:101 Copyright Infringement

Date Filed: 10/18/2011  
Date Terminated: 05/10/2012  
Jury Demand: Plaintiff  
Nature of Suit: 820 Copyright  
Jurisdiction: Federal Question

**Plaintiff**

**THIRD DEGREE FILMS, INC.**

represented by **Mike Meier**  
THE COPYRIGHT LAW GROUP PLLC  
4000 Legato Road  
Suite 1100  
Fairfax, VA 22033  
(888) 407-6770  
Fax: (703) 546-4990  
Email: [mike.meier.esq@copyrightdefenselawyer.com](mailto:mike.meier.esq@copyrightdefenselawyer.com)  
**ATTORNEY TO BE NOTICED**

V.

**Defendant**

**DOES**  
*1 - 152*

**Defendant**

**BAILEY ZWARYCZ**  
*Aka John Doe 116 and John Doe 117*

represented by **John C. Lowe**  
JOHN LOWE, P.C.  
5920 Searl Terrace  
Bethesda, MD 20816  
(301) 321-3300  
Fax: (301) 320-8878  
Email: [johnlowe@johnlowepc.com](mailto:johnlowe@johnlowepc.com)  
**ATTORNEY TO BE NOTICED**

**Defendant**

**TALBORT TABOR**

**Defendant**

**GEORGE MARROW**

**Defendant**

**SANJAY NAG**

**Defendant**

**KEITH JOSEPH**

represented by **Dennis Adrian Somech**  
The Law Office of Dennis Somech, PLLC  
1604 Spring Hill Road  
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(703) 717-2633  
Fax: (703) 442-7366  
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*ATTORNEY TO BE NOTICED*

**Dirk McClanahan**  
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Suite 321  
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Fax: (703) 442-7366  
*PRO HAC VICE*  
*ATTORNEY TO BE NOTICED*

V.

**Interested Party**

**GERALD BROOKS**

represented by **Jack Rephan**  
PENDER & COWARD, P.C.  
222 Central Park Avenue  
Suite 400  
Virginia Beach, VA 23462  
(757) 490-6278  
Fax: (757) 456-2935  
Email: [jrephan@pendercoward.com](mailto:jrephan@pendercoward.com)  
*ATTORNEY TO BE NOTICED*

**Interested Party**

**MIKE LEWIS**

represented by **MIKE LEWIS**  
7337 Donald Court  
Woodbine, MD 21797  
(410) 549-9183  
PRO SE

**Interested Party**

**JOHN DOE**

#61 (IP Address 96.255.200.249)

represented by **Idotenyin Hope Eyi Umana**  
QUARTEY & UMANA  
1400 Spring Street  
Suite 120  
Silver Spring, MD 20910  
(301) 587-0090  
Fax: (301) 587-5540  
Email: [iumana@aol.com](mailto:iumana@aol.com)  
*LEAD ATTORNEY*

ATTORNEY TO BE NOTICED

**Interested Party****COMCAST CABLE  
COMMUNICATIONS, LLC**represented by **John David Seiver**  
DAVIS WRIGHT TREMAINE, LLP  
1919 Pennsylvania Avenue, N.W.  
Suite 800  
Washington, DC 20006  
(202) 973-4200  
Email: [johnseiver@dwt.com](mailto:johnseiver@dwt.com)  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED****Counter Claimant****BAILEY ZWARYCZ**  
*Aka John Doe 116 and John Doe 117*represented by **John C. Lowe**  
(See above for address)  
**ATTORNEY TO BE NOTICED**

V.

**Counter Defendant****THIRD DEGREE FILMS, INC.**represented by **Mike Meier**  
(See above for address)  
**ATTORNEY TO BE NOTICED**

| Date Filed | #        | Page | Docket Text   |
|------------|----------|------|---|
| 10/18/2011 | <u>1</u> |      | COMPLAINT against DOES ( Filing fee \$ 350, receipt number 4616043032) filed by THIRD DEGREE FILMS, INC.. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Civil Cover Sheet)(rdj) (Entered: 10/19/2011)  |
| 10/18/2011 |          |      | SUMMONS Not Issued as to DOES (rdj) (Entered: 10/19/2011)   |
| 10/19/2011 | <u>2</u> |      | REPORT on the filing or determination of an action regarding a patent and/or trademark. (rdj) (Entered: 10/19/2011)   |
| 10/19/2011 | <u>3</u> |      | Corporate Disclosure Statement by THIRD DEGREE FILMS, INC.. (Meier, Mike) (Entered: 10/19/2011)   |
| 10/20/2011 | <u>4</u> |      | MOTION for Discovery ( <i>Motion for Leave to Take Early Discovery</i> ) by THIRD DEGREE FILMS, INC. (Attachments: # <u>1</u> Memorandum in Support Memorandum in Support, # <u>2</u> Declaration Declaration of Jon Nicolini, # <u>3</u> Text of Proposed Order Proposed Order)(Meier, Mike) (Entered: 10/20/2011) |
| 10/21/2011 | <u>5</u> |      | STANDING ORDER. Signed by Judge Beryl A. Howell on October 21, 2011. (lcbah1) (Entered: 10/21/2011)   |

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| 10/21/2011 | <u>6</u>  |  | ORDER granting <u>4</u> Plaintiff's Motion for Leave to Take Discovery Prior to Rule 26(f) Conference. See Order for further details. Signed by Judge Beryl A. Howell on October 21, 2011. (lcbah1) (Entered: 10/21/2011)  |
| 10/21/2011 |           |  | Set/Reset Deadlines: If needed, Joint Status Report due by 2/15/2012. (alg) (Entered: 10/24/2011)  |
| 12/08/2011 | <u>7</u>  |  | ORDER requiring disclosure of identity in the event a putative defendant files a motion in this case, directing no filings be permitted without proper identification, and directing the Clerk of the Court, if feasible, to return any anonymous pleadings to the sender with a copy of the attached Order. Signed by Judge Beryl A. Howell on December 8, 2011. (lcbah1) (Entered: 12/08/2011) |
| 12/12/2011 | <u>8</u>  |  | MOTION to Quash Subpoena by GERALD BROOKS "Leave to file GRANTED" by Judge Beryl A. Howell.(rdj) (Entered: 12/13/2011)   |
| 12/13/2011 | <u>9</u>  |  | Memorandum in opposition to re <u>8</u> MOTION to Quash ( <i>John Doe 104/Gerald Brooks</i> ) filed by THIRD DEGREE FILMS, INC.. (Attachments: # <u>1</u> Text of Proposed Order)(Meier, Mike) (Entered: 12/13/2011)   |
| 12/19/2011 | <u>10</u> |  | ENTERED IN ERROR.....MOTION to Quash <i>Subpoena</i> by DOES (Attachments: # <u>1</u> Exhibit Copy of Subpoena to Verizon, # <u>2</u> Exhibit Copy of List of IP Addresses)(Umana, Idotenyin) Modified on 12/20/2011 (rdj). (Entered: 12/19/2011)  |
| 12/20/2011 |           |  | NOTICE OF CORRECTED DOCKET ENTRY: re <u>10</u> MOTION to Quash <i>Subpoena</i> was entered in error and Counsel was notified the pleading was forwarded to Chambers for leave to file. (rdj) (Entered: 12/20/2011)   |
| 12/20/2011 | <u>11</u> |  | MOTION to Quash, MOTION to Modify Subpoena by MIKE LEWIS (Attachments: # <u>1</u> Text of Proposed Order)"Leave to file GRANTED" by Judge Beryl A. Howell.(rdj) (Entered: 12/22/2011)  |
| 12/22/2011 | <u>12</u> |  | Memorandum in opposition to re <u>11</u> MOTION to Quash MOTION to Modify ( <i>Doe Number 32</i> ) filed by THIRD DEGREE FILMS, INC.. (Attachments: # <u>1</u> Text of Proposed Order)(Meier, Mike) (Entered: 12/22/2011)  |
| 12/28/2011 | <u>13</u> |  | ENTERED IN ERROR.....Memorandum in opposition to re <u>10</u> MOTION to Quash <i>Subpoena (Doe Number 61)</i> filed by THIRD DEGREE FILMS, INC. (Attachments: # <u>1</u> Text of Proposed Order)(Meier, Mike) Modified on 12/29/2011 (rdj). (Entered: 12/28/2011)  |
| 12/29/2011 |           |  | NOTICE OF CORRECTED DOCKET ENTRY: re <u>13</u> Memorandum in Opposition was entered in error and counsel is instructed to refile said pleading if/when the motion Quash  |

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|            |           |  | Subpoena is granted leave to file from the court. (rdj)<br>(Entered: 12/29/2011)  |
| 01/04/2012 | <u>14</u> |  | ORDER denying Motions to Quash, Dismiss, and for Protective Orders filed by <u>8</u> Gerald Brooks and <u>11</u> Mike Lewis. Signed by Judge Beryl A. Howell on January 4, 2012. (lcbah1) (Entered: 01/04/2012)   |
| 01/04/2012 | <u>15</u> |  | MOTION to Quash Subpoena. "Leave to file Granted," Signed by Judge Beryl A. Howell by JOHN DOE (rdj) (Entered: 01/05/2012)  |
| 01/05/2012 | <u>16</u> |  | Memorandum in opposition to re <u>15</u> MOTION to Quash ( <i>John Doe #61</i> ) filed by THIRD DEGREE FILMS, INC.. (Attachments: # <u>1</u> Text of Proposed Order)(Meier, Mike) (Entered: 01/05/2012)   |
| 01/12/2012 | <u>17</u> |  | NOTICE of Voluntary Dismissal re Specified John Does ( <i>as listed in the Notice</i> ) (Meier, Mike) (Entered: 01/12/2012)   |
| 01/12/2012 |           |  | MINUTE ORDER (paperless) denying <u>15</u> motions to quash and dismiss filed by "John Doe # 61" for the reasons stated in <u>14</u> the Court's January 4, 2012 Order. Additionally, John Doe # 61 argues that the plaintiff's subpoena to his internet service provider ("ISP") should be quashed because the Electronic Communication Privacy Act ("ECPA") prevents disclosure of his identifying information. This argument is mistaken. ECPA restricts the disclosure of "a record or other information pertaining to" a subscriber or customer to "any government entity" absent, inter alia, a court order. 18 U.S.C. §§ 2702(a)(3), 2703(c). This provision of ECPA does not apply in the instant case, where the plaintiff is a private corporation and not a government entity. 18 U.S.C. § 2702(c)(6); see <i>First Time Videos, LLC v. Does 1-500</i> , 276 F.R.D. 241, 248 (N.D. Ill. 2011) (finding under similar facts that the information subpoenaed to the plaintiff is permitted by ECPA and therefore not privileged); <i>Patrick Collins, Inc. v. Does 1-22</i> , No. 11-cv-1772, 2011 WL 5439005, at *5 (D. Md. Nov. 8, 2011) (same). Signed by Judge Beryl A. Howell on January 12, 2011. (lcbah1) (Entered: 01/12/2012) |
| 02/01/2012 | <u>18</u> |  | ANSWER to <u>1</u> Complaint with Jury Demand, COUNTERCLAIM against THIRD DEGREE FILMS, INC. by BAILEY ZWARYCZ."Leave to file GRANTED" by Judge Beryl A. Howell (rdj) (Entered: 02/02/2012)   |
| 02/10/2012 | <u>19</u> |  | MOTION to Dismiss <i>Defendant Bailey Zwarycz's Counterclaims under Rule 12(b)(6) and for Sanctions under 28 USC Section 1927</i> by THIRD DEGREE FILMS, INC. (Attachments: # <u>1</u> Text of Proposed Order (Proposed Order), # <u>2</u> Memorandum in Support (Memorandum re Rule 12b6 and 28 USC 1927 sanctions), # <u>3</u> Exhibit (Letter from counsel for Comcast), # <u>4</u> Exhibit (Exhibit showing defendant's remote location), # <u>5</u> Exhibit (wireless range protocol), # <u>6</u>  |

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|            |           |  | Exhibit (map showing limited wireless range at defendant's home))(Meier, Mike) (Entered: 02/10/2012)   |
| 02/10/2012 | <u>20</u> |  | NOTICE of Settlement <i>with specified Does; Dismissal With Prejudice of Specific Doe Defendant(s), Namely Doe(s) 5, 31, 36, 52, 56, 64, 66, 75, 77, 101, 113, 120, 122, 133, 134</i> by THIRD DEGREE FILMS, INC. (Meier, Mike) (Entered: 02/10/2012)  |
| 02/10/2012 | <u>21</u> |  | MOTION for Leave to File <i>Amended Complaint, naming defendants</i> , by THIRD DEGREE FILMS, INC. (Attachments: # <u>1</u> Memorandum in Support, # <u>2</u> Text of Proposed Order, # <u>3</u> Exhibit Proposed Amended Complaint)(Meier, Mike) (Entered: 02/10/2012)                      |
| 02/13/2012 | <u>22</u> |  | NOTICE of Settlement <i>with specified John Doe (Doe 45), and his dismissal</i> by THIRD DEGREE FILMS, INC. (Meier, Mike) (Entered: 02/13/2012)  |
| 02/13/2012 | <u>23</u> |  | Amended MOTION to Amend/Correct <i>Complaint to name specified John Does</i> , by THIRD DEGREE FILMS, INC. (Attachments: # <u>1</u> Memorandum in Support, # <u>2</u> Text of Proposed Order, # <u>3</u> Exhibit Proposed Amended Complaint)(Meier, Mike) (Entered: 02/13/2012)              |
| 02/13/2012 | <u>24</u> |  | MOTION for Extension of Time to File <i>Opposition</i> by BAILEY ZWARYCZ (Attachments: # <u>1</u> Memorandum in Support, # <u>2</u> Text of Proposed Order)(Lowe, John) (Entered: 02/13/2012)  |
| 02/13/2012 | <u>25</u> |  | NOTICE of Voluntary Dismissal re John Does 148 and 149 <i>without Prejudice</i> (Meier, Mike) (Entered: 02/13/2012)  |
| 02/13/2012 | <u>26</u> |  | First MOTION for Extension of Time to <i>serve Defendants; Status Report as requested by the Court in its Order of 10/21/2011</i> , by THIRD DEGREE FILMS, INC. (Attachments: # <u>1</u> Text of Proposed Order)(Meier, Mike) (Entered: 02/13/2012)  |
| 02/17/2012 | <u>27</u> |  | Memorandum in opposition to re <u>24</u> MOTION for Extension of Time to File <i>Opposition</i> filed by THIRD DEGREE FILMS, INC.. (Attachments: # <u>1</u> Exhibit Statement from Counsel for Comcast, # <u>2</u> Text of Proposed Order)(Meier, Mike) (Entered: 02/17/2012)                |
| 02/20/2012 | <u>28</u> |  | REPLY to opposition to motion re <u>24</u> MOTION for Extension of Time to File <i>Opposition</i> filed by BAILEY ZWARYCZ. (Attachments: # <u>1</u> Text of Proposed Order)(Lowe, John) (Entered: 02/20/2012)  |
| 02/21/2012 |           |  | MINUTE ORDER (paperless) The plaintiff's <u>23</u> Amended Motion for Leave to File Amended Complaint is GRANTED. Defendant Zwarycz's <u>24</u> Motion to Extend the Time for Filing Her Opposition to the Plaintiff's Motion to Dismiss Counterclaims is DENIED based upon this defendant's |

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|            |           |  | statement in her Reply brief that she seeks to withdraw the motion. The plaintiff's request for sanctions against defendant Zwarycz's counsel is DENIED. The plaintiff's <u>26</u> motion for a 120-day extension of time to name and serve defendants is DENIED IN PART since defendants have now been named in this case and are entitled to expeditious resolution of the claims against them; and no motion to compel speedier subpoena responses from Internet Service Providers has been filed. The plaintiff shall name and serve defendants by April 6, 2012. Signed by Judge Beryl A. Howell on February 21, 2012. (lcbah1) (Entered: 02/21/2012) |
| 02/21/2012 |           |  | Set/Reset Deadlines: Plaintiff shall serve and name defendants by 4/6/2012. (alp) (Entered: 02/22/2012)  |
| 02/21/2012 | <u>29</u> |  | AMENDED COMPLAINT against DOES, KEITH JOSEPH, GEORGE MARROW, SANJAY NAG, TALBORT TABOR, BAILEY ZWARYCZ filed by THIRD DEGREE FILMS, INC.(rdj) (Entered: 02/22/2012)  |
| 02/22/2012 | <u>30</u> |  | MOTION to Withdraw <i>Defamation Counterclaim</i> by BAILEY ZWARYCZ (Attachments: # <u>1</u> Text of Proposed Order)(Lowe, John) (Entered: 02/22/2012)   |
| 02/22/2012 | <u>31</u> |  | Memorandum in opposition to re <u>30</u> MOTION to Withdraw <i>Defamation Counterclaim (Defendant's Counterclaims Should be Dismissed WITH PREJUDICE)</i> filed by THIRD DEGREE FILMS, INC.. (Attachments: # <u>1</u> Exhibit Email from Mike Meier to John Lowe)(Meier, Mike) (Entered: 02/22/2012)   |
| 02/22/2012 | <u>32</u> |  | RESPONSE re <u>30</u> MOTION to Withdraw <i>Defamation Counterclaim Without Prejudice</i> filed by BAILEY ZWARYCZ. (Lowe, John) (Entered: 02/22/2012)  |
| 02/22/2012 | <u>33</u> |  | ENTERED IN ERROR.....Memorandum in opposition to re <u>19</u> MOTION to Dismiss <i>Defendant Bailey Zwarycz's Counterclaims under Rule 12(b)(6) and for Sanctions under 28 USC Section 1927</i> MOTION to Dismiss <i>Defendant Bailey Zwarycz's Counterclaims under Rule 12(b)(6) and for Sanctions under 28 USC Section 1927</i> MOTION to Dismiss <i>Defendant Bailey Zwarycz's Counterclaims under Rule 12(b)(6) and for Sanctions under 28 USC Section 1927</i> filed by BAILEY ZWARYCZ. (Attachments: # <u>1</u> Text of Proposed Order)(Lowe, John) Modified on 2/23/2012 (dr). (Entered: 02/22/2012)  |
| 02/22/2012 | <u>34</u> |  | ENTERED IN ERROR.....Memorandum in opposition to re <u>19</u> MOTION to Dismiss <i>Defendant Bailey Zwarycz's Counterclaims under Rule 12(b)(6) and for Sanctions under 28 USC Section 1927</i> MOTION to Dismiss <i>Defendant Bailey Zwarycz's Counterclaims under Rule 12(b)(6) and for Sanctions under 28 USC Section 1927</i> MOTION to Dismiss <i>Defendant Bailey Zwarycz's Counterclaims under Rule</i>   |

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|            |           |  | <i>12(b)(6) and for Sanctions under 28 USC Section 1927</i> filed by BAILEY ZWARYCZ. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Text of Proposed Order)(Lowe, John) Modified on 2/23/2012 (dr). (Entered: 02/22/2012)   |
| 02/22/2012 | <u>35</u> |  | Memorandum in opposition to re <u>19</u> MOTION to Dismiss <i>Defendant Bailey Zwarycz's Counterclaims under Rule 12(b)(6) and for Sanctions under 28 USC Section 1927</i> , filed by BAILEY ZWARYCZ. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Text of Proposed Order)(Lowe, John) Modified on 2/23/2012 to edit redundant text (dr). (Entered: 02/22/2012)   |
| 02/23/2012 |           |  | NOTICE OF CORRECTED DOCKET ENTRY: re <u>33</u> Memorandum in Opposition, <u>34</u> Memorandum in Opposition, were entered in error as incorrect duplicate filings and counsel has refiled correct Opposition as Docket Entry <u>35</u> . (dr) (Entered: 02/23/2012)   |
| 02/23/2012 | <u>36</u> |  | MOTION for Leave to Appear Pro Hac Vice :Attorney Name– Dirk McClanahan, :Firm– McClanahan Powers, PLLC, :Address– 1604 Spring Hill Road, Suite 321, Vienna, VA 22182. Phone No. – (703) 546–8594. Fax No. – (703) 442–7366 by KEITH JOSEPH (Attachments: # <u>1</u> Declaration of Dirk McClanahan, # <u>2</u> Text of Proposed Order)(Somech, Dennis) (Entered: 02/23/2012)   |
| 02/24/2012 |           |  | MINUTE ORDER (paperless) granting <u>36</u> Defendant Keith Joseph's Motion to Admit Dirk McClanahan Pro Hac Vice. Mr. McClanahan is hereby admitted pro hac vice for the purpose of representing defendant Joseph in this matter. Signed by Judge Beryl A. Howell on February 24, 2012. (lcbah1) (Entered: 02/24/2012)   |
| 02/24/2012 |           |  | MINUTE ORDER (paperless) granting in part and denying in part <u>30</u> Defendant Bailey Zwarycz's Motion to Withdraw Defamation Counterclaim without prejudice. The defendant's defamation counterclaim is withdrawn, but it is withdrawn with prejudice. To the extent that the plaintiff seeks renewed sanctions against defendant Zwarycz's counsel, that request is DENIED. Signed by Judge Beryl A. Howell on February 24, 2012. (lcbah1) (Entered: 02/24/2012)   |
| 02/24/2012 | <u>37</u> |  | STANDING ORDER. Signed by Judge Beryl A. Howell on February 24, 2012. (lcbah1) (Entered: 02/24/2012)  |
| 02/27/2012 | <u>38</u> |  | REPLY to opposition to motion re <u>19</u> MOTION to Dismiss <i>Defendant Bailey Zwarycz's Counterclaims under Rule 12(b)(6) and for Sanctions under 28 USC Section 1927</i> MOTION to Dismiss <i>Defendant Bailey Zwarycz's Counterclaims under Rule 12(b)(6) and for Sanctions under 28 USC Section 1927</i> MOTION to Dismiss <i>Defendant Bailey Zwarycz's Counterclaims under Rule 12(b)(6) and for Sanctions under 28 USC Section 1927</i> filed by THIRD DEGREE FILMS, INC.. (Meier, Mike) (Entered: 02/27/2012) |



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|            |           |  | 02/27/2012)  |
| 02/28/2012 | <u>39</u> |  | ENTERED IN ERROR.....NOTICE of Voluntary Dismissal by THIRD DEGREE FILMS, INC. (Meier, Mike) Modified on 2/29/2012 (rdj). (Entered: 02/28/2012)  |
| 02/28/2012 | <u>40</u> |  | NOTICE of Voluntary Dismissal re Doe 71 (Keith Joseph) <i>without prejudice</i> (Meier, Mike) (Entered: 02/28/2012)  |
| 02/29/2012 |           |  | NOTICE OF CORRECTED DOCKET ENTRY: re <u>39</u> Notice of Voluntary Dismissal was entered in error as a duplicate filing, counsel refiled said pleading as docket entry <u>40</u> . (rdj) (Entered: 02/29/2012)   |
| 03/13/2012 | <u>41</u> |  | MEET AND CONFER STATEMENT. (Attachments: # <u>1</u> Text of Proposed Order)(Lowe, John) (Entered: 03/13/2012)  |
| 03/15/2012 | <u>42</u> |  | NOTICE of Settlement <i>with specific John Does (37, 61, 85, 131, 143) and their dismissal</i> by THIRD DEGREE FILMS, INC. (Meier, Mike) (Entered: 03/15/2012)   |
| 03/15/2012 | <u>43</u> |  | SCHEDULING ORDER. Discovery shall close on August 22, 2012. See Order for further details. Signed by Judge Beryl A. Howell on March 15, 2012. (lcbah1) (Entered: 03/15/2012)   |
| 03/16/2012 |           |  | Reset Deadlines: Plaintiff Rule 26a2 due by 6/4/2012; Defendant Rule 26a2 due by 7/2/2012; Discovery due by 8/22/2012; Amended Pleadings due by 9/1/2012. Dispositive Motions due by 9/17/2012. Response to Dispositive Motions due by 10/17/2012. Reply to Dispositive Motions due by 10/31/2012. (tj) (Entered: 03/16/2012)                                      |
| 03/23/2012 | <u>44</u> |  | NOTICE of Voluntary Dismissal by THIRD DEGREE FILMS, INC. (Meier, Mike) (Entered: 03/23/2012)  |
| 03/28/2012 | <u>45</u> |  | MOTION for Discovery ( <i>Plaintiff's Deposition pursuant to Rule 30(b)(6) to be taken telephonically</i> ) by THIRD DEGREE FILMS, INC. (Attachments: # <u>1</u> Memorandum in Support, # <u>2</u> Exhibit Defendant's Notice of Deposition, stating that the deposition will be videotaped, # <u>3</u> Text of Proposed Order)(Meier, Mike) (Entered: 03/28/2012) |
| 04/02/2012 | <u>46</u> |  | MOTION for Discovery ( <i>PLAINTIFFS MOTION FOR ORDER ON DISCOVERY</i> ) by THIRD DEGREE FILMS, INC. (Attachments: # <u>1</u> Memorandum in Support, # <u>2</u> Exhibit Partial List of additional copyright infringements committed through Zwarycz's known IP addresses, # <u>3</u> Statement of Facts)(Meier, Mike) (Entered: 04/02/2012)                       |
| 04/03/2012 |           |  | MINUTE ORDER (paperless) The parties are directed to appear for a status conference at 9:30 AM on April 20, 2012 in Courtroom 15 before Judge Beryl A. Howell. Signed by Judge Beryl A. Howell on April 3, 2012. (lcbah1 ) (Entered: 04/03/2012)   |

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| 04/04/2012 |           |  | Set/Reset Hearings: Status Conference set for 4/20/2012 09:30 AM in Courtroom 15 before Judge Beryl A. Howell. (zmm, ) (Entered: 04/04/2012)   |
| 04/06/2012 | <u>47</u> |  | Memorandum in opposition to re <u>45</u> MOTION for Discovery ( <i>Plaintiff's Deposition pursuant to Rule 30(b)(6) to be taken telephonically</i> ) MOTION for Discovery ( <i>Plaintiff's Deposition pursuant to Rule 30(b)(6) to be taken telephonically</i> ) filed by BAILEY ZWARYCZ. (Attachments: # <u>1</u> Text of Proposed Order)(Lowe, John) (Entered: 04/06/2012)   |
| 04/14/2012 | <u>48</u> |  | REPLY to opposition to motion re <u>45</u> MOTION for Discovery ( <i>Plaintiff's Deposition pursuant to Rule 30(b)(6) to be taken telephonically</i> ) MOTION for Discovery ( <i>Plaintiff's Deposition pursuant to Rule 30(b)(6) to be taken telephonically</i> ) filed by THIRD DEGREE FILMS, INC.. (Attachments: # <u>1</u> Exhibit Email from Plaintiff to Defendant, # <u>2</u> Exhibit Email from Defendant to Plaintiff)(Meier, Mike) (Entered: 04/14/2012) |
| 04/16/2012 | <u>49</u> |  | Memorandum in opposition to re <u>46</u> MOTION for Discovery ( <i>PLAINTIFFS MOTION FOR ORDER ON DISCOVERY</i> ) MOTION for Discovery ( <i>PLAINTIFFS MOTION FOR ORDER ON DISCOVERY</i> ) filed by BAILEY ZWARYCZ. (Attachments: # <u>1</u> Text of Proposed Order)(Lowe, John) (Entered: 04/16/2012)   |
| 04/16/2012 | <u>50</u> |  | ENTERED IN ERROR.....MOTION for Leave to File <i>Surreply</i> by BAILEY ZWARYCZ (Attachments: # <u>1</u> Exhibit, # <u>2</u> Text of Proposed Order)(Lowe, John) Modified on 4/17/2012 (rdj). (Entered: 04/16/2012)  |
| 04/16/2012 | <u>51</u> |  | MOTION for Leave to File <i>Surreply</i> by BAILEY ZWARYCZ (Attachments: # <u>1</u> Exhibit, # <u>2</u> Text of Proposed Order)(Lowe, John) (Entered: 04/16/2012)  |
| 04/17/2012 |           |  | NOTICE OF CORRECTED DOCKET ENTRY: re <u>50</u> MOTION for Leave to File <i>Surreply</i> was entered in error as a duplicate filing and counsel refile said pleading as <u>51</u> Motion for Leave to file. (rdj) (Entered: 04/17/2012)   |
| 04/17/2012 |           |  | MINUTE ORDER (paperless) granting the defendant's <u>51</u> Motion for Leave to File <i>Surreply</i> . Signed by Judge Beryl A. Howell on April 17, 2012. (lcbah1) (Entered: 04/17/2012)   |
| 04/17/2012 | <u>52</u> |  | SURREPLY to re <u>45</u> MOTION for Discovery ( <i>Plaintiff's Deposition pursuant to Rule 30(b)(6) to be taken telephonically</i> ) MOTION for Discovery ( <i>Plaintiff's Deposition pursuant to Rule 30(b)(6) to be taken telephonically</i> ) filed by BAILEY ZWARYCZ. (rdj) (Entered: 04/17/2012)  |
| 04/19/2012 | <u>53</u> |  | REPLY to opposition to motion re <u>46</u> MOTION for Discovery ( <i>PLAINTIFFS MOTION FOR ORDER ON</i>  |

|            |           |    |   |
|------------|-----------|----|---|
|            |           |    | <i>DISCOVERY</i> ) MOTION for Discovery ( <i>PLAINTIFFS MOTION FOR ORDER ON DISCOVERY</i> ) filed by THIRD DEGREE FILMS, INC.. (Attachments: # <u>1</u> Exhibit Relevant Email Correspondence, # <u>2</u> Exhibit Relevant Email Correspondence, # <u>3</u> Exhibit Relevant Email Correspondence, # <u>4</u> Exhibit Relevant Email Correspondence)(Meier, Mike) (Entered: 04/19/2012)   |
| 04/20/2012 |           |    | Minute Entry for proceedings held before Judge Beryl A. Howell: Status Conference held on 4/20/2012. Discovery disputes addressed with the court. Order to follow. (Court Reporter: Annie Shaw.) (tj ) (Entered: 04/20/2012)  |
| 04/20/2012 |           |    | MINUTE ORDER (paperless) For the reasons stated on the record during the April 20, 2012 status conference, the plaintiff's <u>19</u> Motion to Dismiss Defendant Zwarycz's Counterclaims is GRANTED. The plaintiff's request for Sanctions pursuant to 28 U.S.C. § 1927 set forth in the plaintiff's Motion to Dismiss is DENIED. It is further ordered that the plaintiff's <u>45</u> Motion to have Plaintiff's Deposition Taken Telephonically is GRANTED. Signed by Judge Beryl A. Howell on April 20, 2012. (lcbah1) (Entered: 04/20/2012) |
| 04/20/2012 | <u>54</u> | 15 | ORDER granting in part and denying in part plaintiff's <u>46</u> Motion for an Order on Discovery. Signed by Judge Beryl A. Howell on April 20, 2012. (lcbah1) (Entered: 04/20/2012)  |
| 05/04/2012 | <u>55</u> |    | NOTICE of Appearance by John David Seiver on behalf of COMCAST CABLE COMMUNICATIONS, LLC (Seiver, John) (Entered: 05/04/2012)   |
| 05/04/2012 | <u>56</u> |    | MOTION to Dismiss <i>under Rule 41(a)(2)</i> by THIRD DEGREE FILMS, INC. (Attachments: # <u>1</u> Memorandum in Support, # <u>2</u> Text of Proposed Order)(Meier, Mike) (Entered: 05/04/2012)  |
| 05/04/2012 | <u>57</u> |    | MOTION for Extension of Time to <i>Comply</i> by COMCAST CABLE COMMUNICATIONS, LLC (Seiver, John) (Entered: 05/04/2012)   |
| 05/05/2012 | <u>58</u> |    | NOTICE of Intention to Oppose Rule 41 Motion by BAILEY ZWARYCZ re <u>56</u> MOTION to Dismiss <i>under Rule 41(a)(2)</i> (Lowe, John) (Entered: 05/05/2012)   |
| 05/07/2012 |           |    | MINUTE ORDER (paperless) granting <u>57</u> Non-Party Comcast's Unopposed Motion for Extension of Time to Comply with April 20, 2012 Order. Comcast shall comply with the Court's April 20, 2012 Order by May 30, 2012. If this case is dismissed before May 30, 2012, Comcast's compliance with the April 20, 2012 Order shall be excused. Signed by Judge Beryl A. Howell on May 7, 2012. (lcbah1) (Entered: 05/07/2012)  |
| 05/09/2012 |           |    | MINUTE ORDER (paperless) As stated during the telephonic conference held with the parties regarding discovery disputes,   |

|            |           |    |  |
|------------|-----------|----|--|
|            |           |    | <p>the deposition of the plaintiff's Fed. R. Civ. P. 30(b)(6) witness is hereby postponed pending resolution of the <u>56</u> Plaintiff's Rule 41 Motion to Dismiss. If the defendant wishes to proceed with the deposition, briefing of the plaintiff's pending motion must be complete by noon on May 14, 2012. The Court will then endeavor to resolve the plaintiff's <u>56</u> motion to dismiss prior to the scheduled May 15, 2012 deposition date. This will require the defendant to file an opposition to the plaintiff's motion to dismiss no later than 5:00 PM on May 11, 2012. The plaintiff may file a reply by noon on May 14, 2012. To facilitate the potential May 15, 2012 deposition, the plaintiff is directed to provide the defendant with details regarding the name, title, and location of the plaintiff's Rule 30(b)(6) witness. Signed by Judge Beryl A. Howell on May 9, 2012. (lcbah1) (Entered: 05/09/2012)</p> |
| 05/10/2012 | <u>59</u> |    | <p>NOTICE of Voluntary Dismissal by THIRD DEGREE FILMS, INC. (Attachments: # <u>1</u> Text of Proposed Order)(Meier, Mike) (Entered: 05/10/2012)</p>   |
| 05/10/2012 |           |    | <p>MINUTE ORDER (paperless) In light of the parties' <u>59</u> Stipulation of Dismissal Pursuant to Rule 41(a)(1)(A)(ii), this case is hereby dismissed with prejudice as to John Does 116 and 117 and Defendant Bailey Zwarycz. Consequently, the plaintiff's pending <u>56</u> Motion to Dismiss Under Rule 41(a)(2) is denied as moot. The Clerk is directed to close this case. Signed by Judge Beryl A. Howell on May 10, 2012. (lcbah1) (Entered: 05/10/2012)</p>  |
| 06/06/2012 | <u>60</u> | 13 | <p>NOTICE OF APPEAL TO DC CIRCUIT COURT by BAILEY ZWARYCZ. Filing fee \$ 455, receipt number 0090-2960941. Fee Status: Fee Paid. Parties have been notified. (Lowe, John) (Entered: 06/06/2012)</p>  |

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

\_\_\_\_\_  
 Third Degree Films, Inc. )  
 20525 Nordhoff Street, Suite 25 )  
 Chatsworth, CA 91311, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 BAILEY ZWARYCZ )  
 Aka John Doe 116 and 117 )  
 )  
 Defendant. )  
 \_\_\_\_\_)

CA No. 1:11-cv-01833-BAH  
Judge Beryl Howell

**DEFENDANT’S NOTICE OF APPEAL**

Notice is hereby given that Bailey Zwarycz, Defendant in the above named case, hereby appeals to the United States Court of Appeals for the District of Columbia Circuit from an order granting Plaintiff’s Motion to Dismiss Defendant Zwarycz’s Counterclaims entered on April 20, 2012. Final judgment in this matter was entered on May 10, 2012.

Respectfully submitted,

Bailey Zwarycz  
By Counsel

/s/ John C. Lowe  
John C. Lowe  
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**CERTIFICATE OF SERVICE**

I hereby certify that on the 6th day of June, 2012, I will electronically file the foregoing with the Clerk of the Court for service on parties using the CM/ECF system.

/s/ John C. Lowe  
John C. Lowe

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

THIRD DEGREE FILMS, INC.,

Plaintiff,

v.

BAILEY ZWARYCZ,

Defendant.

Civil Action No. 11-1833 (BAH)  
Judge Beryl A. Howell

**ORDER**

Upon consideration of the plaintiff's Motion for an Order on Discovery, ECF No. 46, the associated memoranda in support and in opposition to the motion, the applicable law, and following oral argument at the April 20, 2012 status conference, for the reasons stated on the record, it is hereby

**ORDERED** that plaintiff's Motion for an Order on Discovery, ECF No. 46, is **GRANTED IN PART** and **DENIED IN PART**; and it is further

**ORDERED** that Comcast shall disclose to the plaintiff, within ten days, the following information about its customer Bailey Zwarycz:

1. The subscriber's address.
2. Length of service including start date.
3. Subscriber's instrument number or other subscriber number or identity, including a temporarily assigned network address.
4. Any other IP addresses associated with Bailey Zwarycz.
5. Any MAC address on record.
6. Records of DMCA Notices that were sent to Zwarycz.
7. Records of any kind of warning letters/emails/other communications about copyright infringement sent to Zwarycz.

8. Records about notice letter sent to Zwarycz about the present lawsuit (including date sent, how the letter was sent (such as mail or UPS), and any information showing when Zwarycz received the letter.
9. The type of device was installed by Comcast at the residence including the device model number, serial number and manufacturer.
10. Information regarding whether the device installed by Comcast included Wireless (WiFi) Capabilities, and, if so, whether the security (network name & password) was enabled by default or enabled by Comcast upon installation.
11. The date/time the device was installed by Comcast.
12. A copy of any/all signed agreements including device installation agreements signed by or given to Zwarycz;

and it is further

**ORDERED** that the plaintiff's request for information relating to defendant Zwarycz's "[m]eans and source of payment for such service (including any credit card or bank account number)" is DENIED with leave to renew.

**SO ORDERED.**

DATED: APRIL 20, 2012

*/s/ Beryl A. Howell*

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BERYL A. HOWELL  
United States District Judge