

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

THIRD DEGREE FILMS, INC.,
Plaintiff

v.

DOES 1-72,
Defendants

CA: 1:12-cv-10760 FDS

JOHN DOE 1's MOTION FOR RECONSIDERATION

John Doe 1 respectfully requests that this Court vacate its January 3, 2013 Order allowing Third Degree Films, Inc. ("Third Degree") to serve summons because the Order contradicts a previous order of this Court, and will prejudice John Doe 1 if allowed to stand.

On October 4, 2012 this Court issued an Order to Show Cause (Docket Entry 26, Boal, M.J.). Magistrate Judge Boal indicated in her Show Cause Order that a subscriber to an Internet Service Provider ("ISP") is not the proper defendant, and that notices provided to the ISP and subscribers by Third Degree referencing the subscriber as a defendant were improper. Third Degree was ordered to show cause within 14 days why the Court should not quash the subpoenas issued in the case. Third Degree has never filed a response to Magistrate Judge Boal's Order to Show Cause.

In addition to the Order to Show Cause, Third Degree was specifically prohibited from "using in any way, including but not limited to settlement, the identities of subscribers it has already obtained (or does obtain) as a result of the subpoena process, *except* that within three days, TDF shall serve a copy of this Order upon all of the subscribers whose identities it has

learned to date (and such further subscribers, if any, it learns of in the future as a result of the already issued subpoenas).”

Third Degree has failed to serve a copy of Magistrate Judge Boal’s Order to Show Cause on any of the ISPs, or the subscribers whose identity’s it had already learned. Despite Third Degree’s disregard for the October 4, 2012 Order to Show Cause, it has now requested permission to name a subscriber as a defendant in this case, without first explaining whether there is a proper nexus between a subscriber and a defendant. Third Degree has failed to serve a copy of the Show Cause Order upon John Doe 1. Furthermore, allowing Third Degree to serve a summons based upon information obtained through the subpoena is a use that has been expressly prohibited by this Court. It would be unfair and prejudicial to John Doe 1 to allow service of the summons and force the expenditure of time and resources in defending a Complaint in which this Court has already determined that, “while early discovery may be proper and necessary...the Court found that it must also take into consideration the privacy interests of potentially innocent subscribers.” (October 4, 2012 Show Cause Order).

WHEREFORE, John Doe 1 respectfully requests that this Court reconsider its allowance of Third Degree’s request to serve summons.

JOHN DOE 1

/s/ John T. McInnes

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Dated: January 9, 2013

CERTIFICATE OF SERVICE

I, John T. McInnes, hereby certify that this document(s), filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on January 9, 2013.

/s/ John T. McInnes

John T. McInnes