

**U.S. District Court Southern District of Florida  
(Miami Division)**

CIVIL ACTION, CASE #: 03-CV-22328

Judge Moore

Magistrate Judge O'Sullivan

Michael J. Zwebner,

Plaintiff,

v.

JOHN DOES, 1-100,

Defendants.

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**RESPONSE TO PLAINTIFF'S  
MOTION TO RECONSIDER**

**RESPONSE TO PLAINTIFF'S MOTION TO RECONSIDER  
AND  
MEMORANDUM OF LAW IN SUPPORT**

The undersigned, Law Office of L. Van Stillman, P.A., files this Response to the Plaintiff's Motion to Reconsider this order granting John Doe #32's Motion to Quash a subpoena issued by this Court in the above-styled litigation, as said subpoena pertains to John Doe #32, a/k/a Me Too Tom, pursuant to Rule 45 of the Federal Rules of Criminal Procedure, and alleges as follows:

1. On November 11, 2003, John Doe #32 received notice from Terra Lycos, Inc. the recipient of a subpoena in this action, that unless John Doe #32 filed a motion to quash the subpoena issued by this Court on or before November 20, 2003, Lycos would comply and deliver all information on John Doe #32 as requested.

2. John Doe #32 contacted the undersigned attorney to respond on November 13, 2003.
3. On November 13 and 14, 2003, the undersigned attempted to contact the Plaintiff, Michael Zwebner, to comply with Local Rule 7.1. The undersigned was unable to contact Mr. Zwebner, although messages were left on his answering machine.
4. On behalf of John Doe #32, the undersigned filed with this Court the Motion to Quash, which was granted as a result of the Plaintiff's failure to respond.
5. John Doe#32 is not a served defendant in this action, and filed its Motion to Quash for the sole purpose of preventing Lycos from disseminating privileged and confidential information, as discussed in the original Motion, which is hereby adopted as part of this Response.
6. The undersigned has had no contact from the Plaintiff until it was learned that Mr. Zwebner filed a motion for reconsideration of this Court's Order granting the Motion to Quash.
7. Plaintiff does not dispute that he received the Motion to Quash, only that he feels that Local Rule 7.1 was not complied with. This does not excuse his failure to respond to the original motion within the time frame set forth in the Local Rules of the Southern District of Florida.
8. Plaintiff is a pro se litigant, who says in his motion that he is a layman and therefore should be excused from following the rules. A closer look at Plaintiff reveals that he is a party to an inordinate number of court cases (Exhibit "A"). Accordingly, Plaintiff should not only know the Local Rules, but should be required to follow them, and file his responses to adverse motions within the time periods set.

9. The Plaintiff has failed to present any legal reason why this Court should set aside its previous order. For an order on a motion to be set aside for failure to respond, this Court could look at Plaintiff's request as a motion to set aside a default (Plaintiff still has not responded). To set aside a default, it is black letter law that the moving party must show:

- a. That it has a valid defense to the opposing party's request; and
- b. That the defaulting party did not respond as a result of some form of excusable neglect or other inadvertence.

In the instant matter, Plaintiff has not presented any viable reason why this Court should grant the relief requested. Plaintiff does not state that he did not receive the Motion, but only that counsel did not comply with Rule 7.1, which was complied with.

WHEREFORE, for the reasons set forth above, the John Doe #32, a/k/a Me Too Tom, respectfully requests this Honorable Court deny Plaintiff's Motion to set aside this Court's previously issued order to Quash the Supboena as it pertains to John Doe#32.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY a copy of the foregoing has been furnished this 24th day of December, 2003, to: Michael J. Zwebner, 407 Lincoln Road, Suite 6-K, Miami Beach, Florida 33139.

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