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November 5, 2021

VIA ECF

Hon. Paul G. Gardephe, U.S.D.J.
United States District Court
Southern District of New York
40 Foley Square, Room 2204
New York, New York 10007

**Re: Everytown for Gun Safety Action Fund, Inc. v. Defcad, Inc., et al.
Civil Action No. 21-cv-8704 (PGG)**

Dear Judge Gardephe:

We represent Defendant Defcad, Inc (“Defcad”), in the above referenced matter. We are in the process of also being retained by other defendants as well. Defcad intends to object to personal jurisdiction and hereby preserves its position in that regard.

However, we urgently write regarding the *ex parte* expedited third party discovery order that was included in the Order to Show Cause entered today by the Court. The expedited discovery seeks to immediately unmask parties who have a First Amendment right to engage in anonymous speech (“Anonymous Defendants”). *See Sony Music Entertainment Inc. v. Does 1-40*, 326 F.Supp.2d 556, (S.D.N.Y. 2004); *In re Rule 45 Subpoena Issued To Cablevision Systems Corporation Regarding IP Address 69.120.35.31*, 2010 WL 2219343 (E.D.N.Y. 2010); *Doe v. Cahill*, 884 A.2d 451 (Del. 2005); *Dendrite Intern., Inc. v. Doe No. 3*, 342 N.J. Super. 134, (N.J. App. Div. 2001).

Defcad, both in its own right and as *jus tertii* for the Anonymous Defendants, and the Anonymous Defendants, themselves, have a right to oppose this *ex parte* attempted unmasking. Importantly, all of the foregoing cases require that the party seeking to obtain the unmasking must provide notice of the application for unmasking discovery. Plaintiff does not claim to have done that, and yet it provided email addresses it says it knows to the Court in its application.

Further, Plaintiff made no attempt to learn that Defcad is not a Delaware corporation as it erroneously alleges but is, in fact, an Arkansas corporation easily served and noticed at its registered agent (*see* attached). Further, Plaintiff identifies Defcad’s corporate business address in the Complaint and yet made no attempt prove notice of any kind of its *ex parte* application for unmasking third party discovery.

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Accordingly, Defcad respectfully requests that the Court urgently issue an order: (1) staying the expedited third party discovery and directing that no discovery be released until Defendants may be heard by the Court; (2) ordering Plaintiff to cease any attempts to further serve the Order to Show Cause on third parties and immediately identify to Defcad any third parties it has already served; and (4) ordering Plaintiff to immediately serve the stay order on any third party already served with the Order to Show Cause.

Thank you for your attention in this regard.

Respectfully submitted,

/s/ Daniel L. Schmutter
DANIEL L. SCHMUTTER

DLS/sr

Enclosures

cc: Marcella Ballard, Esq. (via ECF and email)
Meaghan Kent, Esq. (via email)



ARKANSAS SECRETARY OF STATE
JOHN THURSTON

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Corporation Name	DEFCAD INC.
Fictitious Names	
Filing #	811227681
Filing Type	For Profit Corporation
Filed under Act	Dom Bus Corp; 958 of 1987
Status	Good Standing
Principal Address	
Reg. Agent	NORTHWEST REGISTERED AGENT, LLC.
Agent Address	701 SOUTH ST. STE 100 MOUNTAIN HOME, AR 72653
Date Filed	12/18/2019
Officers	MORGAN NOBLE , Incorporator/Organizer CODY R WILSON , President BENJAMIN DENIO , Vice-President
Foreign Name	N/A
Foreign Address	
State of Origin	N/A

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