

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

JOHN W. FERRON,	:	
	:	
Plaintiff,	:	Civil Action No. 2:06-cv-322
	:	
vs.	:	Judge Frost
	:	
VC E-COMMERCE SOLUTIONS, INC., <i>et</i>	:	Magistrate Judge Abel
<i>al.</i> ,	:	
	:	
Defendants.	:	

AFFIDAVIT OF ATTORNEY LISA A. WAFER

I, Lisa A. Wafer, hereby state under oath as follows:

1. I am over 18 years of age, and am otherwise competent to make this affidavit. The matters set forth below are based upon my own personal knowledge and, if called as a witness, I could and would testify competently thereto. I am providing this Affidavit in connection with the above referenced matter.

2. I am the Trial Attorney for the Plaintiff in the above captioned matter.

3. On July 18, 2006, I served upon Defendants' counsel "Plaintiff's First Requests for Production of Documents and Other Tangible Things" ("Plaintiff's First Requests"), which, among other things, seeks records relating to the identity of Defendants' employees, agents and affiliates who sent email advertisements on behalf of Defendants between January 2006 and the present. True and correct copies of Plaintiff's First Requests are attached hereto at Attachment

2. None of Plaintiff's First Requests ask for any information or records that would require Defendants to review email messages or any other information possessed by Plaintiff.

4. On July 21, 2006, the Court convened a Preliminary Pretrial Conference, during which Magistrate Judge Abel ordered that, by no later than August 4, 2006, Plaintiff produce to Defendants all of his email messages which may form the basis of a claim in this case.

5. During the Preliminary Pretrial Conference, Magistrate Judge Abel explained that the purpose of this preliminary exchange of information is so that Defendants could determine whether they sent the emails at issue in this case, and determine their settlement position.

6. At no time during the Preliminary Pretrial Conference did Defendants' counsel advise that receipt of the emails from Plaintiff would be necessary for the Defendants to provide responses to Plaintiff's First Requests, even though Defendants' counsel had received Plaintiff's First Requests at the time of the Preliminary Pretrial Conference.

7. On August 1, 2006, I served upon Defendants' counsel Plaintiff's First Set of Interrogatories, which asked Defendants to identify the names of its affiliates who conduct business at specified addresses. A true and correct copy of Plaintiffs' First Set of Interrogatories is attached hereto at Attachment 3. None of Plaintiff's First Set of Interrogatories asks for any information or records that would require Defendants to review email messages or any other information possessed by Plaintiff.

8. On July 24, 2006, I sent Defendants' counsel an email advising that Plaintiff was prepared to produce the email, and inquiring about whether Defendants would agree to a protective order with respect to the email due to the nature of the content of some of the messages. A true and correct copy of my July 24, 2006 email in this regard is attached hereto at Attachment 4.

9. Defendants' counsel refused to agree to the proposed protective order until almost two weeks later, on August 4, 2006. A true and correct copy of the email I received from

Defendants' counsel advising that Defendants would agree to a protective order is attached hereto at Attachment 5.

10. That same day - August 4, 2006 - in accordance with the deadlines set forth in the Court's Preliminary Pretrial Order, I timely forwarded, by overnight mail, the email messages to Defendants' counsel on a USB "thumb" drive.

11. I also served Plaintiff's Second Set of Interrogatories to Defendants at this same time. A true and correct copy of Plaintiff's Second Set of Interrogatories is attached hereto at Attachment 6.

12. On August 16, 2006 - just one day before Defendants' responses to Plaintiff's First Requests were due - Defendants' counsel sent an email message to me requesting a thirty day extension of time to provide Defendants' responses to Plaintiff's discovery requests. A true and correct copy of this email message is attached hereto at Attachment 7. Defendants' counsel did not offer any explanation for why Defendants thought they needed such an extension.

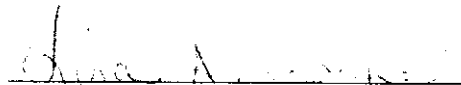
13. In response to Defendants' counsel's August 16, 2006 email message, I asked Defendants' counsel whether Defendants could produce some information and records at this time, if Plaintiff agreed to a fourteen day extension as to the remainder of Defendants' answers and responses. Rather than answer my query, Defendants' counsel tersely stated that her clients were "in the process of" gathering responses, and requested a two-week extension of time to respond.

14. In response, I explained to Defendants' counsel that Plaintiff was reluctant to agree to an extension without receiving any explanation about why the extension was needed, and because Plaintiff has a very short time in which to identify and seek leave to add additional parties defendant.

15. However, Defendants' counsel never extended the courtesy of a reply to the concerns raised by my August 16, 2006 email message.

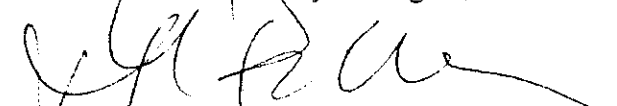
16. Defendant OPTINREALBIG.COM, LLC boasts on its website that it "possesses over 8 million online consumers in its database" and "produces over 20 million page views per month". A true and correct copy of the Print Screen from the website of OPTINREALBIG.COM, LLC is attached hereto at Attachment 8.

17. Further affiant sayeht naught.



Lisa A. Wafer

SWORN AND SUBSCRIBED TO BEFORE ME this 18th day of August, 2006.



Notary Public



MARISA ANNE BARTLETTE WILLIS
ATTORNEY AT LAW
Notary Public, State of Ohio
My Commission Has No Expiration Date
Section 147.03