

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

<b>JOHN W. FERRON,</b>	:	<b>CASE NO. 2:06-CV-0322</b>
	:	
<b>Plaintiff,</b>	:	<b>JUDGE FROST</b>
	:	<b>MAGISTRATE JUDGE ABEL</b>
<b>v.</b>	:	
	:	
<b>VC E-COMMERCE SOLUTIONS, INC.,</b>	:	
<b>et al.</b>	:	
	:	
<b>Defendants.</b>	:	
	:	

**DEFENDANT OPTINREALBIG.COM'S MOTION TO QUASH PLAINTIFF'S NOTICE  
OF DEPOSITION OF STEVEN RICHTER AND SCOTT RICHTER  
AND MOTION FOR PROTECTIVE ORDER**

Defendant Optinrealbig.com ("OPTIN"), pursuant to Federal Rule of Civil Procedure 26(C) moves this Court to enter a protective order quashing the "Notice to Take Deposition," improperly served without a subpoena by Plaintiff, and ordering that the discovery sought in the Notice not be had. In support of its Motion, OPTIN states the following:

At the outset, the Notice purports to set the depositions of Scott Richter and Steven Richter, employees of OPTIN, at the offices of Plaintiff's counsel in Columbus, Ohio. However, OPTIN's principal place of business is located in Colorado. Any deponent to be produced by OPTIN resides in, and works in, the State of Colorado. Specifically, both Scott Richter and Steven Richter work and reside in Colorado. Therefore, their attendance at a deposition in the State of Ohio would present unreasonable burden and expense on OPTIN since it would require its employees to spend inordinate and unnecessary amounts of time away from their usual business

activities, and could thus cause a disruption in OPTIN's business. This can be completely avoided by the taking of the depositions in Colorado.

Second, the date of the deposition set forth in the Notice was chosen by Plaintiff over the express objection of undersigned counsel. The Notice, without a subpoena, was served merely three days after Plaintiff produced a voluminous number of e-mails (over 62,000) which were purported to be at issue in this case and the subject of Plaintiff's allegations. In this regard, OPTIN immediately began its efforts to painstakingly review each and every e-mail only to find that literally tens of thousands are completely irrelevant. To date, OPTIN's review of those e-mails is ongoing and has not yet been completed. It would serve no purpose to conduct the depositions of either Scott or Steven Richter concerning the subject matter of Plaintiff's allegations, without first providing OPTIN the opportunity to review the relevant documents.

Third, the Notice is served solely for the purposes of harassment. It has now come to undersigned counsel's attention that Plaintiff has sought leave to amend his Complaint in the case of *Ferron v. Search Cactus*, Case No. 2:06-cv-327, to include OPTIN as a defendant. (See Plaintiff's Motion for Leave to File Second Amended Complaint, attached as Exhibit A.) As this Court is well aware, the issues in *Search Cactus* parallel those in the instant matter and in fact, Search Cactus has indicated its intention to request that the cases be consolidated. Whether OPTIN is added as a Defendant in the *Search Cactus* case or the cases are consolidated, it is nothing short of harassment for Plaintiff to force OPTIN's employees to appear numerous times for depositions relating to identical allegations.

Furthermore, it is clear that Plaintiff intends to conduct the same discovery in both cases, and subject employees of OPTIN to numerous depositions, irrespective of the waste of time and resources that would result. (See Correspondence, attached hereto as Exhibit B.) Such duplicative discovery is not only inconvenient but unduly burdensome on this Defendant.

Unfortunately, despite undersigned counsel's good faith attempts to reschedule the depositions for a date, time and location that is mutually agreeable, Plaintiff's has refused to reschedule the depositions. (See Correspondence, attached as Exhibit B, and Affidavit of Counsel, attached as Exhibit C.) Accordingly, OPTIN now seeks the assistance of this Court.

As this Court is aware, Federal Rule of Civil Procedure 26(C) states:

Upon motion by a party or by the person from whom discovery is sought, accompanied by a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action, and for good cause shown, the court in which the action is pending or alternatively, on matters relating to a deposition, the court in the district where the deposition is to be taken may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

- (1) that the disclosure or discovery not be had;
- (2) that the disclosure or discovery may be had only on specified terms and conditions, including a designation of the time or place;

Fed. R. Civ. P. 26 (2006).

This Court recently recognized, in the pending case of *Ferron v. Search Cactus L.L.C.*, Case No. 2:06-CV-327, that depositions of individuals situated similarly to the Richters should be taken in a location convenient to the deponent. See Discovery and Scheduling Order attached as Exhibit B. In *Search Cactus*, this Court stated the

following: “Based on the small size of Search Cactus, Mr. Weitzman’s role in the business, and his residence in Michigan, it is ORDERED that his deposition be taken in the county of his residence or the county in which he works.” *Id.*

The instant matter provides a nearly identical situation for this Court’s consideration. Like Mr. Weitzman in *Search Cactus*, the Richters play an integral role in the business operations of OPTIN. Moreover, the Richters reside in Colorado. Surely if it is inconvenient for Mr. Weitzman, a Michigan resident, to travel to Ohio for deposition, such a trip would be an even greater burden on the Richters, who reside much further away from Plaintiff’s law office.

For good cause shown, Defendant OPTIN respectfully requests this Court issue an Order quashing the “Notice to Take Deposition,” improperly served without a subpoena by Plaintiff, and also to issue a Protective Order that the discovery sought not be had until the matters of consolidation and/or amendment of the case pending with Search Cactus be determined, and upon such date, time and location that is mutually agreeable to both parties.

Respectfully Submitted,

/s/ Christina J. Marshall

Christina J. Marshall (0069963)  
Sutter, O’Connell & Farchione  
3600 Erieview Tower  
1301 E. 9th Street  
Cleveland, Ohio 44114  
Phone: (216) 928-2200  
Fax: (216) 928-4400  
E-Mail: [cmarshall@sutter-law.com](mailto:cmarshall@sutter-law.com)

Attorney for Defendant  
Optinrealbig.com, LLC

**CERTIFICATE OF SERVICE**

A copy of the foregoing was forwarded via regular mail this 29<sup>th</sup> day of  
September, 2006 to the following:

Lisa A. Wafer  
Ferron & Associates  
580 North Fourth Street  
Suite 450  
Columbus, Ohio 13215-2125

Attorney for Plaintiff

/s/ Christina J. Marshall  
Christina J. Marshall (0069963)