

EXHIBIT B

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

John W. Ferron, :
 :
 Plaintiff : Case No. 2:06-cv-327
 :
 v. : Judge Frost
 :
 Search Cactus, L.L.C., *et al.*, : Magistrate Judge Abel
 :
 Defendants :

Order

This matter is before the Court on plaintiff John W. Ferron's September 14, 2006 objections to the Magistrate Judge's September 7, 2006 Discovery Order requiring that Aaron Weitzman's deposition be conducted in Michigan (doc. 18). The Magistrate Judge ordered that Aaron Weitzman's deposition be taken in the county of his residence or the county in which he works based on the small size of Search Cactus, Weitzman's role as CEO in the business, and his residence in Michigan. As required by 28 U.S.C. §636(b)(1)(A), Rule 72(a), Fed. R. Civ. P., and Eastern Division Order No. 91-3, pt. F, 5, the Court shall set aside any part of the Magistrate Judge's Order found to be clearly erroneous or contrary to law.

The deposition of a corporation, through its officers or agents, is ordinarily taken at its principal place of business. *Salter v. UpJohn Co.*, 593 F.2d 649, 651 (5th Cir. 1979). Plaintiff maintains that the Magistrate Judge erred by not examining the factors outlined in *Thomas & Betts Corp. v. Hosea Project Movers, LLC*, Case No. 02-2953-Ma/An, unreported, 2004 U.S. Dist. LEXIS 38657 (W.D. Tenn. Sep. 8, 2004). The factors include:

[the] location of counsel for the parties in the forum district, the number of corporate representatives a party is seeking to depose, the likelihood of significant discovery disputes arising which would necessitate resolution by the forum court; whether the persons sought to be deposed often engage in travel for business purpose; and the equities with regard to the nature of the claim and the parties' relationship.

Id. (quoting *Armsey v. Medshares Mgmt. Servs., Inc.*, 184 F.R.D. 569, 571 (W.D. Va. 1998)).

Plaintiff maintains that the Magistrate Judge erred in weighing these factors. Attorneys for the plaintiff and defendant are located in Columbus, and plaintiff maintains that this will save attorney travel time and related expenses for both parties. Plaintiff also argues that only one of defendant's corporate officers is being deposed, and therefore the other corporate officer is available in case anything arises. Plaintiff also argues that it is likely that a dispute will arise during the deposition, and the Court's intervention may be needed. Plaintiff maintains that defendant sent thousands of commercial email messages to Ohio residents, and defendant has chosen to conduct extensive business in Ohio. Finally, defendant has asserted counterclaims for declaratory and injunctive relief against plaintiff.

Plaintiff simply disagrees with the Magistrate Judge's weighing of the relevant factors, and I cannot say that the Magistrate Judge's conclusion is clearly erroneous or contrary to law. Consequently, plaintiff John W. Ferron's September 14, 2006 objections to the Magistrate Judge's September 7, 2006 Discovery Order requiring that Aaron Weitzman's deposition be conducted in Michigan (doc. 18) is **OVERRULED**.

/s/ Gregory L. Frost
Gregory L. Frost
United States District Judge