

**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.	:	

**PLAINTIFF’S MEMORANDUM IN OPPOSITION TO  
DEFENDANTS’ MOTIONS FOR LEAVE TO PROPOUND  
TO PLAINTIFF ADDITIONAL INTERROGATORIES**

PLAINTIFF JOHN W. FERRON, by and through the undersigned counsel, hereby respectfully submits his Memorandum in Opposition to Defendants’ Motions for Leave to Propound to Plaintiff Additional Interrogatories (Document Nos. 55, 56 and 57).

On January 10, 2007, each of the currently-named Defendants filed a Motion for Leave to Propound to Plaintiff Additional Interrogatories. (Document Nos. 55 and 56) On January 11, 2007, Defendant VC E-Commerce, Inc. filed an Amended Motion for Leave to Propound to Plaintiff Additional Interrogatories, which appears to have done nothing more than correct typographical errors in its prior Motion. (Compare Document Nos. 56 and 57.)

Plaintiff respectfully submits that Defendants’ Motions for Leave to Propound to Plaintiff Additional Interrogatories, collectively referred to as “Defendants’ Motions,” are not ripe for this Court’s consideration because Defendants have failed to comply with S.D. Ohio Civ. R. 37.2. (Document Nos. 55-57)

S.D. Ohio Civ. R. 37.2 governs the filing of discovery motions, such as Defendants’ Motions, and provides as follows:

**“To the extent that extrajudicial means of resolution of differences have not disposed of the matter, parties seeking discovery or a protective order may then move for a protective order or a motion to compel discovery pursuant to Rule 26(c) or Rule 37(a), Fed. R. Civ. P. Such motion shall be accompanied by a supporting memorandum and by a certification of counsel setting forth the extrajudicial means which have been attempted to resolve the differences.”** (Emphasis added.)

Defendants’ Motions are not accompanied by a certification from Defendants’ counsel setting forth the extrajudicial efforts made to resolve this discovery issue. (See Document Nos. 55-57.) The reason for this omission is simple; Defendants’ counsel has never bothered to contact Plaintiff’s counsel in an effort to resolve this discovery issue through extrajudicial means, as this Court’s Local Rules clearly require. (Wafer Aff. ¶4)<sup>1</sup>

Moreover, Defendants have utterly failed to communicate to Plaintiff’s counsel, or to this Court in their respective Motions, what “additional interrogatories” they wish to propound to Plaintiff. Thus, Plaintiff has never been afforded the opportunity to respond to an intelligent inquiry presented to it by Defendants’ counsel and, consequently, neither Plaintiff nor the Court has any idea what kind of discovery Defendants seeks to conduct beyond which the Civil Rules and this Court’s Local Rules currently permit.

Accordingly, Defendants’ Motions are not ripe because they do not comply with S.D. Ohio Civ. R. 37.2, and Defendants have failed to apprise Plaintiff and the Court of the nature of their proposed extra-rule discovery requests. Therefore, Defendants’ Motions should be denied.

Respectfully submitted,

s/ Lisa A. Wafer  
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LWafer@Ferronlaw.com  
Trial Attorney for Plaintiff  
FERRON & ASSOCIATES  
A Legal Professional Association

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<sup>1</sup> See the Affidavit of Attorney Lisa A. Wafer, attached hereto at Attachment 1.

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**CERTIFICATE OF SERVICE**

The undersigned certifies that on January 31, 2007, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to Christina Marshall, Trial Attorney of Record for all Defendants in this matter.

/s/ Lisa A. Wafer  
Lisa A. Wafer, Trial Attorney  
Oh. Sup. Ct. Reg. No. 0074034