

**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 August 4, 2006, more than seven months ago, I served upon Defendants' counsel Plaintiff's Second Set of Interrogatories ("Plaintiff's Second Interrogatories"). A true and correct copy of Plaintiff's Second Interrogatories is attached hereto at Attachment 2. Plaintiff's Second Interrogatories clearly and appropriately asked Defendants to identify which of the emails on the USB "thumb" drive they had sent to Plaintiff, and to identify all other individuals and/or entities on whose behalf the emails were sent to Plaintiff.

4. Almost three weeks after Defendants' answers to Plaintiff's Second Interrogatories were due on September 25, 2006, OptIn served its untimely answers to Plaintiff's Second Interrogatories. However, OptIn refused to answer any of the Plaintiff's Second

Interrogatories, asserting objections upon grounds that the Interrogatories are “overly broad, unduly burdensome, and seek information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.” OptIn noted that it would supplement its responses to Plaintiff’s Second Interrogatories after having a reasonable time to review the email messages produced by Plaintiff. A true and correct copy of OptIn’s Answers to Plaintiff’s Second Interrogatories is attached hereto at Attachment 7.

5. On September 28, 2006, VC also served its untimely answers to Plaintiff’s Second Interrogatories. VC also refused to answer Plaintiff’s Second Interrogatories, noting virtually identical objections to those asserted by OptIn, noting that the Interrogatories are “overly broad, unduly burdensome, and seek information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.” VC also stated that it would supplement its responses after having a reasonable time to review the email messages produced by Plaintiff. A true and correct copy of VC’s Answers to Plaintiff’s Second Interrogatories is attached hereto at Attachment 8.

6. Due to the volume of email at issue in this case, Plaintiff did not immediately require Defendants to supplement their answers to Plaintiff’s Second Interrogatories. Rather, Plaintiff allowed Defendants a reasonable opportunity to review the emails that Plaintiff had produced to Defendants along with Plaintiff’s Second Interrogatories.

7. However, as of the date of this Affidavit, Defendants have failed to supplement any of their previous answers to Plaintiff’s Second Interrogatories, and have failed to identify a single individual or entity who sent the emails or on whose behalf the emails at issue were sent to Plaintiff.

8. Reasonably believing that six months was more than sufficient time for Defendants to review the emails at issue in the case, and pursuant to S.D. Ohio Civ. R. 47.01, I sent Defendants' counsel a letter on February 20, 2007 asking that Defendants promptly supplement their answers to Plaintiff's Second Interrogatories. A true and correct copy of my letter to Attorney Marshall in this regard is attached hereto at Attachment 9.

9. On March 1, 2007, the parties participated in an informal telephone conference with Magistrate Judge Abel regarding the March 15, 2007 mediation scheduled in this matter.

10. During that telephone conference, Defendants' counsel asked Magistrate Abel to cancel the mediation because, counsel claimed, Defendants were still reviewing the Plaintiff's emails, contained on the thumb drive served upon them on August 4, 2006, more than seven months ago, and still could not fully evaluate Defendants' potential liability.

11. I advised Magistrate Abel that Plaintiff was ready, willing and able to participate in the March 15, 2006 mediation conference.

12. Nonetheless, Magistrate Abel reluctantly cancelled the mediation at Defendants' request.

13. Based upon Defendants' counsels' claim that Defendants are still – seven months after receiving Plaintiff's email – reviewing the emails Plaintiff provided to Defendant, I raised concerns to Magistrate Abel regarding the upcoming deadline for the parties to seek leave to amend their pleadings to name additional parties, and the fact that Defendants had never supplemented their obviously-deficient answers to Plaintiff's Second set of Interrogatories.


14. I also inquired of Defendants' counsel whether Defendants had reviewed any of the emails at all. In response to my inquiry and a similar one of the Magistrate Judge,

Defendants' counsel stated that Defendants would likely be able to supplement their responses to Plaintiff's Second Set of Interrogatories by the end of March, 2007.

15. As a result, the Magistrate Judge asked that Plaintiff not file another motion to compel discovery at this time.

16. Rather, the Magistrate Judge suggested that Plaintiff file a motion with the Court seeking another extension of time to seek leave to add new parties in this case, and explain to the Court the current status of discovery and why the extension is being requested.

17. Further affiant sayeth naught.

  
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Lisa A. Wafer

SWORN AND SUBSCRIBED TO BEFORE ME this 5<sup>th</sup> day of March, 2007.

  
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Notary Public



JESSICA G. FALLON  
Attorney At Law  
Notary Public, State of Ohio  
My commission has no expiration date  
Sec. 147.03 R.C.