

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

JOHN W. FERRON,)	Case No. 2:06-cv-322
)	
Plaintiff,)	JUDGE Frost
)	
vs.)	Magistrate Judge Abel
)	
VC E-COMMERCE SOLUTIONS, INC., et al.)	
)	<u>CERTIFICATE OF SERVICE</u>
Defendants.)	
)	
)	
)	

I hereby certify that on the 22nd day of June, 2007, a true and correct copy of the Subpoena to Ferron & Associates was hand delivered to:

Ferron & Associates
580 North Fourth Street
Suite 450
Columbus, Ohio 43215

Respectfully Submitted,

Sutter, O'Connell & Farchione

/s/ Lawrence A. Sutter
 LAWRENCE A. SUTTER (0042664)
 DAVID J. HUDAK (0070510)
 3600 Erieview Tower
 1301 E. 9th Street
 Cleveland, Ohio 44114
 Phone: (216) 928-2200
 Fax: (216) 928-4400
 E-Mail: lsutter@sutter-law.com
dhudak@sutter-law.com

Attorneys for Defendant
VC E-Commerce Solutions, Inc.

Issued by the
UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF OHIO

JOHN W. FERRON,
 Plaintiff,

v.

VC E-COMMERCE SOLUTIONS, INC., et al.,
 Defendants.

SUBPOENA IN A CIVIL CASE

CASE NUMBER: 2:06-CV-322

TO: Ferron & Associates, 580 North Fourth Street, Suite 450, Columbus, Ohio 43215

YOU ARE COMMANDED to appear in the United States District Court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME
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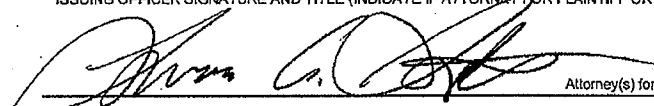
YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects): Please see Exhibit A.

PLACE Sutter, O'Connell & Farchione 3600 Erieview Tower 1301 East 9th Street Cleveland, Ohio 44114	DATE AND TIME 7/22/2007 9:00 am
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YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME
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Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)	DATE
 Attorney(s) for Defendant VC E-Commerce Solutions, Inc.	

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER Lawrence A. Sutter Sutter, O'Connell & Farchione 3600 Erieview Tower 1301 East 9th Street Cleveland, Ohio 44114 (216) 928-4545	
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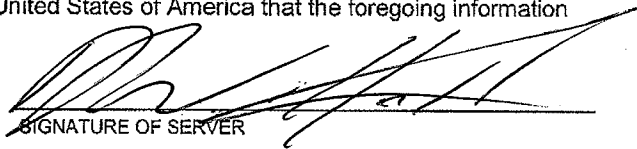
PROOF OF SERVICE

DATE	PLACE
SERVED 6/22/07 11:45am	SPO N. 4th St Columbus, OH 43215
SERVED ON (PRINT NAME) Lea Ferron	MANNER OF SERVICE Corporate
SERVED BY (PRINT NAME) Derek P. Westfall	TITLE Process Server

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on 6/22/07
DATE


SIGNATURE OF SERVER

2862 Johnstown Rd.
ADDRESS OF SERVER
Columbus, OH 43219

Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), as amended on December 1, 2006:

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The Court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection, copying, testing, or sampling of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection, copying, testing, or sampling may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to producing any or all of the designated materials or inspection of the premises—or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect, copy, test, or sample the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production, inspection, copying, testing, or sampling. Such an order to compel shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection, copying, testing, or sampling commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it:

- (i) fails to allow reasonable time for compliance;
 - (ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held;
 - (iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or
 - (iv) subjects a person to undue burden.
- (B) If a subpoena:
- (i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or
 - (ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject

to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) (A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) (A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial-preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

(e) CONTEMPT. Failure of any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. An adequate cause for failure to obey exists when a subpoena purports to require a nonparty to attend or produce at a place not within the limits provided by clause (ii) of subparagraph (c)(3)(A).

EXHIBIT A

Pursuant to Federal Rule of Civil Procedure 45, VC E-Commerce Solutions, Inc. requests that you produce the following documents, pursuant to the following definitions and instructions, at the time and place set forth on the subpoena.

I. Definitions

A. "You" or "your" means and includes Ferron & Associates and/or any and all persons acting in the interest of or on behalf of Ferron & Associates, including agents, servants, employees and representatives, including attorneys, accountants, investigators, advisors, current and former officers, directors, and employees, and environmental consultants, and all others acting on behalf of Ferron & Associates in this litigation.

B. "VCES" refers to VC E-Commerce Solutions, Inc., its predecessors, successors, and divisions, its direct or indirect parents, subsidiaries, and affiliates, any person acting or purporting to act on behalf of any of the above, and the directors, officers, shareholders, employees, agents, accountants, consultants, and attorneys of any of the above.

C. The term "document" is intended to have the broadest possible meaning, including but not limited to emails, video recordings, computer programs, computer code, and all "writings," "recordings," or "photographs," as defined in Rule 1001 of the Federal Rules of Evidence.

D. "Communications" means any oral, written, or electronic transmission of information, including, but not limited to meetings, discussions, conversations, telephone calls, memoranda, letters or correspondence, e-mails, telegrams, telexes, conferences, seminars, messages, notes or reports.

E. "Person" includes any natural person, firm, association, organization, partnership, business, trust, corporation, governmental or public entity or any other form of legal entity.

F. "Relating to" and "Relate(s) to" mean constituting, containing, concerning, consisting, embodying, reflecting, identifying, stating, mentioning, discussing, describing, comprising, evidencing, referring to, pertaining to, dealing with, or having any logical or factual connection whatsoever with that subject or in any other way being relevant to the given subject matter, regardless of whether the connection is favorable or adverse to you.

G. "Complaint" shall refer to the Complaint filed in the above-captioned case on May 1, 2006.

H. "Action" shall refer to the above captioned case.

I. Any reference to any other entity means, without limitation, that entity and any of its predecessors, successors, parent entities, subsidiaries, affiliates, partners, officers, directors, agents, attorneys, and employees.

II. Instructions

A. In producing Documents and things, you are requested to furnish all Documents or things in your possession, custody or control, or known or available to you, regardless of whether those Documents or things are possessed directly by you or your agents, officers, directors, employees, representatives or investigators, or by your attorneys or their agents, employees, representatives or investigators. To the extent that Documents requested below are not produced because they are not in your possession, custody or control, please disclose all information known to you that may lead to the production of those Documents.

B. If you claim that the attorney-client privilege or any other privilege or protection is applicable to any Document, with respect to that Document: (a) state the date of the Document; (b) identify each and every author of the Document and every other person who prepared or participated in the preparation of the Document; (c) identify each and every person who received the Document; (d) state the present location of the Document and all copies thereof; (e) identify each and every person having custody or control of the Document

and all copies thereof; and (f) provide sufficient further information concerning the Document to explain the claim of privilege and permit adjudication of the propriety of that claim.

C. If a demand calls for the production of a document which has been destroyed, placed beyond Responding Party's possession, custody, or control, or otherwise disposed of, with respect to each such document: (a) state the author of the document; (b) state the addressee, if any, and those persons, if any, specified in the document to receive a copy thereof, as well as all known recipients of the document; (c) state the title of the document, if any; (d) state the type of the document (e.g., email, minutes, letter, memorandum, chart, report, handwritten notes); (e) state the date on which the document was prepared; (f) state the date on which the document was sent or received by any Responding Party, as the case may be; (g) identify all persons to whom the substance of the document was transmitted, or who saw such document, and under what circumstances; (h) state the present or last known locations of the document, if not destroyed; and (i) state the name, title, home and business address, and home and business telephone number, of the current or last known custodian of the document;

D. This request for production is continuing so as to require supplemental production pursuant to applicable procedural rules. If, after making your initial production, you or any person acting on your behalf obtains varying or additional information or Documents called for by the requests, all such original information and Documents shall be made available to counsel serving this subpoena.

E. "And" as well as "or" shall be construed disjunctively or conjunctively so as to bring within the scope of each demand all documents that otherwise might be construed to be outside of its scope.

F. "Any" as well as "all" shall each be understood to mean "any and all" so as to bring within the scope of each demand all documents that otherwise might be construed to be outside of its scope.

G. Each category of documents or other tangible things demanded herein shall be construed independently and shall not be limited by reference to any other such category.

H. The past tense shall be construed as the present tense or the future tense, the present tense as the past or the future tense, and the future tense as the present or past tense, so as to bring within the scope of each demand all documents that might otherwise be construed to be outside its scope.

I. The singular tense shall be construed as the plural and the plural as the singular so as to bring within the scope of each demand all documents that otherwise might be construed to be outside its scope.

J. Each demand requires the production of documents and other materials in the same form and in the same order in which they existed prior to production. Documents are to be produced in the boxes, file folders, bindings, or other containers in which the documents are found or the information is stored. The title, labels or other descriptions of the boxes, file folders, binders or other containers are to be left intact.

III. Categories of Documents Requested

1. All billing records and time entries reflecting work performed in connection with this Action or any other action in which you (or any of your employees, principals or agents) were the plaintiff.

2. All documents relating to the decision to file this action or any action in which you (or any of your employees, principals or agents) were the plaintiff.

3. All transcript(s) of any deposition or other sworn testimony given by you (or any of your employees, principals, agents or clients) in any action asserting claims under the Ohio Consumer Sales Practices Act ("CSPA") or under any other consumer-protection related act, statute or rule.

4. All documents relating to the registration by you, or anyone acting on your behalf, of any and all email addresses used by you, or anyone acting on your behalf, at any time during the last five years, including without limitation communications relating to such registrations.

5. All documents relating to any investigation performed by you, or anyone acting on your behalf, concerning the allegations in the Complaint.

6. All documents relating to any efforts made by you, or anyone acting on your behalf, to elicit e-mail communications relating to consumer transactions or potential consumer transactions.

7. All communications concerning any email(s) sent by or on behalf of VCES, including all emails or other correspondence sent or received by you to or from VCES and/or any of its subsidiaries.

8. All documents relating to any effort(s) by you, or anyone acting on your behalf, to subscribe, sign up or register on any website to receive any product or service since January 1, 2004, including any and all communications relating to such effort(s).

9. All documents relating to your analysis of any claim(s) or potential claim(s) in connection with any action or potential action in which you (or any of your employees, principals or agents) were the plaintiff or considered being a plaintiff, including any claim(s) or potential claim(s) under the CSPA in connection with mass email marketing or advertising practices.

10. All documents relating to or constituting any litigation files in any action that alleges violations of the CSPA or any other consumer protection-related act, rule or statute, and in which you (or any of your employees, principals or agents) were plaintiff or counsel.

11. All documents sufficient to identify the name, case number and claims asserted in any case or litigation filed by you, either as plaintiff or counsel, in the last five years.

12. All documents relating to any communication or notification with or to any Internet Service Provider or email account provider relating to any email(s) sent to you by or on behalf of VCES.

13. All documents relating to any website believed to be owned and/or generated by VCES, including without limitation documents relating to any effort(s) by you to access any such website and any "evidence gathered and preserved for use" in this Action that was obtained from any such website.

14. All documents relating to or constituting any analyses, research, communications and/or memoranda concerning mass email marketing practices.

15. All documents relating to or constituting any articles or other publications concerning the practices at issue in this Action.

16. All emails sent or received by you relating to or confirming any request by you to be removed or "unsubscribed" from any email list or group.

17. All analysis or other documents relating to the volume of emails received by you at any time between January 1, 2004 and the present.

18. All documents relating to or constituting any "research" concerning the practices at issue in this Action.

19. All documents relating to or constituting any retainer or fee agreements you have or have had with John W. Ferron at any time.

20. All documents relating to or constituting any communications you have had with anyone regarding this Action or regarding the subject matter of this Action.

21. All communications concerning any attempt by you to solicit potential clients as plaintiffs in consumer protection-related lawsuits, including any advertisement(s) you have placed in connection therewith.

22. All documents relating to each and every website you have visited since January 1, 2003 at which you provided an e-mail address.

23. All documents relating to, referring to, or constituting any decisions filed with the Attorney General and kept in the Public Information File that you have collected, copied, or reviewed.

24. All documents sufficient to identify any and all persons employed by you to assist in the investigation and/or prosecution of any lawsuit or potential lawsuit under the CSPA.

25. All documents relating to any software installed, implemented, or otherwise used by you for the purpose of screening, blocking, filtering, or otherwise managing e-mail, including the configuration of any such software, including but not limited to communications concerning the implementation of filters on any of your email accounts or any documents or communications concerning any decision not to implement such filters for any reason.

26. All documents relating to or referring to Jaco Ferroni.

27. All documents relating to or referring to Beverly Farlow.

28. All documents relating to or referring to Julie Klusty.

29. All documents relating to or referring to Bob Sherminhizzer.

30. All documents relating to any computer virus that infected any computer used, owned, or operated by you since January 1, 2003.

31. All documents relating any policies or practices in place at Ferron & Associates at any time since January 1, 2003 regarding the use of computers, e-mail, or the internet.

32. All documents sufficient to identify any and all current and former employees (including part-time or temporary employees) of Ferron & Associates since January 1, 2003.

33. Please produce or make available for forensic inspection any and all computers from which you have sent or received e-mail since January 1, 2003.

34. Please produce or make available for forensic inspection any and all media, including flash drives, hard drives, servers, or backup tapes on which e-mails sent to or from you since January 1, 2003 have been stored.

35. All written or recorded statements concerning this action or its subject matter previously made by you.

36. All documents including invoices evidencing payments made by you or your agents for the establishment, use, or other maintenance of all email addresses used by you.

37. All invoices and payments made by you in the last 12 months to any internet service providers used by you.

38. All demand letters sent by you or on your behalf in the past five years relating to email or internet marketing.

39. All documents filed by you in any judicial, administrative, or legislative proceeding in the past five years pertaining to commercial email.

40. All documents which pertain to websites to which you or anyone on your behalf have registered for any reason in the past five years.

41. All documents which pertain to statements by you made in either electronic (eg. websites, chat boards, etc.) or print media concerning the use of commercial email, including any articles, books, or publications authored or edited by you.

42. All documents which pertain to lists used by you to distribute communications (whether disseminated by facsimile, mail, or email) regarding commercial emails, your website, or your litigation and related activities against senders and/or advertisers of commercial email.

43. All documents which pertain to sanctions imposed by a Court on you.

44. All documents related to any anti-spam organizations, discussion groups, or chat boards of which you are a member.

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