

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

JOHN W. FERRON,

Plaintiff,

v.

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

Defendants.

CASE NO. 2:06-CV-322

JUDGE Frost

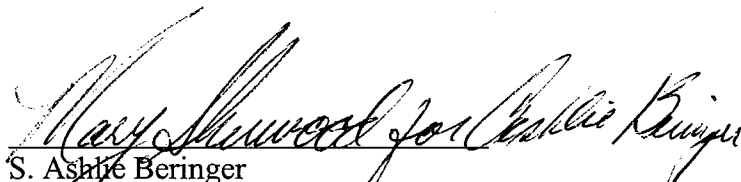
Magistrate Judge Abel

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of July, 2007, I had deposited in the U.S. mail, first-class postage prepaid, a true and correct copy of the Subpoena to Ferron & Associates, properly addressed to:

Lisa A. Wafer, Esq.
Jessica G. Fallon, Esq.
Ferron & Associates
580 N. Fourth Street, Suite 450
Columbus, OH 43215-2125

Hugh J. Bode, Esq.
Alan B. Parker, Esq.
Robert S. Yallech, Esq.
Reminger & Reminger Co LPA
1400 Midland Building
101 Prospect Avenue West
Cleveland, OH 44115-1093


S. Ashlie Beringer
Gibson, Dunn & Crutcher LLP
1801 California Street, #4200
Denver, CO 80202
303-298-5700

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 Sutter, O'Connell & Farchione 3600 Erievew Tower 1301 East 9th Street Cleveland, Ohio 44114	DATE AND TIME September 27, 2007 9:00 am
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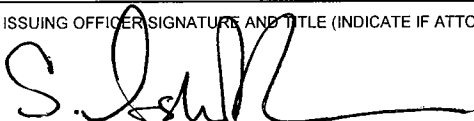
YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects): Please see Exhibit A.

PLACE	DATE AND TIME
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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'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)  Attorney(s) for Defendant VC E-Commerce Solutions, Inc.	DATE 7-07-07
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ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER Ashlie Beringer, GIBSON, DUNN & CRUTCHER LLP 1801 California Street, Suite 4200 Denver, CO 80202-2641 (303) 298-5718

PROOF OF SERVICE

DATE	PLACE
SERVED	
SERVED ON (PRINT NAME)	MANNER OF SERVICE
SERVED BY (PRINT NAME)	TITLE

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	
DATE	SIGNATURE OF SERVER
	ADDRESS OF SERVER

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 provide deposition testimony, pursuant to the following definitions and instructions, at the time and place set forth on the subpoena. Pursuant to Federal Rule of Civil Procedure 30(b)(6), you have a duty to designate one or more officers, directors, or managing agents, or other persons to testify as to matters known or reasonably available to you.

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, teletypes, 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.

J. "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.

K. "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.

L. 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.

M. 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.

III. Deposition Topics

1. Your document retention policies.
2. Your relationship(s) to and with Ferron, including but not limited to Ferron's role(s) as your client, partner, president, employee, employer, agent, attorney, and/or stakeholder.
3. Any actions in which you represented a plaintiff or plaintiffs (including but not limited to Ferron) in connection with alleged violations of Ohio consumer protection laws, including but not limited to the circumstances of your retention, the services you provided, and the outcome and/or status of each such action.
4. Any actions in which you are or were a plaintiff or a defendant, including who provided legal services to you in connection with those actions.
5. 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.
6. Any investigation performed by you, or anyone acting on your behalf, concerning the allegations in the Complaint.
7. Any efforts made by you, or anyone acting on your behalf, to elicit and/or avoid receiving e-mail communications relating to consumer transactions or potential consumer transactions.
8. 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.

9. 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).
10. 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, including but not limited to Ferron) 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.
11. Any effort(s) by you to access any website believed to be owned and/or generated by VCES.
12. Any communications you have had with anyone regarding this Action or regarding the subject matter of this Action.
13. 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.
14. 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.
15. Your knowledge of and/or relationship with:
 - a. Jaco Ferroni
 - b. Beverly Farlow
 - c. Julie Klusty
 - d. Bob Sherminhizzer.

16. Any computer virus that infected any computer used, owned, or operated by you since January 1, 2003.
17. Any 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.
18. All documents, facts, circumstances and events relating to the subjects addressed in paragraphs 1-17, including but not limited to the documents produced by you in response to VCES's subpoena served June 22, 2007.