

plaintiffs/counterclaim defendants Trademark Properties, Inc. and Richard C. Davis (together, "Plaintiffs") to fully address outstanding discovery matters which Defendants have tried unsuccessfully to resolve on consent. Because Plaintiffs' noncompliance has taken us to the end of the discovery period, necessitating entry of a new scheduling order in any event, Defendants have styled this motion as a motion for entry of a Fourth Amended Scheduling Order rather than as a motion to compel (which in substance it also is). In support of this motion and in accordance with Local Rule 7.04, Defendants show the Court as follows:

DEPOSITION OF MARK HALLORAN

1. On or about December 14, 2007, Plaintiffs identified Mark Halloran as an expert witness.
2. On or about January 10, 2008, Defendants noticed the deposition of Mr. Halloran to take place on January 31, 2008, and requested the production of documents by Mr. Halloran. See Notice of Deposition of Mark Halloran, Subpoena to Mark Halloran, and letter from Robert Jordan to Frank Cisa dated January 10, 2008, collectively attached hereto as Exhibit A.
3. Subsequent to receiving this notice, Plaintiffs' attorney informed Defendants' attorney that Mr. Halloran's deposition could not go forward as scheduled due to conflicts. Despite numerous requests by email and telephone for Mr. Halloran's available dates and for his documents, Plaintiffs have yet to provide Defendants with dates on which Mr. Halloran's deposition may take place, nor have they produced Mr. Halloran's documents.

4. As set forth in the attached proposed Fourth Amended Scheduling Order, defendants request that this Court order Plaintiffs to provide Defendants with suitable dates for the deposition of Mr. Halloran and with his documents.

DEPOSITION OF WILLIAM CAMPBELL

5. On or about January 25, 2008, Richard Davis identified Billy Campbell as a third-party witness during his continued deposition. See Transcript of Continued Deposition of Richard C. Davis dated January 24, 2008, page 43, line 22, attached hereto as Exhibit B.

6. On or about February 5, 2008, Defendants noticed the deposition of Mr. Campbell to take place on February 20, 2008. See Subpoena and letter of Robert Jordan to William Campbell dated February 5, 2008; Notice of Deposition of William Campbell and letter of Robert Jordan to Frank Cisa dated February 6, 2008, collectively attached hereto as Exhibit C.

7. Subsequent to receiving this notice, Plaintiffs' attorney advised Defendants' attorney that he had a scheduling conflict and the deposition was postponed.

8. On or about February 13, 2008, Defendants re-noticed this deposition for March 11, 2008. See Subpoena and letter of Robert Jordan to William Campbell dated February 13, 2008; Amended Notice of Deposition of William Campbell and letter of Robert Jordan to Frank Cisa dated February 13, 2008, collectively attached hereto as Exhibit D.

9. On or about February 27, 2008, Mr. Campbell notified Defendants that he had a scheduling conflict and is currently traveling extensively in China and other locations. The parties are attempting to reschedule this deposition, but have been unable to obtain new dates from Mr. Campbell. See E-Mail from Billy Campbell to Nelson Mullins dated February 27, 2008, attached hereto as Exhibit E.

10. As set forth in the attached proposed Fourth Amended Scheduling Order, Defendants request this Court permit the taking of Mr. Campbell's deposition on or before May 16, 2008.

CONTINUED DEPOSITION OF THOMAS WHALEY

11. On or about March 21, 2007, Defendants deposed Thomas Whaley. Whaley briefly acted as Plaintiff Davis' lawyer during certain business negotiations relevant to the case. During the deposition, Plaintiffs' counsel made several objections based on the attorney-client privilege and instructed Mr. Whaley not to answer. Mr. Whaley is not represented by Plaintiffs' counsel. Nevertheless, Mr. Whaley followed Plaintiffs' counsel's advice and refused to answer after objections were made. Defendants' counsel reserved his right to compel Mr. Whaley's responses.

12. Since Mr. Whaley's deposition, he has indicated a willingness to answer the questions previously objected to if he receives the consent of the plaintiffs. Plaintiffs' counsel has indicated in conversations with Defendants' counsel that Plaintiffs would so consent and agree to the re-opening of Mr. Whaley's deposition. Nevertheless, Mr. Whaley states in a letter to Defendants' counsel that he has not received Plaintiffs'

consent in writing. See Letter of Thomas Whaley to Robert Jordan dated January 21, 2008, attached hereto as Exhibit F.

13. As set forth in the proposed Fourth Amended Scheduling Order, Defendants request that counsel for the Plaintiffs be ordered to communicate with Mr. Whaley regarding Plaintiffs' consent and notify Defendants' counsel whether or not Mr. Whaley will appear for a re-opened deposition. Defendants further request that, if Plaintiffs refuse to consent, Defendants be allowed to make a motion to compel with respect to the attorney-client privilege issues raised in Mr. Whaley's deposition.

PRODUCTION OF DOCUMENTS IDENTIFIED BY PLAINTIFFS IN
RECENT DEPOSITIONS

14. On or about January 31, 2008, Defendants' attorney wrote to Plaintiffs' attorney seeking additional documents responsive to Defendants' requests for production and identified during the January 24 and January 25, 2008 continued depositions of Mr. Davis, Ginger Alexander, and Trademark Properties. To date, Plaintiffs have not produced any of these documents to Defendants. See Letter of Richard Farrier to Frank Cisa dated January 31, 2008, attached hereto as Exhibit G.

15. As set forth in the attached proposed Fourth Amended Scheduling Order, defendants request this Court order Plaintiffs to fully respond to the Defendants' request on or before April 14, 2008.

PRODUCTION OF PHONE RECORDS

16. Defendants filed a previous motion to compel on November 30, 2007. The motion to compel raised, in part, Plaintiff's failure to produce telephone records responsive to requests for production. Prior to a hearing on Defendant's motion to compel, Plaintiff's attorney wrote to Defendants' attorney on January 14, 2008 and stated Plaintiffs expected to obtain the phone records and would forward these records to Defendants. See Letter of Frank Cisa to Robert Jordan dated January 14, 2008, attached hereto as Exhibit H.

17. On or about January 28, 2008, Plaintiffs merely provided Defendants with the account numbers of the phone records at issue rather than providing the actual phone records. See Email of Frank Cisa to Robert Jordan dated January 28, 2008, attached hereto as Exhibit I. Plaintiffs claimed they were unable to obtain the phone records from their carriers.

18. On or about January 29, 2008, Defendants issued subpoenas to the phone companies for the account records as identified by the Plaintiffs. See Subpoenas and Letters of Robert Jordan to NuVox Communications and Sprint Nextel dated January 29, 2008, attached collectively hereto as Exhibit J. Defendants obtained these records from both companies on or about March 5, 2008.

19. Defendants served Plaintiffs with Defendants' Second Set of Interrogatories regarding the information obtained from the phone records. See Second

Set of Interrogatories of Defendant/Counterclaim Plaintiff to Plaintiffs/ Counterclaim Defendants dated March 13, 2008, attached hereto as Exhibit K.

20. As set forth in the attached proposed Fourth Amended Scheduling Order, defendants request that Plaintiffs be ordered to answer the interrogatories as the delay in serving these interrogatories was the result of plaintiff's failure to timely produce the phone records.

CONSULTATION

21. In addition to the attached letters and above-referenced telephone calls, on or about March 12, 2008, Defendants' attorney wrote to Plaintiffs' attorney regarding the joint submission of the attached proposed Consent Fourth Amended Scheduling Order, but to date has received no response. See Email of Robert Jordan to Frank Cisa enclosing proposed Fourth Amended Scheduling Order, attached hereto as Exhibit L.

22. Based on the above facts and attached exhibits, Defendants respectfully request that this Honorable Court enter the attached proposed Fourth Amended Scheduling Order.

23. In addition, Defendants request that Plaintiffs be required to pay the amount of reasonable expenses incurred in obtaining the Order, including reasonable attorneys' fees and travel time to the hearing of this motion.

As evidenced by the attached exhibits and in accordance with Local Rule 7.02, the undersigned counsel has unsuccessfully attempted to resolve this matter prior to filing this motion.

Respectfully submitted,

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March 14, 2008
Charleston, South Carolina