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Attorneys for Defendants

Akanoc Solutions, Inc.,

Managed Solutions Group, Inc.

and Steve Chen

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

LOUIS VUITTON MALLETTIER, S.A.,

Plaintiff,

vs.

AKANOC SOLUTIONS, INC., et al.,

Defendants.

) Case No.: C 07-3952 JW (HRL)

) **DEFENDANTS' MOTION FOR**
) **ADMINISTRATIVE RELIEF FOR**
) **LEAVE TO FILE MOTIONS IN**
) **LIMINE #16 AND #17**

1 Pursuant to Civil L.R. 7-11,¹ Defendants Managed Solutions Group, Inc., Akanoc Solutions,
 2 Inc. and Steve Chen (“Defendants”) respectfully submit this motion for administrative relief for an
 3 order granting leave to file their Motion in Limine #16 to preclude Vuitton from referring to “willful
 4 blindness” during opening statements and their Motion in Limine #17 to Exclude Vuitton’s Exhibits
 5 Numbered 619 and 620 and Expert Testimony About Actions Taken After Deposition.

6 This motion for administrative relief is required because the Court’s June 5, 2009 deadline
 7 for filing motions in limine has passed and because the Court has no available motion hearing dates
 8 remaining prior to the trial, making it impossible for Defendants to file a motion for leave to file its
 9 additional motion in limine pursuant to Northern District Civil Local Rule 7-2.

10 Good cause for Defendants’ motion for administrative relief exists because (1) opening
 11 statements are limited to a statement of facts or evidence that the parties intend or in good faith
 12 expect to prove. ‘Willful blindness’ is not evidence; it is a legal conclusion to be drawn from the
 13 evidence. Any reference thereto during opening statements would necessarily constitute improper
 14 legal argument because it would instruct the jury about what the law requires and infringe on the
 15 province of the District Court to instruct the jury on the law, (2) the issue of whether use of “willful
 16 blindness” during opening statements is proper is an urgent matter that must be determined by the
 17 Court prior to the inception of trial, (3) the issue of website usage allegedly discussed in Vuitton’s
 18 exhibits no. 619 and 620 is an urgent matter that relates to core elements of Vuitton’s claims, (4)
 19 Vuitton’s exhibits no. 619 and 620 contradict the deposition testimony of Vuitton’s expert witness,
 20 (5) Defendants were unable to file motion in limine #16 by the Court’s deadline of June 5, 2009
 21 because Vuitton did not inform defendants that it intended to reference ‘willful blindness’ during
 22 opening statements until August 4, 2009² and prior to that time, Vuitton’s counsel admitted he was

23 _____
 24 ¹Defendants contacted plaintiff’s counsel via e-mail on August 4, 2009, requesting that plaintiff
 25 stipulate to the filing of this motion for administrative relief for leave to file its Motion in Limine
 26 #16. Plaintiff’s counsel refused to stipulate to the filing of this motion. Declaration of James A.
 27 Lowe (“Lowe Decl.”) ¶ 8. Defendants contacted plaintiff’s counsel via phone on August 11, 2009,
 requesting that plaintiff stipulate to the filing of this motion for administrative relief for leave to file
 its Motion in Limine #17. Plaintiff’s counsel refused to stipulate to the filing of this motion. Lowe
 Decl. ¶ 10.

²Lowe Decl. ¶ 6.

1 not planning to discuss “willful blindness” during Vuitton’s opening statement³ and (6) Defendants
2 were unable to file motion in limine #17 by the Court’s deadline of June 5, 2009 because Vuitton did
3 not produce their exhibits no. 619 and 620 to Defendants until August 10, 2009.⁴

4 Granting this motion will expedite the trial of this matter because it allows resolution of
5 evidentiary objections that would otherwise have to be raised during the trial. Advance resolution of
6 these issues will benefit the jury, the Court and the trial preparation of both parties.

7 **I. CONCLUSION**

8 Defendants respectfully request that the Court enter an order granting Defendants leave to
9 file their Motion in Limine #16 to preclude Vuitton from referring to “willful blindness” during
10 opening statements and Motion in Limine #17 to Exclude Vuitton’s Exhibits Numbered 619 and 620
11 and Expert Testimony About Actions Taken After Deposition.

12
13 Dated: August 11, 2009

GAUNTLETT & ASSOCIATES

14
15 By: /s/James A. Lowe

16 David A. Gauntlett
17 James A. Lowe
18 Brian S. Edwards
19 Christopher Lai

20 Attorneys for Defendants
21 Akanoc Solutions, Inc.,
22 Managed Solutions Group, Inc.,
23 and Steve Chen
24
25
26

27 ³Lowe Decl., ¶ 5.

28 ⁴Lowe Decl., ¶ 9.