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 20 FORTIER

21 **UNITED STATES DISTRICT COURT**  
 22 **NORTHERN DISTRICT OF CALIFORNIA**

23 VIVOTEK USA, INC., a California  
 24 corporation,

25 Plaintiff,

26 v.

27 4XEM CORPORATION, INC.,  
 28 incorporated under the laws of Canada; and  
 JOHN FORTIER, an individual, doing  
 business as 4XEM USA,

Defendants.

CASE NO. CV 13-04452 PSG

**JOINT CASE MANAGEMENT  
 STATEMENT AND ~~PROPOSED~~ ORDER**

Date: January 28, 2014

Time: 10:00 a.m.

Dept.: 5

Judge: Hon. Paul S. Grewal

1 The parties to the above-entitled action jointly submit this JOINT CASE  
2 MANAGEMENT STATEMENT AND [~~PROPOSED~~] ORDER pursuant to the Standing Order  
3 for All Judges of the Northern District of CA, dated July 1, 2011 and Civil Local Rule 16-9.

4 1. Jurisdiction & Service

5 This Court has jurisdiction over this action under 28 U.S.C. § 1332 because there is  
6 diversity of citizenship and the matter in controversy exceeds, exclusive of interests and costs,  
7 the sum of \$75,000. Plaintiff Vivotek USA, Inc. (“Plaintiff”) is a California corporation, having  
8 its principle place of business located at 2050 Ringwood Avenue, San Jose, CA 95131.  
9 Defendant 4XEM Corporation, Inc. (“4XEM CANADA”) is a business entity incorporated under  
10 the laws of Canada, having its principle place of business at 17 Easton Road, Unit 6, Brantford,  
11 Ontario N3P 1J4, Canada. Defendant John Fortier is not a citizen or resident of California. He  
12 is a citizen of Ontario, Canada, and Plaintiff alleges (and Defendants deny) that Mr. Fortier is  
13 also a citizen of Nevada.  
14

15 Defendant 4XEM CANADA was served with the summons and complaint on December  
16 4, 2013. 4XEM CANADA answered the complaint on December 24, 2013. Plaintiff alleges that  
17 valid service was made on Defendant Fortier on October 9, 2013. No timely response to this  
18 service was received, and a default was taken on November 15, 2013. Fortier subsequently filed  
19 a motion to set aside default on December 24, 2013. Fortier contests that he was validly served.  
20 The motion was not opposed and will come on for a hearing on January 28, 2014. No additional  
21 parties remain to be served.

22 2. Facts

23 Plaintiff has alleged the following factual background. Plaintiff develops, manufactures  
24 and sells video surveillance security equipment and related equipment and software. These  
25 products are sold through a world-wide network of authorized distributors. Defendants are  
26 resellers of surveillance and other electronics products. Through June, 2013, Defendants were  
27 authorized distributors of Plaintiff’s products. During that period, Defendants placed purchase  
28 orders for Plaintiff’s products. Pursuant to those purchase orders Plaintiff provided Defendants

1 with shipments of products. Within the past 2 years, Defendants made payments in the  
2 aggregate amount of \$262,497.95 towards the accounts receivable incurred under their purchase  
3 orders with Plaintiff. After application of payments, Defendants have an unpaid balance of  
4 \$314,008.46 due and owing to Plaintiff. Plaintiff has demanded repayment of this balance.  
5 Defendants have failed and refused to pay this sum, and the amount of \$314,008.46 remains due  
6 and owing to Plaintiff, exclusive of interest.

7 Through June, 2013, Defendants were authorized to make certain consignment sales of  
8 Plaintiff's products whereby Defendants would arrange for the sale of Plaintiff's products to a  
9 third party, the third party would pay Plaintiff directly for these products, and Plaintiff would  
10 then pay Defendants a percentage thereof. One such third party was Ingram Micro, a technology  
11 distribution company. In or about February, 2013, Plaintiff shipped certain products to Ingram  
12 Micro on behalf of Defendants. In violation of their consignment agreement with Plaintiff,  
13 Defendants received payment directly from Ingram Micro. The portion of this sale that would  
14 have been retained by Plaintiff, less the payment that would have been made to Defendants, is  
15 \$67,712. Plaintiff has demanded payment of this balance. Defendants have failed and refused to  
16 pay this sum, and the entire amount remains due and owing to Plaintiff, exclusive of interest.

17 Defendant 4XEM CANADA has denied the principal allegations of the complaint (while  
18 acknowledging that 4XEM CANADA and Plaintiff had a business relationship). If the  
19 unopposed motion to set aside the default as to Mr. Fortier is granted, Mr. Fortier will deny the  
20 principal allegations of the complaint.  
21

22 3. Legal Issues

23 The parties do not anticipate any novel or particularly complicated legal issues at this  
24 stage. Plaintiff's complaint raises claims for breach of contract, common counts, quantum  
25 valebant and conversion. These issues will be largely decided based on the facts of the matter.  
26 Although Defendant believes that certain of the claims are not properly pleaded, neither Plaintiff  
27 nor Defendants believe there will be any significant dispute regarding legal issues.  
28

1 4. Motions

2 *Pending Motions:*

3 Defendant Fortier’s motion to set aside default: Mr. Fortier filed the motion on  
4 December 24, 2013. Plaintiff did not respond. Mr. Fortier filed a brief “reply” on January 14,  
5 2014. The motion is set for hearing on January 28, 2014.

6 *Plaintiff’s Anticipated Motions:*

7 Plaintiff anticipates possibly filing a motion for summary judgment and a motion for  
8 right to attach order and writ of attachment. However, discovery and pre-trial motions may be  
9 filed as needed.

10 *Defendants’ Anticipated Motions:*

11 Defendant may file a motion for summary judgment or for partial summary judgment.

12 5. Amendment of Pleadings

13 The parties do not anticipate any specific amending of the pleadings at this time.

14 6. Evidence Preservation

15 The parties certify that they have reviewed the Guidelines Relating to the Discovery of  
16 Electronically Stored Information. The parties further certify that they have met and conferred  
17 pursuant to F.R.C.P. 26(f).

18 7. Disclosures

19 The parties have complied with the initial disclosure requirements of F.R.C.P. 26.  
20 Counsel for Plaintiff and Defendants completed an initial document exchange on January 13,  
21 2014. The parties are in the process of reviewing the documents disclosed as part of this initial  
22 document exchange, but anticipate that upon the completion of such a review each side will be  
23 deemed to be in compliance with the initial disclosure requirements.

24 8. Discovery

25 No discovery has been taken to date. The parties anticipate propounding written  
26 discovery and taking the depositions of, including but not limited to, the corporate  
27 representatives of Plaintiff, Defendant 4XEM CANADA, and individual defendant Fortier.  
28

1 9. Class Actions

2 No class action certification is anticipated in this matter.

3 10. Related Cases

4 There are no related cases.

5 11. Relief

6 Plaintiff is claiming damages in the sum of \$381,720, or as according to proof. These  
7 damages are calculated as per the statement of facts, above, and as described in Plaintiff's  
8 complaint. Plaintiff is also claiming all applicable interest, costs of suit, attorneys' fees, punitive  
9 damages, and all other and further relief as the court may deem just and proper.

10 Defendants contest liability, and contest the amount of damages alleged, should liability  
11 be established.

12 12. Settlement and ADR

13 It is anticipated that written discovery will provide a basis from which the parties can  
14 explore settlement. The parties anticipate pursuing mediation, or some other mutually agreeable  
15 form of ADR, after initial written discovery proceeds.

16 13. Consent to Magistrate Judge For All Purposes

17 All parties consent to have a magistrate judge conduct all further proceedings, including  
18 trial and entry of judgment.

19 14. Other References

20 Not applicable.

21 15. Narrowing of Issues

22 The parties anticipate that certain issues in this matter may be suitable for narrowing,  
23 either through agreement or motion, following the completion of written discovery.

24 16. Expedited Trial Procedure

25 Not applicable.

26 17. Scheduling

27 The parties propose the following pretrial schedule:  
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CASE MANAGEMENT ORDER

The above JOINT CASE MANAGEMENT STATEMENT AND [~~PROPOSED~~] ORDER is approved as the Case Management Order for this case and all parties shall comply with its provisions.

IT IS SO ORDERED.

Dated: September 3, 2014

*Paul S. Grewal*  
MAGISTRATE JUDGE PAUL S. GREWAL