

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action no. 06-CV-01726-LTB-CBS

INTERNET ARCHIVE

Plaintiff and Counterclaim Defendant

v.

SUZANNE SHELL

Defendant and Counterclaim Plaintiff and Third Party Plaintiff

v.

BREWSTER KAHLE - an individual

RICK PRELINGER - an individual

KATHLEEN BURKE - an individual

Third Party Defendants

FILED
UNITED STATES DISTRICT COURT

JAN - 4 2007

GREGORY C. LANHAM

**DEFENDANT SHELL'S VERIFIED UNOPPOSED MOTION TO AMEND
SCHEDULING ORDER**

I am the Defendant and Counterclaim Plaintiff and Third Party Plaintiff Suzanne Shell, bringing this motion to Amend the Scheduling Order for cause, and in support thereof I state the following under the penalty of perjury:

1. I conferred with opposing counsel and they do not oppose this motion.
2. Opposing counsel and I disagree on the amendments which need to be made on the Scheduling Order. The errors and misrepresentations on this Order as submitted by opposing counsel are so egregious, and compromise my legal interests so seriously, that I felt it was imperative to bring this to the attention of This Honorable Court immediately.
3. I was not provided with the opportunity to review the final version of the Scheduling Order before my signature was affixed to it and it was signed by opposing counsel, Kenneth B. Wilson, and filed with this court.

Shell's Verified Motion to Amend Scheduling Order 06-CV-01726-LTB-CBS

2

4. I did not authorize my signature to be affixed to the Scheduling Order as it was submitted to this court by opposing counsel.

5. I was also not provided with a copy of the Scheduling Order as it was filed with this court by opposing counsel.

6. I conferred with Lila Bailey regarding the information to be included on the Scheduling Order. She advised me she was making some changes after I submitted my changes to her, and that Perkins Coie was rejecting some of my changes. I made myself available to review the changes on the document as soon as it was sent to me so it could be timely filed. I stayed at my computer until after 9 pm. I also advised her that I hoped she could understand my reluctance to have my signature affixed to a document that I had not reviewed. I received no response to this concern.

7. Opposing counsel never provided me with a copy reflecting Internet Archive's changes nor what changes of mine it was rejecting, even after filing it with the court. Furthermore, opposing counsel did not include items which I wanted included in the Order and materially changed the document without my knowledge or consent. I only discovered the content of the document by logging on to my PACER Internet account and paying for a download of it.

8. Errors, omissions and unauthorized changes in this document include:

a. The Scheduling Order falsely reflects that I agree to a trial to the Court. I never authorized this. I made a jury demand on every Answer & Counterclaim & Third Party Claim document I filed with the court in California and the court in Colorado. I have never waived my demand for a jury trial. I advised Ms. Bailey during our conferences on this document that the trial was to be to a jury. Opposing counsel misrepresented this important information in the Scheduling

Order.

b. I disputed that I ‘repeatedly’ threatened to sue Internet Archive as stated in ¶4, Undisputed Facts and wanted it removed. Opposing counsel did not remove this misrepresentation from the document. I want the “Undisputed Facts” changed to reflect that I sent a cease and desist demand and a demand for payment to Internet Archive when I discovered it had copies of my web site on its Wayback Machine.

c. I wanted included in ¶4, Undisputed Facts, that Internet Archive copied my web site, as it included this admission in ¶ 3a of its Statement of Claims and Defenses. Opposing counsel refused to include this undisputed fact in the Scheduling Order.

d. I wanted included in ¶4, Undisputed Facts, that Internet Archive stored a copy of my web site, as it included this admission in ¶ 3a of its Statement of Claims and Defenses. Opposing counsel refused to include this undisputed fact in the Scheduling Order.

e. I want included in ¶4, Undisputed Facts, that Internet Archive made my web site available for distribution and display as it included this admission in ¶ 3a of its Statement of Claims and Defenses. Opposing counsel refused to include this undisputed fact in the Scheduling Order.

f. I wanted included in ¶4, Undisputed Facts, that Internet Archive performed the aforementioned copying without seeking or obtaining my express permission, as it included this admission in ¶ 3a of its Statement of Claims and Defenses. Opposing counsel refused to include this undisputed fact in the Scheduling Order.

g. I wanted included in ¶4, Undisputed Facts, that Internet Archive performed the aforementioned copying without paying license or use fees for the copying and refused to pay license

or use fees, as it included this admission in ¶ 3a of its Statement of Claims and Defenses. Opposing counsel refused to include this undisputed fact in the Scheduling Order.

h. I wanted included in ¶4, Undisputed Facts, that I am the owner and author and copyright holder of the web site www.profane-justice.org , as Internet Archive admits in ¶3a of its Statement of Claims and Defenses that it honored my demand to remove the web site from its Wayback Machine, which compliance with my demand expressly acknowledges that it recognizes me as the legitimate copyright owner of that web site. This fact is also admitted to by virtue of the fact that Internet Archive sued me, and not anyone else, for Declaratory Relief for Copyright Non-Infringement. Opposing counsel refused to include this undisputed fact in the Scheduling Order.

9. I intended to advise opposing counsel to include the following on the Scheduling Order when I received it from opposing counsel for approval, which I never received:

a. e. Deposition Schedule: Ms. Shell intends to Depose Internet Archive, Kahle, Burch and Prelinger on or about April 18-23, 2007.

b. f. Interrogatory Schedule: Ms. Shell intends to serve her first set of interrogatories on Internet Archive, Kahle, Burch and Prelinger on or about February 1, 2007

c. g. Schedule for Request for Production of Documents: Ms. Shell intends to serve her first request for production of documents on Internet Archive, Kahle, Burch and Prelinger on or about February 7, 2007.

d. Ms. Shell intends to request access to Internet Archive premises for inspection and video taping on or about May 11, 2007.

WHEREFORE, I respectfully move this Court to order that the Scheduling Order as

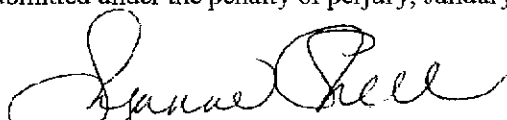
submitted on January 3, 2007 be amended as defined above, or, in the alternative,

To order that we confer again and amend the Scheduling Order to accurately reflect a joint agreement and that it not be filed until I see and approve the final draft and authorize my signature to be affixed, and

To sanction opposing counsel for its failure to obtain my approval before affixing my signature to a joint document which it filed it with this court, and

Any other relief this court deems just and proper.

Submitted under the penalty of perjury, January 4, 2007



Suzanne Shell, Defendant - pro se
14053 Eastonville Rd, Elbert, CO 80106
Phone: (719)749-2971
Email: dsshell@ix.netcom.com

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the attached document **DEFENDANT SHELL'S VERIFIED MOTION TO AMEND SCHEDULING ORDER** were placed in the United States Mail, first class mail, postage prepaid on January 5, 2007 and emailed on January 4, 2007.

Perkins Coie, LLP
4 Embarcadero Center, Suite 2400
San Francisco, CA 94111



Suzanne Shell - January 5, 2007

UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO
FACSIMILE COVER SHEET

Pursuant to D.C.COLO.LCivR 5.1 and D.C.COLO.LCrR 49.1, this cover sheet must be submitted with any facsimile filing. A pleading or paper not requiring a filing fee and no longer than ten pages, including all attachments, may be filed with the clerk by means of facsimile during a business day. Upon receipt of a facsimile filing, the clerk will make the copies required under D.C.COLO.LCivR 10.1L and D.C.COLO.LCrR 49.3L. Facsimiles received by the clerk after 5:00 p.m. (Mountain Time) will be considered filed as of the next business day.

Clerk's Office facsimile telephone number: 303-335-2714

1. Date of transmission: January 4, 2007

2. Name of attorney or *pro se* party making the transmission: Suzanne Shell

Facsimile number: 719-749-29721 Telephone number: 719-749-2971

3. Case number, caption, and title of pleading or paper: 06-CV-01726-LTB-CBS
Internet Archive v. Suzanne Shell v. Brewster Kahle et al

— **DEFENDANT SHELL'S VERIFIED UNOPPOSED MOTION TO AMEND SCHEDULING ORDER**

4. Number of pages being transmitted, including the facsimile cover sheet: 6

Instructions, if any: _____
