

**UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT**

**MERCEXCHANGE, L.L.C.,**

**Plaintiff,**

**v.**

**eBAY, INC., and HALF.COM, INC.,**

**Defendants.**

**Miscellaneous No. 3:07mc38 (JBA)**

**(Case No. 2:01-CV-736 Pending in  
the United States District Court for  
the Eastern District of Virginia)**

**February 15, 2007**

**MEMORANDUM OF RESPONDENT KENNETH NAHAN AND MERCEXCHANGE,  
L.L.C. IN SUPPORT OF MOTION FOR RECONSIDERATION OF EX PARTE ORDER  
GRANTING DEFENDANTS' MOTION TO COMPEL ENFORCEMENT OF  
SUBPOENA DUCES TECUM**

**I. INTRODUCTION**

Respondent Kenneth Nahan ("Nahan") and Plaintiff MercExchange, L.L.C. ("MercExchange") respectfully request that the Court reconsider its Order of February 9, 2007 and deny defendants' motion to compel enforcement of their subpoena *duces tecum* upon Mr. Nahan. While Mr. Nahan intends to produce documents tomorrow in response to the subpoena and the Court's Order, defendants' subpoena is substantially overbroad and exceeds the scope of discovery as expressly limited by the Trial Court. Moreover, this Court's expedited ex parte ruling of February 9 effectively denied Mr. Nahan with notice and the opportunity to be heard with respect to these issues.

Mr. Nahan's sole relevance to the issues now pending in the underlying litigation pertain to a single meeting held shortly before the trial of the case in 2003, when Mr. Nahan met with defendants' counsel at their request. Defendants' concealment of their meeting with Mr. Nahan is now relevant to the post-appeal proceedings in a very specific, limited fashion. Accordingly,

the Trial Court has permitted very limited discovery pertaining to this incident. Defendants' subpoena upon Mr. Nahan is overbroad, and was designed to obtain wide-ranging discovery with respect to all of the affairs of Mr. Nahan's business in order that defendants may attempt to relitigate their invalidity defenses from trial.

Contrary to defendants' arguments, counsel for Mr. Nahan and MercExchange attempted to meet-and-confer with defendants' counsel with respect to these issues, but defendants' counsel made no genuine effort to confer before filing this motion. In addition, defendants ignored the Trial Court's mandate that the parties contact Magistrate Judge Bradberry of that Court in the event of a discovery dispute. Instead, defendants filed five motions to compel in four federal district courts across the country without first notifying the Magistrate Judge of the Trial Court. However, counsel for MercExchange and Mr. Nahan have contacted the Trial Court with respect to these discovery disputes and defendants' overreaching subpoenas, and have moved for a protective order. The Trial Court is expected to hear these issues shortly.

## **II. BACKGROUND**

This litigation was initiated in September 2001, when MercExchange sued eBay for infringement of three patents, U.S. Patent No. 5,845,265 ("the '265 Patent"), U.S. Patent No. 6,085,176 ("the '176 Patent"), and U.S. Patent No. 6,202,051 ("the '051 Patent"). The case was litigated extensively, culminating in a five-week jury trial in April and May of 2003.

One month before trial, and after the close of discovery, defendants produced for the first time a so-called "Edwin Newman video" that pertained to a "Honicorp system" designed in substantial part by Mr. Nahan. *See generally* Exhibit A, Order and Opinion of Dec. 18, 2006 ("Post-Appeal Order") at 17-21. Defendants characterized the video to MercExchange and the Court as an "infomercial," and alleged that it constituted prior art which is, by definition, public. Over MercExchange's objection, the Trial Court admitted the video into evidence.

Unbeknownst to the Trial Court or MercExchange, defendants had been told by Mr. Nahan that the video was maintained as confidential during the pertinent time period. This occurred during a meeting between defendants' counsel and Mr. Nahan shortly before trial and defendants' disclosure of the video to MercExchange. Defendants never disclosed this meeting or Mr. Nahan's statement to the Trial Court or MercExchange.

The jury determined that defendants willfully infringed MercExchange's '265 Patent, and the jury rejected defendants' invalidity defenses in their entirety. The District Court entered judgment on the jury verdict in August 2003, but at that time denied MercExchange's post-trial motion for permanent injunction against continued infringement. *See generally MercExchange, L.L.C. v. eBay, Inc.*, 275 F. Supp.2d 695, 711-15 (E.D. Va. 2003).

Mr. Nahan learned of the results of the trial in media accounts. Shortly thereafter, he contacted MercExchange's counsel and informed them of the meeting he had with defendants' counsel before the trial. Mr. Nahan later provided a declaration attesting to this meeting with defendants' counsel.

In March 2005, the Federal Circuit affirmed the verdict of willful infringement and the validity of the '265 Patent. *See generally MercExchange, L.L.C. v. eBay, Inc.*, 401 F.3d 1323 (Fed. Cir. 2005). The appellate court also reversed the Trial Court's denial of permanent injunctive relief for MercExchange, and it reversed the Trial Court's holding of invalidity of the '051 Patent, directing that the case be remanded for trial with respect to the '051 Patent.

In May 2006, the United States Supreme Court held that the Trial Court and the Federal Circuit had failed to apply the correct analysis with respect to the permanent injunction issue. *eBay, Inc. v. MercExchange, L.L.C.*, \_\_\_ U.S. \_\_\_, 126 S. Ct. 1837, 1840 (2006). The Court

directed that the Trial Court reconsider MercExchange's request for a permanent injunction under the four-factor standard articulated in the Supreme Court's opinion. *Id.* at 1839-41.

Meanwhile, ten months after the jury verdict in this case, and while the appeal was pending before the Federal Circuit, eBay belatedly petitioned the Patent and Trademark Office ("PTO") for a reexamination of the '265, '176, and '051 Patents.<sup>1</sup> Those reexamination proceedings remain pending before the PTO and no final decision has been reached.

Following the Supreme Court's decision and the return of the mandate of this case from the Federal Circuit, the Trial Court conducted a scheduling conference with the parties to determine what issues remained for resolution. The Trial Court determined that it would consider only two issues at this time, first, MercExchange's renewed motion for a permanent injunction and, second, defendants' request that the entire proceeding be stayed pending the results of eBay's belatedly-sought reexamination.<sup>2</sup>

The parties then briefed the permanent injunction and stay issues to the Trial Court. In opposition to the stay motion, MercExchange argued, *inter alia*, that defendants' unclean hands in failing to disclose the Nahan meeting, and in affirmatively misrepresenting the Newman video to be a public "infomercial," weighed against defendants' request for the equitable relief of a stay. Defendants contended that they required discovery into the allegations regarding their own meeting with Mr. Nahan.

---

<sup>1</sup> Of course, by this time defendants' invalidity defenses with respect to the '265 Patent had already been rejected by the jury, and the Federal Circuit had defendants' appeal of that verdict before it. The Federal Circuit affirmed that verdict in March 2005, even after defendants informed the appellate court that they had requested reexamination of the patent.

<sup>2</sup> Reexamination proceedings have in some instances taken as many as ten years to resolve. eBay recently filed a request with the PTO seeking to initiate *another* reexamination proceeding, revealing that its reexamination gambit is nothing more than a delay tactic to prolong this litigation indefinitely.

In the Trial Court's Order and Opinion dated December 18, 2006, the Court held that it was proper for MercExchange to have submitted fresh evidence with respect to its need for a permanent injunction and in opposition to the stay.<sup>3</sup> Exhibit A, Order and Opinion of Dec. 18, 2006 ("Post-Appeal Order") at 6-7. On defendants' request for discovery relating to this new evidence, however, the Court determined that it would permit very *limited* discovery. Specifically, the Court held, "all discovery requests must be confined to the investigation into events occurring subsequent to this Court's denial of MercExchange's initial Motion for an injunction." Post-Appeal Order at 15-16. The Court further emphasized, "[t]o reiterate, the permissible discovery must relate to developments subsequent to August 6, 2003, that are relevant to MercExchange's motion for an injunction and eBay's motion to stay the proceedings." *Id.* at 17.

The sole exception to this temporal limitation pertained to defendants' meeting with Mr. Nahan, about which the Court provided the following additional limitation: "[t]he court clarifies that the issue regarding the Newman video is the only issue pre-dating the court's August 6, 2003, denial of MercExchange's injunction motion that the parties are permitted to investigate during discovery, and that *such investigation is being permitted only as a result of eBay's tardy submission of the Newman video after the close of trial discovery.*" *Id.* at 21 (underlined emphasis in original, bold and italicized emphasis supplied).

The Court also held that "[i]n the event that discovery disputes arise, the parties *must* contact Magistrate Judge James Bradberry no later than February 6, 2007 to determine an expedited discovery dispute procedure." *Id.* at 16 (emphasis added).

---

<sup>3</sup> Although eBay contended that it was relevant that the PTO was considering post-trial reexaminations of the patents-in-suit, it argued that MercExchange's evidence should have been limited to that which existed at the trial of the case.

Rather than limiting their discovery as instructed by the Trial Court, defendants have served subpoenas on, *inter alia*, MercExchange's trial expert Dr. Weaver, and MercExchange's law firm Fish & Richardson seeking all manner of information regarding "MercExchange's infringement allegations" and all of MercExchange's patent prosecution and reexamination files. Defendants also served subpoenas on Altitude Capital Partners, a firm that had invested in MercExchange, Ubid, an internet company with whom MercExchange had commercialized its patents, Kenneth Nahan, and Mr. Nahan's law firm Nordlicht & Hand.<sup>4</sup>

Although counsel for MercExchange and Mr. Nahan attempted several times without success to meet-and-confer, defendants filed their motion to compel in this Court on February 2, 2007, and on that same day filed four other motions to compel in three other federal district courts. On February 9, this Court ruled on the motion without awaiting a response from Mr. Nahan.

### **III. ARGUMENT**

Kenneth Nahan and MercExchange respectfully request that this Court reconsider its *ex parte* February 9 order and permit them to be heard in connection with defendants' motion to compel discovery.

#### **A. The Court Should Reconsider Its Order Of February 9, Which Was Entered Before Mr. Nahan Had An Opportunity To Respond.**

While Mr. Nahan and MercExchange recognize that the standard for a motion for reconsideration is strict, that standard is met in this instance. The three grounds that most typically provide a basis for reconsideration are: (1) an intervening change in controlling law; (2) the availability of newly discovered evidence; and (3) the need to correct clear error or

---

<sup>4</sup> MercExchange's counsel, Hunton & Williams, now represents Dr. Weaver, Mr. Nahan, Altitude Capital Partners, and Nordlicht & Hand in connection with these subpoenas.

prevent manifest injustice. *Virgin Atl. Airways, Ltd. v. Nat'l Mediation Bd.*, 956 F.2d 1245, 1255 (2d Cir. 1992); *Johnson v. Connecticut*, 428 F. Supp.2d 87, 89 (D. Conn. 2006). "That the court overlooked controlling law or material facts may also entitle a party to succeed on a motion to reconsider." *Eisemann v. Greene*, 204 F.3d 393, 395, n.2 (2d Cir. 2000) (per curiam); *Johnson*, 428 F. Supp.2d at 89.

That standard is met here, where the Court ruled within five business days without awaiting a response from Mr. Nahan, and without hearing important facts relevant to defendants' motion to compel. The form cover sheet from this Court provided with service of defendants' motion upon Mr. Nahan's counsel states, "Counsel and pro se parties are hereby notified that failure to file and serve a memorandum in opposition to a motion, within 21 days after the motion is filed, may be deemed sufficient cause to grant the motion." Exhibit B at 1. Likewise, this Court's Local Rule 7(a)(1), referred to in the aforesaid cover sheet, provides a 21-day response time for responding to motions, but states that the Court may, "***on notice to all parties,***" rule on the motion before expiration of the 21-day period. D. Conn. L. Civ. R. 7(a)(1). This Court's newly-amended Local Rule 7(a)(3) also provides that, for good cause shown, "a party may request expedited consideration of the motion by the Court by designating the motion as one seeking 'emergency' relief." D. Conn. L. Civ. R. 7(a)(3).

Here, to the knowledge of MercExchange and Mr. Nahan, there was no notice from the Court that it would shorten the time for consideration of the motion or that it would rule without awaiting a response. Counsel has consulted this Court's PACER docket for this matter and found no indication of a ruling of this Court providing notice of a shortening of the period for a response. To the contrary, the Court's PACER docket Entry No. 1 states with respect to defendants' motion, "Responses due by 2/23/2007." Exhibit C. There was no designation by



defendants that this was an “emergency” motion triggering the application of Rule 7(a)(3) and, if even had there been such a designation, Mr. Nahan should have been given notice that the Court would rule on that basis. And while defendants requested that the Court expedite treatment of the motion, defendants also requested oral argument.

Mr. Nahan and MercExchange intended to respond to defendants’ motion before the expiration of the 21-day period, but during the week of February 5 counsel was consumed with responding to the other four motions to compel that defendants had filed in other courts across the country. The courts dealing with those motions had given notice that they were considering defendants’ motions on an expedited basis, thereby requiring counsel to attend to those motions with immediate responses.

The need for reconsideration here is particularly strong, because defendants violated an Order of the Trial Court by filing this motion to compel without first contacting the Trial Court to alert it to this discovery dispute. *See supra* at 9.

And remarkably, defendants are now citing this Court’s order to other federal district courts in which they filed their motions to compel (and as of yesterday, to the Trial Court itself) as precedent that warrants like rulings from these other courts with respect to defendants’ other motions. Defendants are not informing these courts, however, that this Court’s ruling was made without the benefit of a response from Mr. Nahan and MercExchange.

Accordingly, Mr. Nahan and MercExchange respectfully request that the Court reconsider its Order to the extent that it granted defendants’ motion to compel, for the reasons set forth *infra*.



**B. The Court's Order Reflects Incomplete Information With Respect To The Meet-And-Confer Process.**

In its February 9 Order, this Court appeared to accept defendants' contentions that Mr. Nahan's counsel did not make itself available to meet and confer with respect to this discovery dispute. The Court ruled without the benefit of complete information with respect to this issue.

As shown by the attached Exhibits D, E, and F, counsel for Mr. Nahan requested the opportunity to meet and confer at least twice before defendants filed this motion, and once again immediately after defendants filed their motion. Defendants did not, for example, inform this Court of Mr. Nahan's counsel's e-mail of January 23 in which he sought a conference with defendants' counsel that might have obviated the need for defendants' motion. Exhibit E.

Defendants' motion also alleged incorrectly that they had served Mr. Nahan with the subpoena on January 12. Defs.' Br. at 4. To the contrary, it appears that Mr. Nahan was served with the subpoena only immediately before the due date for a response and not on January 12, as the Court's Order appears to assume. Order of Feb. 9, 2007 ("Connecticut Order") at 2. Defendants' allegation in their brief that they "served" Mr. Nahan with the document requests on January 12 is erroneous and unsubstantiated.<sup>5</sup>

Moreover, defendants did not inform this Court that the Trial Court's Order permitting this limited discovery specifically required defendants to contact Magistrate Judge Bradberry of that Court by February 6 in the event of any discovery disputes, so that the Trial Court could resolve issues of the scope of discovery and hear them on an expedited basis. Defendants filed their five motions to compel across the country on February 2 without first informing Magistrate Judge Bradberry there was a dispute. In light of defendants' refusal to notify the Trial Court,

---

<sup>5</sup> Indeed, Mr. Nahan's counsel has asked defendants' counsel three times to confirm the date of service. *See, e.g.*, Exhibit I. Defendants' counsel has refused to respond.

MercExchange contacted Magistrate Judge Bradberry on February 6 and, on February 9, moved that Court for a protective order with respect to defendants' overreaching subpoenas, including that served on Mr. Nahan. Exhibit H. That motion is pending before the Trial Court.

With due respect to this Court, the Trial Court is in the best position to interpret the meaning of its own order with respect to the scope of the limited discovery. *Cf. Feller v. Brock*, 802 F.2d 722, 727-28 (4<sup>th</sup> Cir. 1986) ("[p]rudence requires that whenever possible, coordinate courts should avoid issuing conflicting orders"); *Fincher v. Keller Indus., Inc.*, 129 F.R.D. 123, 125 (M.D.N.C. 1990) (while issuing courts have authority to enforce subpoenas, "parties' discovery rights in [the issuing] district can rise no higher than their level in the district of trial"). While Mr. Nahan recognizes that this Court has jurisdiction to enforce a subpoena issued from this Court, defendants should not be entitled to violate the Trial Court's Post-Appeal Order by enforcing the subpoena in an overbroad manner. Thus, as a threshold matter, Mr. Nahan and MercExchange request that this Court defer to the Trial Court with respect to issues regarding the scope of defendants' overbroad subpoenas, and defendants' violations of the Trial Court's Post-Appeal Order.

**C. Defendants' Subpoena Upon Mr. Nahan Is Overbroad And Exceeds The Scope Of Discovery Permitted By The Trial Court.**

Notwithstanding the overbreadth of defendants' subpoena, Mr. Nahan is gathering responsive non-privileged documents and intends to produce documents tomorrow.

However, defendants' boilerplate arguments regarding the scope of discovery are inapposite, because in this case the Trial Court expressly limited the scope of discovery, and Mr. Nahan has only very limited and specific involvement or relevance to this action.

Defendants served wide-ranging document requests upon Mr. Nahan that appear intended to allow defendants to relitigate their allegations of the validity of MercExchange's patents by

unearthing all the files relating to Mr. Nahan's business ventures. *See generally* Exhibit G. Among other things, defendants requested all manner of information relating to Mr. Nahan's business activities relating to the system defendants relied upon as prior art. *Id.* (*see, e.g.*, request nos. 2 (displays or distribution of video before filing date of MercExchange patent application), 7 (requests to raise capital), 8-9 (display of system on other occasions)). That validity issue has already been conclusively adjudicated against defendants, and the Trial Court has not permitted defendants to reopen it.

As noted *supra*, the sole issue before the Trial Court pertinent to Mr. Nahan relates to a meeting he had with defendants' counsel shortly before the trial of this case. *See generally* Post-Appeal Order at 17-21. After the close of discovery in this case and only one month before trial, defendants' counsel produced a videotape relating to Mr. Nahan's "Honicorp" system, and they represented to MercExchange and the Trial Court that this video was a public "infomercial." Over MercExchange's objection, the Court then allowed this tape into evidence at trial as possible prior art. After the Nahans read press accounts about the trial verdict, they contacted MercExchange's counsel and told them they had met with defendants' counsel before trial and had discussed the video. Mr. Nahan provided a declaration stating that he had told defendants' counsel before the trial that the video was confidential, *i.e.*, it was not a public "infomercial."<sup>6</sup>

On remand after appeal, MercExchange raised this issue as evidence of defendants' unclean hands, which weighed against defendants' request for the equitable relief of a stay of proceedings. In its December 18 Order, the Court permitted limited discovery with respect to this issue. Post-Appeal Order at 21. This Court made clear the limited purpose of the discovery,

---

<sup>6</sup> Under well-settled patent law, if the video was confidential it could not constitute "prior art."

*viz.*, “such investigation is being permitted only as a result of *eBay’s tardy submission of the Newman video after the close of trial discovery*.” *Id.* (emphasis added). The Trial Court also emphasized that the “issue regarding the Newman video” was the “only issue pre-dating the court’s August 6, 2003, denial of [the] injunction motion that the parties are permitted to investigate during discovery ....” *Id.* (emphasis in original).

Thus, the issue before the Trial Court is not whether defendants can now turn up some new evidence of prior art to belatedly bolster the defenses on which they lost at trial. Nor does it matter whether defendants can now dredge up some evidence of an earlier public disclosure of the Newman video or the Honicorp system generally. Rather, the issue is simply one of defendants’ candor before the tribunal and what was communicated between the Nahans and defendants’ counsel during their pretrial meeting. If defendants’ representation to the Trial Court was false when made, they cannot cure the falsity of their representation after the fact. Accordingly, discovery of Mr. Nahan should be limited to the communications between the Nahans and defendants’ counsel. The only document request that clearly falls within this limited scope is request number three. *Id.* (“[a]ll documents relating to any meeting or call with any eBay attorneys ....”).

**D. The Court Should Reconsider And/Or Vacate Its Rulings With Respect to Mr. Nahan’s Objections, And Defer To The Trial Court With Respect To The Permissible Scope Of The Subpoena.**

Unfortunately, because defendants’ brief provided an incomplete and inaccurate picture of the underlying events, Mr. Nahan and MercExchange respectfully request that the Court reconsider the remainder of its rulings to the extent the Court granted defendants’ motion. The following points illustrate defendants’ characterization of these issues:

First, as set forth *supra*, Mr. Nahan’s counsel did not fail to “cooperate” in meeting and conferring with defendants’ counsel. Connecticut Order at 4.

Second, defendants' allegation in their brief that they "served" Mr. Nahan with the document requests on January 12 is erroneous and unsubstantiated. *See* Defs' Br. at 4; Connecticut Order at 2.<sup>7</sup> Rather, it appears that defendants merely *issued* the subpoena on that date.

Third, and relatedly, the subpoena was substantially broader than the limited discovery now ordered by this Court, which increased the burden of this subpoena. Indeed, this Court's Order noted that defendants presented no argument for compelling a response to several of the subpoena topics. Connecticut Order at 4-5. Mr. Nahan and MercExchange do not dispute that documents pertaining to Mr. Nahan's communications with defendants are discoverable, but, as defendants appear to concede, several of their document requests sought other information not reasonably related to the issues before the Trial Court. *See* Exhibit G (*e.g.*, request nos. 7-9). Accordingly, it was reasonable for Mr. Nahan to object to such requests.

Fourth, and relatedly, Mr. Nahan's objection that the requests are not limited by time frame again is based on the fact that defendants appear intent on retrying their invalidity case before the Trial Court, rather than focusing on the pending issue, *viz.*, what Mr. Nahan told defendants at the 2003 meeting. *See supra* at 12.

Fifth, and finally, there is no genuine issue before the Trial Court with respect to Mr. Nahan's "bias," his "relationship with plaintiffs' counsel," or "the veracity of [his] declaration concerning the confidentiality of the Newman Video." Connecticut Order at 5. While issues as to a witness's bias or veracity are ordinarily fair game for discovery, in this instance there is no dispute that Mr. Nahan met with defendants' counsel before the trial and told defendants'

---

<sup>7</sup> Again, Mr. Nahan's counsel has asked defendants' counsel repeatedly to confirm the date of service, and defendants' counsel has refused to respond.

counsel that the video in question was confidential. Mr. Nahan did not speak with MercExchange's counsel until *after* the trial. The Trial Court has permitted discovery of Mr. Nahan with respect to his meeting with defendants, but defendants have never denied that this meeting occurred nor that Mr. Nahan told them the video was confidential during the relevant time period. Defendants' sole defense was that another person told allegedly them the video was not confidential; defendants argued that this justified withholding from the Trial Court the fact of their meeting with Mr. Nahan.

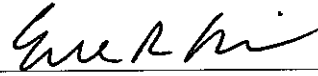
#### **IV. CONCLUSION**

For all the foregoing reasons, Mr. Nahan and MercExchange respectfully request that this Court reconsider its February 9 Order and deny defendants' motion to compel, and/or defer resolution of this matter pending the Trial Court's rulings on the motion for protective order now pending before that Court.

Dated: February 15, 2007

Respectfully submitted,

KENNETH NAHAN  
and MERCEXCHANGE, L.L.C.,



Edward R. Scofield (CT00455)  
**ZELDES, NEEDLE & COOPER**  
1000 Lafayette Blvd.  
P.O. Box 1740  
Bridgeport, Connecticut 06606-1740  
(203) 333-9441 (tel)  
(203) 333-1489 (fax)  
email: [escfield@znclaw.com](mailto:escfield@znclaw.com)

Gregory N. Stillman (admitted in Virginia)  
**HUNTON & WILLIAMS, LLP**  
500 East Main Street  
Suite 1000  
Norfolk, Virginia 23510  
Telephone (757) 640-5300  
Facsimile: (757) 625-7720

Thomas J. Cawley (admitted in Virginia)  
David M. Young (admitted in Virginia)  
**HUNTON & WILLIAMS, LLP**  
1751 Pinnacle Drive, Suite 1700  
McLean, Virginia 22102  
Telephone: (703) 714-7400  
Facsimile: (703) 714-7410

Scott L. Robertson (admitted in D.C.)  
Jennifer A. Albert (admitted in D.C.)  
Brian M. Buroker (admitted in D.C.)  
**HUNTON & WILLIAMS, LLP**  
1900 K Street, N.W.  
Washington, D.C. 20006-1109  
Telephone: (202) 955-1500  
Facsimile: (202) 778-2201

Attorneys for Respondent Kenneth Nahan  
and Plaintiff MercExchange, L.L.C.



**CERTIFICATE OF SERVICE**

I hereby certify that on the 15th day of February, 2007, I caused a copy of the foregoing **MEMORANDUM OF RESPONDENT KENNETH NAHAN AND PLAINTIFF MERCEXCHANGE, L.L.C. IN SUPPORT OF MOTION FOR RECONSIDERATION OF EX PARTE ORDER GRANTING DEFENDANTS' MOTION TO COMPEL ENFORCEMENT OF SUBPOENA DUCES TECUM** to be served as follows:

**By Hand Upon:**

David R. Schaefer  
Brenner, Saltzman & Wallman  
271 Whitney Ave., P.O. Box 1746  
New Haven, CT 06511-1746

**By Overnight Mail Upon:**

Jeffrey G. Randall  
Skadden, Arps, Slate, Meagher & Flom, LLP  
525 University Avenue  
Suite 1100  
Palo Alto, CA 94301

Allan M. Soobert  
Skadden, Arps, Slate, Meagher & Flom, LLP  
1440 New York Avenue, NW  
Washington, DC 20005

  
\_\_\_\_\_