

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA**

CASE NO.: 2:04-cv-47-FtM-34- SPC

WHITNEY INFORMATION
NETWORK, INC., a Colorado corporation,

Plaintiff,

v.

XCENTRIC VENTURES, LLC., an
Arizona limited liability company;
BADBUSINESSBUREAU.ORG, an
Arizona limited liability company; and
ED MAGEDSON, an individual,

Defendants.

**NOTICE OF WITHDRAWAL OF MOTIONS TO COMPEL
AND SUPPLEMENT TO MOTION FOR ADDITIONAL DISCOVERY TIME
PURSUANT TO RULE 56(f), FEDERAL RULES OF CIVIL PROCEDURE TO
RESPOND TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

Plaintiff, Whitney Information Network, Inc. ("WIN"), by and through undersigned counsel, files this, its Notice of Withdrawal of Motion to Compel and Supplement to Motion for Additional Discovery Time Pursuant to Rule 56(f), Federal Rules of Civil Procedure to Respond to Defendants' Motion for Summary Judgment, and states as follows:

1. Defendants have finally provided or made mutually satisfactory arrangements to produce the outstanding discovery subject of WIN's Motion to Compel Sworn Answers to Second and Third Sets of Interrogatories, Better Answers to Second Set of Interrogatories and Second Request for Production [DE 124] and its Amended Motion to Compel Documents Responsive to First Request for Production [DE 125]. Accordingly, WIN hereby notifies this Court that it withdraws the foregoing motions (WIN, by agreement with defendants, reserves the right to seek

further relief from this Court in the event that defendants either did not, despite their representation, make full disclosure of fail to fulfill their continuing obligations).

2. While defendants have finally complied with their discovery obligations as referenced in the foregoing motions, which does not obviate WIN's need for additional time to respond to the defendants' Motion for Summary Judgment. To the contrary, it shows that WIN's discovery plan and schedule were fortuitous and supports WIN's request for additional time to respond to defendants' Motion for Summary Judgment. WIN needs the discovery recently provided to, among other things, preparing for and take depositions (WIN has scheduled on August 1 & 2, 2007, the depositions of Ed Magedson, Ben Smith (defendants' computer engineer) and defendants' corporate representatives and is in the process of scheduling the deposition of one of defendants' former employees who is represented by defendants' counsel, which deposition is anticipated will be conducted on August 4 or 11, 2007). As WIN has previously advised this Court, upon completion of these depositions and the requisite time to have the transcripts prepared and reviewed, WIN will be able to formulate a response to Defendants' Motion for Summary Judgment. Based on the foregoing and as more fully discussed in WIN's pending motion to extend time pursuant to Rule 56(f) to respond to Defendants' Motion for Summary Judgment (DE 119) and WIN's Motion to Compel Sworn Answers to Second and Third Sets of Interrogatories, etc (DE 124), this Court should refuse to consider the Summary Judgment Motion or continue the time for WIN to respond to the Summary Judgment Motion until the outstanding and previously scheduled discovery is completed.¹ Wichita Falls Office Associates v. Banc One Corp., 978 F.2d 915, 919 & n 4 (5th Cir. 1993)("The purpose of Rule 56(f) is to provide non-movants with a much needed tool to keep open the doors of

¹ WIN suggest that an appropriate extension would be until August 30, 2007, assuming that the depositions currently set for August 1-2, 2007, take place as scheduled and without any inappropriate objections or refusal to testify (thereby affording a reasonable time to obtain and review the transcripts thereof and prepare a response to the Summary Judgment Motion).

discovery in order to adequately combat a summary judgment motion.”; “Such ‘continuance of a motion for summary judgment for purposes of discovery should be granted almost as a matter of course’ unless ‘the non-moving party has not diligently pursued discovery of the evidence.’”).

Respectfully submitted,

By: /s/Shawn L. Birken

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Dated: July 24, 2007

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 24, 2007, I electronically filed the forgoing document with the Clerk of Court using CM/ECF. I also certify that the foregoing is being served this day upon all counsel of record or *pro se* parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

Respectfully submitted,

By: /s/ Shawn L. Birken
Shawn L. Birken

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SERVICE LIST

Case No. 2:04-cv-47-FtM-34SPC

United States District Court, Middle District of Florida

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