

**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.

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**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 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. WIN had originally scheduled depositions on August 1 & 2, 2007, of Ed Magedson and Ben Smith (defendants' computer engineer), both acting as defendants' corporate representatives as well as their individual capacities. On July 31, 2007, defendants' counsel informed WIN's counsel that Ben Smith's deposition had to be rescheduled. Ben Smith's deposition took place on August 10, 2007.

2. WIN's initial motion and previous supplements set forth a proposed schedule with the explicit assumption that the depositions of Ed Magedson and Ben Smith would take place on August 1 & 2, 2007. Additionally, although WIN was informed that the transcript of Ed Magedson's

deposition would be received by August 11, 2007, WIN did not receive the transcript until August 19, 2007 and is awaiting the receipt of Mr. Smith's deposition transcript (which based upon the time it took to obtain Mr. Magedson's transcript WIN expects will be on or about August 30, 2007.)

3. 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, etc.. 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) 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.<sup>1</sup> 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 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.'").

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<sup>1</sup> WIN suggest that an appropriate extension would be until September 14, 2007, assuming that the deposition transcript of Ben Smith is received by August 30, 2007.

Respectfully submitted,

By: /s/Shawn L. Birken

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**Counsel for Plaintiff**

Dated: August 22, 2007

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on August 22, 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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