

**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.

**PLAINTIFF'S MOTION FOR LEAVE TO FILE DEPOSITION TRANSCRIPTS
AND INCORPORATED MEMORANDUM OF LAW**

Plaintiff, Whitney Information Network, Inc. ("WIN"), by and through its undersigned counsel, hereby moves this Court for the entry of an order granting WIN leave to file deposition transcripts with this Court and as grounds therefore states as follows:

WIN brought a claim against defendants for defamation. Defendants filed a Motion for Summary Judgment and, Alternatively, Motion for Reconsideration Re: Motion to Dismiss Plaintiff's First Amended Complaint for Lack of Personal Jurisdiction and Motion for Sanctions [Court Document No. 115] (the "Summary Judgment Motion"). WIN conducted the deposition of defendant, Ed Magedson, in which Mr. Magedson provided testimony that WIN desires to use in opposition to the Summary Judgment Motion. WIN seeks to file Mr. Magedson's deposition transcript with this Court in

support of its memorandum in opposition to the Summary Judgment Motion. But is uncertain whether it is allowed to do so pursuant to this Court's August 20, 2007, Order [Court Document No. 138]. Accordingly, in an abundance of caution, seeks permission to file transcripts of depositions conducted in this action with this Court (including, without limitation, Mr. Magedson's deposition transcript for use in opposition to the Summary Judgment Motion)

WIN certifies that a good faith effort to resolve this issue has been made with defendants' counsel. Defendants' counsel initially opposed the granting of this motion pending review of Magedson's deposition transcript. However, WIN's counsel sent an email to defendants' counsel the morning of September 10, 2007 and defendants' counsel has not responded to articulate defendants' position.

WHEREFORE, Whitney Information Network, Inc. respectfully requests that this Court enter an order allowing it to file transcripts of depositions conducted in this action with this Court (including, without limitation, Ed Magedson's deposition transcript for use in opposition to Defendants' Motion for Summary Judgment and, Alternatively, Motion for Reconsideration Re: Motion to Dismiss Plaintiff's First Amended Complaint for Lack of Personal Jurisdiction and Motion for Sanctions)

Dated: September 10, 2007

Respectfully submitted,

By: /s/ Shawn L. Birken

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10 day of September, 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 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.

/s/ Shawn L. Birken

Shawn L. Birken

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SERVICE LIST

United States District Court, Middle District of Florida
Fort Myers Division

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

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