

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

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

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.

**SUPPLEMENT TO PLAINTIFF'S MOTION FOR SANCTIONS FOR
IMPROPER DEPOSITION CONDUCT**

Plaintiff, Whitney Information Network, Inc. ("WIN"), hereby supplements its Motion for Sanctions for Improper Deposition Conduct as follows:

WIN took the deposition of defendant, Ed Magedson, in Phoenix, Arizona. As a result of improper conduct during that deposition, WIN filed its Motion for Sanctions for Improper Deposition Conduct [Doc. No. 154]. On October 24, 2007, defendants filed an Eratta [sic] Sheet with regard to Mr. Magedson's deposition [Doc. No. 157] in which Mr. Magedson altered his deposition testimony on a material issue. During his deposition Mr. Magedson testified that he did not author emails which he now acknowledges he did. Id.; Transcript of August 1, 2007, deposition of Ed Magedson ("Magedson Transcript") at pp. 189-193 (a copy of which is attached hereto as Exhibit 1). In these emails Mr. Magedson solicits a posting on the Ripoff Report website at issue ("This is great... Can you post something or part of this e-mail below. This would be great and would definitely piss them off!") and "Can you file your own detailed Rip-off Report? Your info

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

WIL[L] NOT BE REVEALED! You are a source of info for you.”). Magedson Transcript at pp. 189-193 & Exhibit 12 (a copy of which is attached hereto as Exhibit 1). Such solicitation precludes defendants from utilizing immunity pursuant to the Communications Decency Act, 47 U.S.C. § 230(c)(1). Fair Housing Council of San Fernando Valley v. Roommates.com, LLC, 489 F.3d 921 (9th Cir. 2007); MCW, Inc. v. Badbusinessbureau.com, L.L.C., 2004 WL 833595 at *9 (N.D. Tex. 2004); 47 U.S.C. § 230. WIN took all reasonable action to ask Mr. Magedson about this but was precluded from doing so because of Mr. Magedson’s false testimony. WIN is entitled to again ask Mr. Magedson about this and, hopefully this time, obtain his true testimony. Liberty/Sanibel II Limited Partnership v Gettys Group, Inc., 2007 WL 1109274 (M.D. Fla. 2007).

WIN previously asked this Court to compel defendants to pay the fees and costs for WIN’s counsel to return to Phoenix to complete their inquiry of Mr. Magedson into the areas which he improperly refused to testify on the basis of relevancy (WIN specifically desires to conduct this deposition in person and videotaped (as it previously conducted Mr. Magedson’s deposition) as it anticipates that Mr. Magedson’s deposition testimony will be used as his trial testimony and WIN is entitled to present such testimony in the format of its choice). Motion for Sanctions for Improper Deposition Conduct at p. 3. Mr. Magedson’s materially altered testimony provides yet another basis for this Court to order this relief.

WHEREFORE, Whitney Information Network, Inc. respectfully requests that this Court enter an order sanctioning defendants, Xcentric Ventures, LLC, badbusinessbureau.org and Ed Magedson, and their counsel, Maria Crimi Speth, for their improper discovery conduct including, without limitation, withdrawing Maria Crimi Speth’s authority to appear before this Court *pro hac vice* and requiring them to pay the fees and costs incurred by Whitney Information Network, Inc. to

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

have its counsel return to Phoenix, Arizona to complete their inquiry into the areas that Ed Magedson improperly refused to testify and altered his testimony and granting all other relief this Court deems just and appropriate.

October 31, 2007.

Respectfully submitted,

ROTHSTEIN ROSENFELDT ADLER
401 East Las Olas Boulevard, Suite 1650
Fort Lauderdale, Florida 33301
Tele: 954/522-3456
Fax: 954/527-8663

By: /s/ Shawn L. Birken

Scott W. Rothstein
Fla. Bar No. 765880
srothstein@rra-law.com
Steven N. Lippman
Fla. Bar No. 709638
slippman@rra-law.com
Shawn L. Birken
Fla. Bar No. 418765
sbirken@rra-law.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of October, 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 Court delineated 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.

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

**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.

SERVICE LIST

Steven N. Lippman, Esq.
slippman@rra-law.com
Scott W. Rothstein, Esq.
srothstein@rra-law.com
Shawn L. Birken, Esq.
sbirken@rra-law.com
ROTHSTEIN ROSENFELDT ADLER
401 East Las Olas Boulevard, Suite 1650
Fort Lauderdale, Florida 33301
Phone: 954-522-3456
Fax: 954-527-8663
Counsel for Plaintiffs
Via CM/ECF

Maria Crimi Speth, Esq.
Jaburg & Wilk, PC
3200 North Central Avenue, Suite 2000
Phoenix, AZ 85012
Tele.: 602/248-1089
Fax: 602/248-0522
mcs@jaburgwilk.com
Via CM/ECF

Denise B. Crockett, Esq.
Brian J. Stack, Esq.
Stack Fernandez Anderson & Harris, P.A.
1200 Brickell Avenue, Suite 950
Miami, Florida 33131
Tel. 305.371.0001
Fax. 305.371.0002
Email: dcrockett@stackfernandez.com
Email: Bstack@stackfernandez.com
Via CM/ECF