

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

Case No. 2:04-cv-47-FtM-29 SPC

WHITNEY INFORMATION
NETWORK, INC., a Colorado corporation,
and RUSS WHITNEY, an individual,

Plaintiffs,

v.

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

Defendants.

**PLAINTIFFS' UNOPPOSED MOTION FOR AN ENLARGEMENT OF TIME
TO RESPOND TO DEFENDANTS' SECOND MOTION TO DISMISS
FOR FAILURE TO STATE A CLAIM PENDING A RULING BY THE COURT
ON PLAINTIFFS' MOTION TO STRIKE**

Plaintiffs, WHITNEY INFORMATION NETWORK, INC. and RUSS WHITNEY, by and through their undersigned counsel, file this, their Unopposed Motion for an Enlargement of Time to respond to Defendants' Second Motion to Dismiss for failure to state a claim, and state:

1. On or about September 27, 2004, Defendants served their Second Motion to Dismiss for failure to state a claim attached to their Notice of Errata correcting the title of the Motion that was originally filed on September 21, 2004, rendering a response due on or about October 14, 2004.

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ROTHSTEIN ROSENFELDT
300 Las Olas Place, 300 SE 2nd Street, Suite 860, Fort Lauderdale, Florida 33301

2. Plaintiffs, simultaneously with this Motion, are filing their Motion to Strike Defendants' Second Motion to Dismiss for Failure to State a Claim.

3. As such, Plaintiffs respectfully request an enlargement of time to file their response to Defendants' Second Motion to Dismiss for Failure to State a Claim pending a ruling by this Court on Plaintiffs' Motion to Strike,.

4. At this point, preparing a response to Defendants' Second Motion to Dismiss would be futile if this Court enters an order granting Plaintiffs' Motion to Strike Defendants' Second Motion to Dismiss.

5. If the Court denies Plaintiffs' Motion to Strike, Plaintiffs will require twenty days to respond to the numerous novel and complicated issues of law in Defendants' Second Motion to Dismiss.

6. Plaintiffs certify that their counsel, Christina M. Kitterman, has conferred with Defendants' counsel and they are not opposed to this Court granting the requested enlargement.

7. This Motion is filed in good faith, for good cause, and the requested relief is not sought for the purposes of delay.

WHEREFORE, based upon the foregoing, Plaintiffs, WHITNEY INFORMATION NETWORK, INC. and RUSS WHITNEY, respectfully request that this Court enter an Order Granting Plaintiffs' Unopposed Motion for an Enlargement of Time to respond to Defendants' Second Motion to Dismiss for Failure to State a Claim pending a ruling on Plaintiffs' Motion to Strike Defendants' Second Motion to Dismiss.

MEMORANDUM OF LAW

Pursuant to Rule 6(b) of the Federal Rules of Civil Procedure, this Court “for cause shown may at any time in its discretion” enlarge the time permitted by the Rules for Plaintiffs to reply to Defendants’ Second Motion to Dismiss for Failure to State a Claim. Plaintiffs’ Unopposed Motion for a 20-day Enlargement of Time clearly sets forth a good faith basis for granting the requested enlargement. Plaintiffs are not engaging in any type of delay tactic that would warrant denial of this Motion. Plaintiffs respectfully request that the Court exercise its discretion and permit the requested enlargement for the good cause stated herein.

Dated: October 14, 2004

Respectfully submitted,

By: /s/ Christina M. Kitterman
Scott W. Rothstein, Esq.
FBN: 765880
Michael A. Pancier, Esq.
FBN: 958484
Christina M. Kitterman, Esq.
FBN: 595381
ROTHSTEIN ROSENFELDT
Counsel for Plaintiffs
300 Las Olas Place, Suite 860
300 S.E. Second Street
Fort Lauderdale, Florida 33301
Tele: 954/522-3456
Fax: 954/527-8663
E-Mail: srothstein@rrdplaw.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished, by mail, this 14th day of October, 2004, to: James A. Weinkle, Wachovia Financial Center, Suite 3400, 200 South Biscayne Boulevard, Miami, FL 33131-5323; Maria Crimi Speth, Esq. 3200 North Central Avenue, Suite 2000, Phoenix, AZ 85012; Jonathan P. Ibsen 7047 East Greenway Parkway, Suite 140, Scottsdale, AZ 85254.

ROTHSTEIN ROSENFELDT

By: /s/ Christina M. Kitterman
Scott W. Rothstein, Esq.
Michael A. Pancier, Esq.
Christina M. Kitterman, Esq.

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**ORDER ON PLAINTIFFS' UNOPPOSED MOTION FOR AN ENLARGEMENT
OF TIME TO RESPOND TO DEFENDANTS' SECOND MOTION TO DISMISS
FOR FAILURE TO STATE A CLAIM PENDING A RULING BY THE COURT
ON PLAINTIFFS' MOTION TO STRIKE**

THIS CAUSE came before the Court on Plaintiffs' Unopposed Motion for an Enlargement of Time to respond to Defendants' Second Motion to Dismiss for Failure to State a Claim pending a ruling by the Court on Plaintiffs' Motion to Strike, and the Court having carefully considered the Motion and being otherwise fully advised in the premises, it is hereby:

ORDERED and ADJUDGED that Plaintiffs' Unopposed Motion for an Enlargement of Time to respond to Defendants' Second Motion to Dismiss for Failure to State a Claim is hereby **GRANTED**. Should Plaintiffs' Motion to Strike be Denied,

Plaintiffs will have twenty (20) days from the date of this Court's Order to serve their response to Defendants' Second Motion to Dismiss.

DONE AND ORDERED, in Chambers at Fort Myers, Lee County, Florida, this _____ day of _____, 2004.

U.S. DISTRICT COURT JUDGE

Copies Furnished To:
Scott W. Rothstein, Esq.
James A. Weinkle, Esq.

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FAX SERVICE LIST

Scott W. Rothstein, Esq.
Christina M. Kitterman, Esq.
ROTHSTEIN ROSENFELDT
Counsel for Plaintiffs
300 Las Olas Place, Suite 860
300 S.E. Second Street
Fort Lauderdale, Florida 33301
Tele: 954/522-3456
Fax: 954/527-8663
E-Mail: srothstein@rrdplaw.com

James A. Weinkle
Wachovia Financial Center, Suite 3400
200 South Biscayne Boulevard
Miami, FL 33131-5323
Tele: 305/960-2200
Fax: 305/960-2201
E-mail: JAWeinkle@duanemorris.com