

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 10-CIV-20718-COOKE/BANDSTRA

ALBERT SEGAL, and
MARIANNA CHAPAROVA,

Plaintiffs,

- vs. -

AMAZON.COM, INC.,

Defendant.

_____ /

**DEFENDANT AMAZON.COM, INC.'S MOTION TO COMPEL PLAINTIFFS TO
APPEAR FOR DEPOSITION, MOTION TO COMPEL PLAINTIFFS TO PROVIDE
CONTACT INFORMATION FOR THE WITNESSES ON THEIR WITNESS LIST, AND
MOTION TO EXTEND THE FACT DISCOVERY AND DISPOSITIVE MOTION
DEADLINES, AND INCORPORATED MEMORANDUM OF LAW**

Pursuant to Federal Rule of Civil Procedure 37 and Local Rules 7.1 and 26.1, Defendant Amazon.com, Inc. (“Amazon”) respectfully moves the Court to: (a) compel Plaintiffs to appear for their depositions on a date and time certain; (b) compel Plaintiffs to provide contact information for the witnesses on their witness list or, alternatively, strike the witnesses from their witness list; and (c) extend the fact discovery and dispositive motion deadlines by forty-five days. In support, Amazon states as follows:

MEMORANDUM OF LAW

District Courts have broad discretion in managing their cases. *Chrysler Int'l Corp. v. Chenaly*, 280 F.3d 1358, 1360 (11th Cir. 2002). The broad discretion given to the court includes the management of pretrial activities such as discovery and scheduling. *Id.* (citing *Johnson v. Bd. of Regents of Univ. Georgia*, 263 F.3d 1234, 1269 (11th Cir. 2001)); *see also Allianz Global*

Risks U.S. Ins. Co. v. Singlesource Roofing Corp., 2006 WL 5112608, *1 (M.D. Fla., Nov. 14, 2006) (granting motion to compel deposition dates and extending fact discovery deadline).

Plaintiffs here failed entirely to appear for their duly noticed depositions, and now refuse to reschedule those depositions before the fact-discovery deadline. Plaintiffs also refuse to provide contact information for the non-party witnesses on their witness list. Amazon respectfully requests the Court to compel the Plaintiffs to appear for their depositions on a date and time certain, compel the Plaintiffs to provide contact information for (or strike) the witnesses on their witness list, and to extend the fact discovery and dispositive motion deadlines by forty-five days.

A. Plaintiffs Should be Compelled to Appear for Deposition

On December 4, 2010, Amazon served each of the Plaintiffs with a Notice of Deposition, scheduling their depositions to occur on December 20 and December 22, 2010. Copies of the December 4, 2010 Deposition Notices are attached hereto as **Exhibit A**. On the same day, Amazon's counsel informed Plaintiffs via email that Amazon would be amenable to moving the depositions to any earlier date in December, subject to the Plaintiffs' availability. A copy of the December 4, 2010 email is attached hereto as **Exhibit B**.

Later that day, Plaintiffs each sent a reply email to Amazon's counsel, indicating that they were not available for deposition on December 20 or December 22, and that they would not be available until January 5-7, 2011, at the earliest. Copies of Plaintiffs' December 4th reply emails are attached hereto as **Exhibit C**. Since the fact discovery deadline in this case is January 3, 2011, and the dispositive motion deadline is January 7, 2011 [D.E. 31], Amazon's counsel made repeated requests for Plaintiffs to provide any alternative dates in December to conduct their depositions. Plaintiffs refused, and informed Amazon's counsel that the depositions "will

not take place this month,” and that they would not appear for the depositions scheduled for December 20 and December 22. Copies of the parties’ multiple email exchanges are attached hereto as **Exhibit D**.

Despite Amazon’s repeated pleas, Plaintiffs refused to provide alternative deposition dates before the fact discovery deadline, and failed to appear for their scheduled depositions on December 20 and December 22. Copies of the Court Reporter’s Certificates of Non-Appearance for the December 20 and December 22 depositions will be provided to the Court once the Court Reporter provides them to undersigned counsel.

By failing to appear for their depositions on December 20 and December 22, and refusing to participate in re-scheduling those depositions, Plaintiffs are precluding Amazon from obtaining necessary discovery before the January 3rd fact discovery deadline, and have unfairly prejudiced Amazon’s ability to finalize its motion for summary judgment and prepare for trial. Amazon respectfully requests the Court to compel the Plaintiffs to appear for deposition on a date and time certain, and to extend the fact discovery and dispositive motion deadlines until after they appear for their depositions.

B. Plaintiffs Should be Compelled to Provide Contact Information for the Non-Party Witnesses Identified on their Witness List

Pursuant to this Court’s Scheduling Order, the parties were required to serve, by December 3, 2010, a witness list that identifies the “names **and addresses** of all fact witnesses intended to be called at trial.” [D.E. 31 (emphasis added)]. Despite Amazon’s repeated requests, Plaintiffs refuse to provide contact information for the non-party witnesses identified on their witness list, and refuse to cooperate in scheduling those witnesses’ depositions.

On December 3, 2010, Plaintiffs sent Amazon’s counsel, via email, an unsigned¹ and undated list of fact witnesses who may testify at the trial of this matter. A copy of the Witness List is attached hereto as **Exhibit E**. Plaintiffs identify sixteen potential witnesses who “may testify on Plaintiffs’ behalf” and “who have knowledge regarding some of the issues raised in the Amended Complaint,” but Plaintiffs fail to provide contact information for any of those witnesses and, in one instance, fail even to provide a last name. (See witness #10: “Eddie NJ”). Plaintiffs also state in their Witness List, in bold print, that “[t]he Plaintiffs’ witnesses may be contacted only through Plaintiffs.”

Immediately upon receiving Plaintiffs’ Witness List via email on December 3rd, counsel for Amazon sent Plaintiffs a reply email, asking for contact information for the Plaintiffs’ witnesses and to coordinate scheduling the witnesses’ depositions. A copy of that email is attached hereto as **Exhibit F**. Plaintiffs refused and, despite the fact that they are not attorneys, told counsel for Amazon that Amazon could contact the witnesses only through the Plaintiffs, and that Plaintiffs have “reassured the [witnesses] that they will not be contacted directly by Amazon and/or Amazon’s counsel.” *See Exhibit G*. Plaintiffs also informed Amazon’s counsel that any depositions of the non-party witnesses “will not take place this month.” *See Exhibit H*.

Over the next three weeks, Amazon’s counsel repeatedly requested Plaintiffs to provide contact information for their witnesses so that Amazon could subpoena them for records and/or deposition, but Plaintiffs refused. Copies of the multiple email exchanges between Amazon’s counsel and the Plaintiffs are attached hereto as **Exhibit I**.

¹ Plaintiffs have repeatedly “served” papers in this case in email form, and without an actual signature. Plaintiffs’ failure to sign the papers in this case or include a certificate of service violates multiple Federal and Local Rules, including Fed.R.Civ.P. 26(a)(4), Fed.R.Civ.P.26(g), and Fed.R.Civ.P. 11(a), and alone constitutes sufficient justification to strike the papers in their entirety. *See Fed.R.Civ.P. 26(g)(2)*.

Plaintiffs' refusal to provide contact information for their proposed witnesses or to cooperate in scheduling those witnesses' depositions has unfairly prevented Amazon from obtaining discovery before the fact discovery deadline. Amazon respectfully requests the Court to compel the Plaintiffs to provide contact information for their non-party witnesses, and to extend the fact discovery and dispositive motion deadlines until Amazon has had an opportunity to subpoena records and obtain deposition testimony from those witnesses.

Alternatively, since Plaintiffs have refused to abide by this Court's Scheduling Order, and have intentionally shielded their witnesses from discovery by Amazon, the Court should strike each of the sixteen non-party witnesses identified on Plaintiffs' witness list.

CONCLUSION

For the reasons discussed above, Amazon respectfully requests the Court to: (a) compel Plaintiffs to appear for their depositions on a date and time certain; (b) compel Plaintiffs to provide contact information for the witnesses on their witness list or, alternatively, strike those witnesses from their witness list; (c) extend the fact discovery and dispositive motion deadlines by forty-five days; and (d) order such other relief as is just and proper.

LOCAL RULE 7.1(a)(3) CERTIFICATION

Pursuant to Local Rule 7.1(a)(3), undersigned counsel for Amazon certifies that he has conferred with Plaintiffs on multiple occasions in an effort to resolve the issues raised in this Motion, but the parties were unable to resolve their differences.

Dated: December 22, 2010

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CERTIFICATE OF SERVICE

I hereby certify that on December 22, 2010, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record identified on the 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 system:

/s/ David B. Esau
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