

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 REPLY IN SUPPORT OF ITS
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**

Defendant Amazon.com, Inc. ("Amazon") files this Reply in Support of its 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 [D.E. 40] (the "Motion"),¹ and in support thereof, states as follows:

A. Plaintiffs Should be Compelled to Appear for Their Depositions

Plaintiffs do not dispute that Amazon is entitled to depose them, or that they failed to appear for their scheduled depositions on December 20 and December 22, 2010, or that they refused to provide alternative dates for the depositions. Nor do Plaintiffs dispute that Amazon made repeated additional efforts (after filing its Motion) to schedule the Plaintiffs' deposition. In

¹ In their Opposition to Amazon's Motion [D.E. 43], Plaintiffs included a separate motion to compel Amazon to produce its corporate representative for deposition. Amazon will timely file its response to that motion separately in a subsequent filing.

fact, on December 22, 2010, after the Plaintiffs failed to appear for their depositions and refused to provide alternative dates, Amazon served each of the Plaintiffs with another Notice of Deposition, scheduling the depositions to occur on January 3, 2011. Plaintiffs specifically indicated that they were available on that date, and even scheduled the deposition of Amazon's corporate representative to occur on that date as well. Copies of the second Notices of Deposition are attached to D.E. 42, at Exhibits 3 and 4.

Despite proper notice, and affirmative indication from the Plaintiffs that they were available, Plaintiffs again failed to appear for their depositions on January 3, 2011. Copies of the Certificates of Non-Appearance are attached to D.E. 42, at Exhibits 5 and 6. Since Amazon has made repeated good faith efforts to depose the Plaintiffs before the end of the fact discovery period, good cause exists to extend the fact discovery and dispositive motion deadlines so that Amazon can depose the Plaintiffs and prepare and file its Motion for Summary Judgment. Good cause to extend the fact discovery and dispositive motion deadlines also exists because the Court has not yet ruled on Amazon's Motion to Dismiss Plaintiffs' Amended Complaint [D.E. 26], and the parties do not yet know what claims will ultimately be at issue in this case.

Plaintiffs argue that their depositions should be postponed until after the Court rules on Plaintiffs' motions to compel other discovery from Amazon, and after the Plaintiffs depose Amazon's corporate representative. Amazon knows of no rule or order in this case that would obviate Plaintiffs' obligation to appear for their properly noticed depositions based solely on pending motions to compel other discovery. Thus, Amazon's Motion should be granted, and Plaintiffs should be ordered to appear for their depositions, without contingencies, on a date and time certain in the near future.

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

Plaintiffs also fail to articulate any legitimate justification for their refusal to provide contact information for the non-party witnesses on their witness list. If Plaintiffs intend to call at trial the witnesses identified on their witnesses list, Amazon must be given a fair opportunity to obtain discovery from them. Despite their pledge to cooperate, Plaintiffs have altogether refused to help Amazon obtain that discovery. As demonstrated in Exhibit I to Amazon's Motion, counsel for Amazon repeatedly requested Plaintiffs to provide deposition dates for their witnesses. Plaintiffs never once provided a substantive response. To this day, Plaintiffs have provided no additional information about their witnesses.

Since Plaintiffs have admittedly shielded their witnesses from discovery by Amazon, and have hampered Amazon's ability to fairly defend this case, the Court should either: (a) strike the Plaintiffs' witness list altogether; or (b) order Plaintiffs to provide the witnesses' contact information, and extend the fact discovery and dispositive motion deadlines for a short period to permit Amazon to conduct its discovery as to those witnesses. Plaintiffs concede that thirty days would be appropriate, which is fine with Amazon assuming Plaintiffs begin cooperating.

WHEREFORE, 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 to permit Amazon to conduct the above-referenced discovery; and (d) order such other relief as is just and proper.

Dated: January 18, 2011

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CERTIFICATE OF SERVICE

I hereby certify that on January 18, 2011, 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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