

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 05-80387 CIV RYSKAMP/VITUNAC

STEVEN A. SILVERS, an individual,

Plaintiff,

v.

GOOGLE INC., a Delaware corporation,

Defendant.

\_\_\_\_\_ /

GOOGLE INC., a Delaware corporation,

Counterclaimant,

v.

STEVEN A. SILVERS, an individual;  
STELOR PRODUCTIONS, INC., a Delaware  
Corporation; STELOR PRODUCTIONS, LLC, a  
Delaware limited liability company, and  
STEVEN ESRIG, an individual,

Counterdefendants.

\_\_\_\_\_ /

**STELOR PRODUCTIONS, LLC'S RESPONSE TO  
STEVEN SILVERS' MOTIONS FOR CONTINUANCE OF TRIAL SETTING AND FOR  
EXTENSION OF TIME TO RESPOND TO SUMMARY JUDGMENT MOTIONS**

Stelor Productions, LLC hereby submits its response to Silvers' Motion for Continuance of Trial Setting and his Motion for Extension of Time to Respond to Summary Judgment Motions:

Stelor requests that the Court confirm that attorney Robert Cooper is appearing as counsel of record for Mr. Silvers in this action. Attorney Cooper has appeared on behalf of Mr.

BURLINGTON • SCHWIEP • KAPLAN & BLONSKY, P.A.

OFFICE IN THE GROVE PENTHOUSE 2699 SOUTH BAYSHORE DRIVE MIAMI, FLORIDA 33133

T: 305.858.2900 F: 305.858.5261

EMAIL: INFO@BSKBLAW.COM WWW.BSKBLAW.COM

Silvers at Silvers' depositions held on October 10 and 13, 2006. At those depositions, Mr. Cooper claimed that he was making only a "limited appearance" on behalf of Mr. Silvers. Stelor objected that it was not appropriate or permissible for Mr. Cooper to appear only on a limited basis. That is, if Mr. Cooper was going to appear in the action by defending his client at the deposition, he was required to appear for all purposes in the case.

It appears that Mr. Cooper continues to assist Mr. Silvers in the litigation by preparing the instant Motion for Continuance, which purports to be filed *pro se*, but which also attaches Mr. Cooper's affidavit. Presently, Mr. Cooper is "ghost-writing" Mr. Silvers' recent court papers, and effectively acting as counsel for Mr. Silvers. Yet, Mr. Cooper still avoids filing a formal appearance with the Court, or otherwise submitting himself to the responsibilities of counsel of record in this case. This should not be permitted. Stelor recognizes Mr. Silvers' right to hire counsel, but that counsel should be required to formally appear and be subject to the Court's authority and the Rules of Civil Procedure<sup>1</sup> before acting as *de facto* counsel.

Indeed, under Local Rule 11.1, Mr. Cooper has already appeared in the action, and is required to promptly file a formal notice of appearance. Local Rule 11.1.D.2. provides that "[a]n attorney representing a witness in any civil action . . . shall file a notice of appearance, with the consent of the client endorsed thereon, with the Clerk of the Court . . . . The notice shall be filed by the attorney promptly upon undertaking the representation." Here, Mr. Cooper represented Mr. Silvers as a witness at the deposition conducted in this case and, therefore, is

---

<sup>1</sup> For example, Rule 11 requires that every pleading, written motion and other paper be signed by an attorney of record, unless the party is not represented by an attorney. Here, Silvers is represented by Cooper – at deposition and otherwise – but Silvers continues to sign his own pleadings. Furthermore, counsel of record must abide by the Rules Regulating the Florida Bar and may be subject to disciplinary action by this Court for failing to abide by those rules. S.D. Fla. L.R. 11.1.C.

required to promptly file a notice of appearance. Having appeared, he cannot withdraw without leave of court. S.D. Fla. L.R. 11.1.D.3. Furthermore, Silvers is now foreclosed from appearing or acting on his own behalf. S.D. Fla. L.R. 11.1.D.4.

Until there is clarification, however, Stelor is placed in the difficult position of not knowing whether or not Mr. Silvers remains a *pro se* litigant. Silvers may be a represented party given that Mr. Cooper has defended him at the depositions and is assisting him with his filings. However, Mr. Silvers continues to purport to be a *pro se* party with respect to the action. If he is *pro se*, it is necessary for Stelor's attorneys to be permitted to communicate with him directly. If he is represented, Stelor's attorneys may not communicate with Silvers directly "about the subject of the representation." *See* Florida Rules of Professional Conduct, Rule 4-4.2. Stelor requires clarification as to the scope of the representation to comply with the rules. Stelor is also in doubt as to whether it is required to serve Mr. Cooper with pleadings and notes that Mr. Cooper is not listed as one of the attorneys to be served on the Court's CM/ECF filing system.

Mr. Silvers cannot have it both ways. He cannot continue to purport to be a *pro se* litigant and at the same time have an attorney acting on his behalf with respect to this litigation. Nor can an attorney properly act on behalf of a client, unless formally appearing before the Court in the case. It is unfair to the other parties in the litigation, and to their lawyers, to leave them in doubt as to how they are permitted to act under the rules of this Court and the rules of professional responsibility.

With respect to the substance of Silvers' request for enlargement of time to respond to the Summary Judgment motion, he is not shown good cause. Cooper has already appeared at the Silvers deposition and can respond on Silvers' behalf to the motions. Furthermore, the Court's

October 5, 2006 Omnibus Order provides that “no further extensions of time will be provided in this case.” [D.E. 138.] Permitting an enlargement of time to respond to the summary judgment motions will conflict with the need to have them timely resolved before trial in December. Stelor is prepared to proceed with the Phase I trial as it is currently set.

WHEREFORE, Stelor respectfully request that the Court order Mr. Cooper to file a notice of appearance in this action and deny Silvers’ motions for continuation of the trial and extension of time to respond to the summary judgment motions.

Respectfully submitted,

s/Kevin C. Kaplan - Florida Bar No. 933848

David J. Zack - Florida Bar No. 641685

Email: [kkaplan@bskblaw.com](mailto:kkaplan@bskblaw.com)

[dzack@bskvlaw.com](mailto:dzack@bskvlaw.com)

BURLINGTON, SCHWIEP, KAPLAN &  
BLONSKY, P.A.

Office in the Grove, Penthouse A

2699 South Bayshore Drive

Miami, Florida 33133

Tel: 305-858-2900

Fax: 305-858-5261

Counsel for STELOR PRODUCTIONS,  
LLC and STEVEN ESRIG

CERTIFICATE OF SERVICE

I hereby certify that on October 20, 2006, 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 or pro se parties 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/Kevin C. Kaplan

**SERVICE LIST**

**STEVEN A. SILVERS, Plaintiff, v. GOOGLE INC.  
CASE NO. 05-80387 CIV RYSKAMP/VITUNAC  
UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF FLORIDA**

Steven A. Silvers, *pro se*  
[gewrue@hotmail.com](mailto:gewrue@hotmail.com)  
Suite 202 – PMB 203  
8983 Okeechobee Boulevard  
West Palm Beach, Florida 33411  
Tel: 954-4445-6788  
Fax: 561-784-9959  
Method of Service: E-mail and U.S. Mail

Ramsey Al-Salam, Esq.  
[RAlsalam@perkinscoie.com](mailto:RAlsalam@perkinscoie.com)  
William C. Rava, Esq.  
PERKINS COIE LLP  
Suite 4800  
1201 Third Avenue  
Seattle, Washington 98101-3099  
Tel: 206-359-8000  
Fax: 206-359-9000  
Attorneys for Defendant Google Inc.  
Method of Service: E-mail and U.S. Mail

Johanna Calabria, Esq.  
PERKINS COIE LLP  
Suite 2400  
Four Embarcadero Center  
San Francisco, CA 94111  
Tel: 415-344-7050  
Fax: 415-344-7124  
E-mail: [jcalabria@perkinscoie.com](mailto:jcalabria@perkinscoie.com)  
Attorneys for Defendant Google Inc.  
Method of Service: E-mail and U.S. Mail

Robert H. Cooper, Esq.  
[robert@rcooperpa.com](mailto:robert@rcooperpa.com)  
ROBERT COOPER, P.A.  
Concorde Centre II, Suite 704  
2999 N.E. 191 Street  
Aventura, Florida 33180  
Tel: 305-792-4343  
Fax: 305-792-0200  
Method of Service: U.S. Mail

Jan Douglas Atlas, Esq.  
[jatlas@adorno.com](mailto:jatlas@adorno.com)  
ADORNO & YOSS LLP  
Suite 1700  
350 East Las Olas Boulevard  
Fort Lauderdale, Florida 33301  
Tel: 954-763-1200  
Fax: 954-766-7800  
Attorneys for Defendant Google Inc.  
Method of Service: E-mail and U.S. Mail