

# EXHIBIT

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December 15, 2006

**VIA EMAIL**

Adam P. Seitz  
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Re: *Sprint Communications Company L.P. v. Vonage Holdings Corp.  
and Vonage America, Inc.*, Case No. 05-2433-JWL  
Our Reference: Y2108-00079  
Your Reference: SPRI.116441

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Dear Adam,

With respect to your request that we identify the source of the documents that were shown to Mr. McGrory at his deposition (but not produced by Sprint), be advised that these documents were sent to Barry Golob of our office by Masoud Kamali through his attorney, David Heckadon of Gordon & Rees LLP. All documents which were sent to us by Masoud Kamali, including those shown to Mr. McGrory, are presently being processed and will be produced to you shortly. Also be advised that these documents have not been reviewed by any Vonage employee or officer, nor has the substance thereof been conveyed by us to any Vonage employee or officer.

In addition, further to your telephone conference with Mr. Golob yesterday, we confirm that we will supplement Vonage's non-infringement and willfulness contentions by the end of this year, and will supplement Vonage's invalidity contentions two (2) weeks after we receive updated infringement contentions from Sprint.

Finally, we re-iterate our request for the identification of the search terms used by Sprint in its efforts to locate documents responsive to Vonage's requests for production, as well as the identification of individuals contacted in connection with those efforts. We further re-iterate that we will not regard such an identification as a waiver of any applicable privilege or immunity. In this regard, we again direct your attention to *In re CV Therapeutics, Inc., Securities Litigation*, 2006 U.S. Dist. LEXIS 38909 (N.D. Calif., April 4, 2006) at \*31-\*32.

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As evidenced by the documents shown to Mr. McGrory at his deposition, responsive documents which Sprint has not produced to Vonage clearly existed at one point in time and, based on Mr. McGrory's testimony, should have been retained by Sprint. The question now is whether Sprint cannot locate these documents because they no longer exist or because of the particular search terms employed. If you contend that these documents no longer exist, then we request that you provide us with information regarding the destruction of these documents, including the individual(s) responsible therefor and the timing thereof, as well as the circumstances surrounding and the reasons for such destruction.

If we do not hear from you to the contrary by close of business on Monday, December 18, 2006, we will presume that we have reached an impasse and Sprint will not provide us with the requested information.

Please let me know if you have any questions regarding any of the above. We look forward to your reply.

Very truly yours,



Donald R. McPhail

DRM/ego

cc: Barry Golob, Esq.

**From:** McPhail, Donald R. [mailto:DRMcPhail@duanemorris.com]  
**Sent:** Friday, December 15, 2006 11:21 AM  
**To:** Seitz, Adam P. (SHB); Webb, B. Trent (SHB)  
**Cc:** Golob, Barry; McPherson, Patrick D.  
**Subject:** Sprint v Vonage

Gentlemen -

Attached please find correspondence related to this matter. Please let me know if you have any difficulty opening the attachment.

Don

**Duane Morris**

**Donald R. McPhail**  
Partner

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