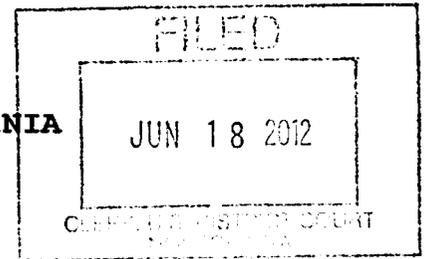


UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Norfolk Division



I/P ENGINE, INC.,

Plaintiff,

v.

Case No. 2:11cv512

AOL, INC., et al.,

Defendants.

ORDER

At the request of the parties, the Court held a telephonic hearing on June 15, 2012, to discuss various discovery-related issues. Charles J. Monterio, Jr., Esq., argued on behalf of the plaintiffs, and David Perlson, Esq., argued on behalf of the defendants.<sup>1</sup> The official court reporter was Jody Stewart.

For the reasons stated on the record, the Court ORDERS the following:

1. The deposition of Jonathan Alferness, taken in his capacity as a Rule 30(b)(6) designee of one or more of the defendants, shall be limited to a total of ten hours, to be conducted over the course of two or more days on a schedule to be determined by agreement between counsel for the plaintiff and counsel for the defendants who have identified Mr. Alferness as a Rule 30(b)(6) designee. If the parties have not agreed upon the

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<sup>1</sup> Defendant AOL, Inc. was separately represented by Robert L. Burns, Esq., but Mr. Burns deferred to Mr. Perlson, who argued on behalf of all defendants in this instance.

scheduled dates for Mr. Alferness's deposition by 4:00 p.m. on June 22, 2012, the plaintiff is DIRECTED to advise the Court by fax letter sent to the chambers of the undersigned at 757-222-7028, to be received no later than 5:00 p.m. that same day, and an order setting the deposition for dates selected by the Court shall be entered forthwith. If necessary to complete the examination of Mr. Alferness, the parties may extend the duration of his deposition by agreement, without further intervention of the Court.

2. With respect to Rule 30(b)(6) depositions of the defendants taken on or before June 25, 2012, the Court FINDS that the defendants have not received reasonable notice and time to prepare their designees to testify with respect to any new topics identified in the amended Rule 30(b)(6) deposition notices served by the plaintiff on June 12, 2012, but the plaintiff is GRANTED leave to reopen such depositions as necessary to address these new topics at a later date. To the extent possible, however, the defendants are encouraged to prepare their Rule 30(b)(6) designees to address these new topics on the initial deposition dates, and the plaintiff shall be fully prepared at the outset to examine these witnesses on all topics identified in both its original and amended Rule 30(b)(6) notices. For the avoidance of doubt, the Court notes that the seven-hour time limit imposed on each deposition by Rule 30(d)(1) has not been extended. As noted at hearing, the Court makes no determination now with respect to an

award of expenses incurred in connection with any reopened depositions; the parties may move for an award of expenses pursuant to Rules 26(c), 30(d), or 37 at a later date, as appropriate.

3. With respect to the plaintiff's response to the defendants' Interrogatory No. 1, previously addressed by this Court in its Order of May 2, 2012 (ECF No. 156), any Rule 37(b) motion to compel shall be filed on or before June 25, 2012. Any brief in opposition to such motion shall be filed within ten days after filing of the motion. Any rebuttal brief shall be filed within three days after filing of the opposition brief. The movant shall contact the Magistrate Courtroom Deputies at 757-222-7222 within three days after filing the motion to schedule a hearing to take place within seven days after completion of briefing. To be clear, Rule 6(d) of the Federal Rules of Civil Procedure does not apply to this expedited briefing schedule.

4. At hearing, the parties addressed an issue with respect to the total number of depositions to be taken by the plaintiff in this case. As presented at hearing, it appears that the parties may have entered into a stipulation or agreement addressing the total number and scope of depositions to be taken by the plaintiff. The specific terms, the operative effect, and the validity of the stipulation or agreement appear to be in dispute. Any motion to compel, motion for a protective order, or other motion related to this dispute shall be filed on or before June 25, 2012. Any brief

in opposition to such motion shall be filed within ten days after filing of the motion. Any rebuttal brief shall be filed within three days after filing of the opposition brief. The movant shall contact the Magistrate Courtroom Deputies at 757-222-7222 within three days after filing the motion to schedule a hearing to take place within seven days after completion of briefing. To be clear, Rule 6(d) of the Federal Rules of Civil Procedure does not apply to this expedited briefing schedule.

5. In the interim, the parties are DIRECTED to continue to meet and confer with respect to these discovery disputes, and to advise the Court promptly if a resolution is reached by agreement.

IT IS SO ORDERED.

  
UNITED STATES MAGISTRATE JUDGE

Norfolk, Virginia

June 18, 2012