

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA  
WEST PALM BEACH DIVISION

CASE NO.: 09-80396 CIV-MARRA

VISION MEDIA TV GROUP, LLC, a  
Florida limited liability company, JOHN  
VAZAIOS, CHRISTIAN KELCH, GARY  
JAMES, LINDA SHIELDS, MATTHEW  
McMAHON, LINDA GIBBS, LINDA  
GALLIGAN, TONY LANDA, PAUL BEMIC,  
PAUL DEMIC, CHRIS KELCH, DIANA,  
JANETTE MORRISON, SET PETERS, JEFF  
SLAVIN, CATHY PROCTOR, KRISTIN SLOAN,  
BILL HOUGH, DR. MATT McMAHON,  
MICHAEL RAWLINSSON, LEON GROBER,  
PAUL DEMNICK, KATE LARSE, and ALEX BERRY,

Plaintiffs,

vs.

JULIA FORTE, personally and JULIA FORTE  
d/b/a [www.800Notes.com](http://www.800Notes.com), ADVENT LLC, JANE  
DOE (a/k/a "BEWARE"),

Defendants.

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**PLAINTIFFS' MOTION TO STRIKE DEFENDANTS MOTION TO DISMISS OR  
FOR SUMMARY JUDGMENT AND MEMORANDUM OF LAW IN SUPPORT FOR  
FAILURE TO COMPLY WITH THE LOCAL RULES OF COURT AND MOTION TO  
STRIKE DEFENDANTS POSTING THEIR MOTIONS ON THEIR BLOG WEBSITE  
AND REQUEST FOR ADDITIONAL TIME TO RESPOND TO THE MOTION  
PENDING RESOLUTION OF PLAINTIFFS' MOTION TO STRIKE  
AND MEMORANDUM OF LAW IN SUPPORT**

Plaintiffs VISION MEDIA TV GROUP, LLC, a Florida limited liability company, JOHN  
VAZAIOS, CHRISTIAN KELCH, GARY JAMES, LINDA SHIELDS, MATTHEW  
McMAHON, LINDA GIBBS, LINDA GALLIGAN, TONY LANDA, PAUL BEMIC, PAUL  
DEMIC, CHRIS KELCH, DIANA, JANETTE MORRISON, SET PETERS, JEFF SLAVIN,  
CATHY PROCTOR, KRISTIN SLOAN, BILL HOUGH, DR. MATT McMAHON, MICHAEL

RAWLINSSON, LEON GROBER, PAUL DEMNICK, KATE LARSE, and ALEX BERRY (hereinafter collectively "Plaintiffs"), by and through their undersigned counsel, and pursuant to the applicable Federal Rules of Civil Procedure and the local rules of the Southern District of Florida, herein files their motion to strike the Defendants Motion To Dismiss or For Summary Judgment and Memorandum of Law In Support based on its failure to comply with the local rules of court in the filing of such motion. Plaintiffs would further request that the Court provide relief from the conduct of the attorney and the law firm representing the Defendants 'posting' the motion to dismiss and motion for summary judgment on their internet website as being embarrassing and defamatory and would further request for additional time to respond to the motion to dismiss and motion for summary judgment and, in support of all such positions would state as follows.

1. On January 21, 2010, Defendants filed the following documents: (i) a 28 page document entitled Motion To Dismiss Or For Summary Judgment and Memorandum of Law In Support<sup>1</sup>; and (ii) a separate, 10 page document entitled Statement of Undisputed Facts About Which There Is No Genuine Issue Under Local Rule 7.5(C).

2. Immediately after the filing of such motion, Defendants' counsel, Paul Alan Levy Esquire, posted a copy of the motion on the internet through his law firm's blog page. This is evidenced by the attached **EXHIBIT "A"**. Such conduct is clear that Defendants counsel, through his law firm, Public Citizen Litigation Group, a public litigation group tied to Ralph Nader, seeks to embarrass, defame and disparage the Plaintiffs through trying their case through the internet media outlet and without affording the Plaintiffs with an opportunity to address the substantive arguments contained in such motion through the timeframe set forth by the Federal

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<sup>1</sup> DE 14

and local rules of court. Such conduct is wrong, prejudicial and should be addressed by the Court prior to the Court considering the merits of the Plaintiffs' position.

3. The piecemeal filing of the motion was done to circumvent and, thus, violates the local rules of court and is properly subject to a motion to strike. Additionally, Defendants' counsel, Paul Alan Levey, conduct of posting the motion through their internet 'blog' website immediately after the filing of the piecemeal motion should also be stricken through the instant motion to strike as such conduct is highly prejudicial and defamatory to the Plaintiffs. The reasons for which are more fully set forth in the attached Memorandum of Law.

### **MEMORANDUM OF LAW**

#### **I. RULE 7.1 OF THE LOCAL RULES OF COURT LIMITS THE LENGTH OF MEMORANDUMS OF LAW TO 20 PAGES**

Rule 7.1(C)(2) of the local rules of the Southern District of Florida states, in part, as follows:

*Length.* Absent prior permission of the Court, no party shall file any legal memorandum exceeding twenty (20) pages in length, with the exception of a reply which shall not exceed ten (10) pages in length. . .

Case law interpreting such rule prohibits parties' from the filing of motions that are in excess of the local rule regarding page limitations without first obtaining leave of court to permit the filing of such motion. *Von Grabe vs. Fleming*, 2006 WL 2640640 \*11 (M.D. Fla. 2006) (plaintiff is cautioned that he should not file any document in excess of twenty pages without first obtaining permission from the Court). It further prohibits the conduct of the filing of piecemeal motions for summary judgment through the separate filing of (i) the motion; (ii) a memorandum of law in support of the motion; and (iii) a statement of undisputed facts in support of the motion. *Lawson vs. Dollar General Corporation, et.al.*, 2006 WL 1722345 \*1 (M.D. Fla. 2006) citing *Sommers vs. Pediatric Services of America*, 2005 U.S. Dist. LEXIS 28253 (M.D.

Fla. 2005) (prohibiting the attorney from “circumventing the rule [page limitation on motions for summary judgment] **by separately filing a motion and memorandum in support thereof.**”<sup>2</sup>)

In *Lawson*, 2006 WL 1722345 \*1, the attorney representing the defendant filed a four (4) page motion for summary judgment; a twenty (20) page memorandum of law in support of the motion for summary judgment; and an eighty seven (87) page statement of undisputed facts; equaling a total of 111 pages. The plaintiff moved to strike such filings because the filings were in excess of the page limitation allowed for by the local rules of court. The Court agreed and granted the motion to strike. *Lawson*, 2006 WL 1722345 \*1. In so holding, it noted the ‘widely accepted standard that the statement of undisputed facts should be included in the memoranda’ and further viewed the conduct of the attorney representing the defendant filing such piecemeal documents as attempting to ‘circumvent the rule’. *Lawson*, 2006 WL 1722345 \*1.

Here, there is no dispute. Taking the defendants motion for summary judgment together with the defendants ‘undisputed statement of undisputed facts’<sup>3</sup>, it is clear that the motion is in violation of the local rules of court as the motion should have been, but was not, filed prior to receiving leave of court. *Von Grabe vs. Fleming*, 2006 WL 2640640 \*11. The motion, rather, was filed in circumvention of the rule through Defendants’ counsel, Paul Alan Levy, Esquire, filing the motion in ‘piecemeal’ with the motion for summary judgment being filed in a separate document from the statement of undisputed facts. It is clear from the piecemeal filings of Defendants’ counsel, Paul Alan Levy, Esquire, that Mr. Levy is attempting to circumvent the local rules of court by ‘backdoor’ his way around the page limitation. Such conduct should be rejected though the instant motion to strike, here, just as it was not permitted through the

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<sup>2</sup> Bold font added for additional emphasis.

<sup>3</sup> Plaintiffs vehemently deny all such statements of undisputed fact that are adverse to the plaintiff; all of which will be addressed through the appropriate memorandum of law addressing the merits of the defendants’ motion.

granting of the motion to strike in *Lawson vs. Dollar General Corporation, et.al.*, 2006 WL 1722345 \*1 (M.D. Fla. 2006).

**II. DEFENDANTS' CONDUCT OF 'POSTING' THEIR MOTION FOR SUMMARY JUDGMENT AND MOTION TO DISMISS ON THEIR BLOG INTERNET WEBSITE IS DEFAMATORY AND PREJUDICIAL AND SHOULD ALSO BE STRICKEN**

Not only does the motion to dismiss and motion for summary judgment violate the local rules of court through defendants' counsel's conduct of attempting to circumvent the local rules through filing such motion in piecemeal, but Defendants' counsel, who appears to be grandstanding and seeking his own publicity for himself and his public citizen group law firm, also engaged in additional defamatory conduct through immediately posting their recent, procedurally incorrect, motion on their law firm internet blog page with the clear intention to further defame and embarrass the Plaintiffs and their well respected program host, Hugh Downs, and without affording the Plaintiffs with procedural due process through the filing of a responsive memorandum of law in opposition to such filing and without waiting for the Court to rule on the merits of the Defendants position. The result of such conduct is only serving to cause additional prejudice to the Plaintiffs as the Plaintiffs are now not only being defamed and viewed in false light by the Defendants, but are also being defamed and placed in false light by the Defendants' attorney and their public interest law firm. Defendants should be required to wait for the judicial process to take its course prior to further engaging in any embarrassing, slanderous, and defamatory conduct. Plaintiffs have been working with Hugh Downs for three years; the conduct of Defendants attorney posting the motion on their internet blog website has the potential to embarrass the Plaintiffs and Mr. Downs. The redress should be addressed through an order directing the Defendants' counsel to strike any references to the Plaintiffs on

their internet blog website and allow the Court, rather than the media or the public, decide the issues framed in the instant litigation on their merits.

**III. PLAINTIFFS' REQUEST AN ENLARGMENT OF TIME TO RESPOND TO DEFENDANTS' MOTION TO DISMISS AND MOTION FOR SUMMARY JUDGMENT PENDING RESOLUTION OF THE ISSUES REFERENCED ABOVE**

As the issues referenced above may affect the Defendants' pending piecemeal motion to dismiss and motion for summary judgment, Plaintiffs request an enlargement of time to respond to the merits, or lack thereof, of the Defendants' motion pending resolution of the issues more particularly contained thereof. Should the motion for additional time be granted, the parties will not be prejudiced as the procedural issues referenced above should be addressed by the Court prior to the Court requiring a response on the substantive merits of the Defendants' position. Should the motion be denied, however, the parties will be substantially prejudiced as the effect of the denial of the motion for additional time may lead to the Plaintiffs being required to respond, twice, to the pending motion to dismiss and motion for summary judgment.

**CONCLUSION**

Plaintiffs would respectfully request that the Court grant the motion to strike Defendants' Motion To Dismiss Or For Summary Judgment and Memorandum of Law In Support For Failure To Comply With The Local Rules of Court. Plaintiffs would further request that the Court compel the Defendants to strike from the internet blog of their attorneys' website any references to the motion to dismiss and motion for summary judgment and further prohibit any further attempts by the Defendants' attorneys to cast the Plaintiffs in a negative and false light prior to resolving the pending claim on the merits. Plaintiffs would further request that the Court provide the Plaintiffs with an enlargement of time to respond to the pending motion to dismiss and motion for summary judgment pending resolution of the issues, referenced above. Plaintiffs

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would then request that the Court grant Plaintiffs any further relief that the Court deems fair, just and equitable.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing was sent via electronic transmission on this the 25<sup>th</sup> day of January, 2010 to **Lee E. Levenson, Jr.**, co-counsel for Plaintiffs, 2500 Quantum Lakes Drive, Suite 203, Boynton Beach, Florida 33426 and to **Paul Alan Levy, Esquire**, Public Citizen Litigation Group, 1600 20<sup>th</sup> Street, N.W., Washington, D.C. 20009-1001.

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