

November 11, 2009

Ms. Sonia Miranda
Clerk, 80th Judicial District Court
201 Caroline, 9th floor
Houston, Texas 77002

Re: Cause No. 2008-24181; *Virgie Arthur v. Howard K. Stern, Bonnie Stern, Larry Birkhead, Lyndal Harrington, Art Harris, Nelda Turner, Teresa Stephens, TMZ Productions, Inc and Harvey Levin. CBS Studios, Inc.*; In the 80th Judicial District Court; Harris County, Texas.

Dear Mr. Jackson:

Enclosed please find for filing the Plaintiffs Motion for Continuance or Abatement of Case Deadlines, with corresponding Proposed Order and Notice of Submission. I have enclosed a copy of each of these documents, which I ask that you file stamp and return with the waiting messenger.

We understand that it is Judge Weiman's policy that Motions for Continuance, unless agreed, are to be set for oral hearing. However, in my conversation with your office today, I learned that the first possible opportunity for an oral hearing on this issue is December 11, 2009, well after our expert designation date. As discussed on the telephone, we are therefore asking you to place this on the Submission Docket for November 23, 2009.

Thank you for your assistance in this matter. If you have any questions, please do not hesitate to contact us.

By copy of this letter, all counsel of record and *pro se* defendants have been supplied with copies of this document.

Sincerely,



Patti Lampton, CP, TBLS
Paralegal

Enclosures

cc: Mr. Harry Susman *Via Email an Faxy*
Mr. Richard Hess
Susman Godfrey LLP
1000 Louisiana, 51st Floor
Houston, Texas 77002

Mr. L. Lin Wood *Via Email and Fax*
Mr. Luke Lantta
Bryan Cave
2200 Ross Avenue, Suite 3200
Dallas, Texas 75201

Mr. Charles Babcock *Via Email and Fax*
Ms. Amanda Bush
Ms. Nancy Hamilton
Jackson Walker
1401 McKinney, Suite 1900
Houston, Texas 77010

Ms. Diana Marshall *Via Email and Fax*
Marshall & Lewis, LLP
1010 Lamar, Suite 450
Houston, Texas 77002

Ms. Teresa Stephens *Via Certified Mail*
5022 Cloyce Court
North Richland Hills, Texas 76180

Ms. Bonnie Stern *Via Email and Certified Mail*
269 S. Beverly Dr., No. 1247
Beverly Hills, CA 90212

Ms. Lyndal Harrington *Via Email and Certified Mail*
8318 Burning Hills Dr.
Houston, TX 77071

Ms. Nelda Turner *Via Email and U.S. Mail*
13348 County Road 3111
Gladewater, Texas 75647

CERTIFICATE OF SERVICE

On the 11th day of November 2009, Plaintiff served the foregoing Notice of Submission for Motion for Continuance or Abatement of Case Deadlines to all parties as follows.

Via Email and Fax

Mr. Harry Susman
Mr. Richard Hess
Susman Godfrey LLP
1000 Louisiana, 51st Floor
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(713) 651-9366
Fax: (713) 654-6666

Via Email and Fax

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Via Email and Fax

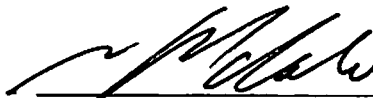
Mr. Charles Babcock
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Ms. Lyndal Harrington
8318 Burning Hills Dr.
Houston, TX 77071

Via Email and U.S. Mail

Mrs. Nelda Turner
13348 County Road 3111
Gladewater, Texas 75647



Neil McCabe

VIRGIE ARTHUR,	§	IN THE DISTRICT COURT OF
	§	
PLAINTIFF,	§	
	§	
v.	§	HARRIS COUNTY, TEXAS
	§	
HOWARD K. STERN, BONNIE STERN,	§	
LYNDAL HARRINGTON, ART HARRIS,	§	
NELDA TURNER, TERESA STEPHENS,	§	
LARRY BIRKHEAD, HARVEY LEVIN,	§	
TMZ PRODUCTIONS, INC., and	§	
CBS STUDIOS, INC.	§	
	§	
DEFENDANTS.	§	80th JUDICIAL DISTRICT

MOTION FOR CONTINUANCE OR ABATEMENT OF CASE DEADLINES

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Plaintiff VIRGIE ARTHUR, and files this, her Motion for Continuance or Abatement of Case Deadlines, and for cause would show:

I.

Judge Tony Lindsay issued a docket control order in this case on June 1, 2009. A copy of that order is attached hereto as Exhibit A. Among the deadlines dictated by that order is an expert designation date of November 24, 2009 for parties seeking affirmative relief. The order further specifies that the "designation must include the information listed in Rule 194.2(f)." Exhibit A lists the date for trial of this case as May 24, 2010.

On October 5, 2009, after this case was transferred from the 280th District Court, this Court issued an Order Resetting Trial. A copy of that order is attached as Exhibit B. Exhibit B reiterates that the trial of this case is scheduled to take place on May 24, 2010. The order does not, however, address the expert designation deadline or any other preliminary deadlines.

II.

Nearly a year ago, on December 1, 2008, Plaintiff Virgie Arthur designated John Mallery of BKD, LLP as an expert witness regarding computer forensics. Because of delays beyond Plaintiff's control, Mr. Mallery has yet to receive data from the defendants for analysis, and he therefore would be unable to provide any meaningful information, as dictated by Rule 194.2(f), on or before the expert designation date noted in the Docket Control Order.

A Special Master was appointed in this case on January 27, 2009 to obtain information responsive to discovery requests from various defendants' computers, but he has been thwarted in his efforts. The record in this case reflects Plaintiff's diligent efforts to obtain the discovery she needs to move this case forward. Plaintiff has filed no fewer than five motions to compel various defendants in this case. After defendants persisted in non-compliance with orders compelling discovery, Plaintiff filed at least four motions for contempt. Defendants Lyndal Harrington and Teresa Stephens have been found in contempt for failing to comply with discovery orders. A third defendant, Bonnie Stern, has seen a default judgment entered against her for discovery abuse and spoliation. Communications to the parties from the Special Master indicate that a fourth defendant, Art Harris, also has engaged in massive spoliation of evidence.

In addition to these events in the trial court, Defendants Howard K. Stern, Teresa Stephens, and Art Harris each have filed mandamus proceedings, which have impeded the discovery process.

III.

Plaintiff's inability to obtain discovery potentially affects all the deadlines set out in the Docket Control Order of June 1, 2009. It is impossible to determine at this

juncture what dates will be appropriate for expert deadlines, discovery deadlines, pleading deadlines, and trial.

WHEREFORE PREMISES CONSIDERED, Plaintiff prays that deadlines set out in the Docket Control Order dated June 1, 2009 and the Order Resetting Trial dated October 5, 2009 be abated until such time as this Court can put meaningful and appropriate deadlines into place.

Respectfully submitted,

THE O'QUINN LAW FIRM

By: 

Neil C. McCabe
State Bar No. 13335300
M. Michael Meyer
State Bar No. 13993850
440 Louisiana, Suite 2300
Houston, Texas 77002
713-223-1000 (telephone)
713-222-6903 (fax)
**ATTORNEYS FOR
PLAINTIFF**

CERTIFICATE OF CONFERENCE


I attempted to confer with all parties by email on November 11, 2009, with the following responses:

Defendant Nelda Turner agrees.

Defense counsel Charles Babcock and L. Lin Wood responded by seeking specific dates for a new docket control order, which Plaintiff was unable to provide.

Defendant Teresa Stephens responded by asking questions about the scope of Plaintiff's computer expert's work.

Responses were not received from the other defendants by the time this document was filed.


Neil McCabe

CERTIFICATE OF SERVICE

On the 11th day of November 2009, Plaintiff served the foregoing Motion for Continuance or Abatement of Case Deadlines to all parties as follows.

Via Email and Fax
Mr. Harry Susman
Mr. Richard Hess
Susman Godfrey LLP
1000 Louisiana, 51st Floor
Houston, Texas 77002
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Via Email and Fax
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Houston, TX 77071

Via Email and U.S. Mail
Mrs. Nelda Turner
13348 County Road 3111
Gladewater, Texas 75647



Neil McCabe


AFFIDAVIT

BEFORE ME, the undersigned authority, appeared NEIL MCCABE, who is personally known to me, and who, upon his oath, deposed and said:

1. My name is Neil McCabe. I am over the age of eighteen years and I am competent to make this affidavit. I am lead attorney for Plaintiff in the above styled and numbered cause of action. As such, I am familiar with the documents filed in this case, and the dates of such filings are within my personal knowledge.

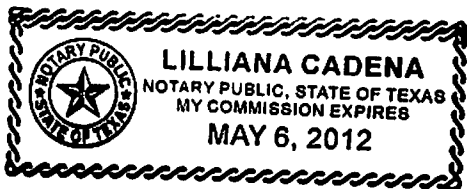
2. The statements contained in the foregoing Motion for Continuance or Abatement of Case Deadlines are within my personal knowledge and are true and correct. The documents attached to the motion are true and correct copies.


FURTHER AFFIANT SAITH NOT.



Neil McCabe

SWORN and SUBSCRIBED before me on this the 17th day of November, 2009.





Notary Public in and for
The State of Texas

RECEIVED
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Case No. 200824181

DCORX
IN THE DISTRICT COURT OF
HARRIS COUNTY, TEXAS
280th JUDICIAL DISTRICT

ARTHUR, VIRGIL By: _____
vs.
STERN, HOWARD K

DOCKET CONTROL ORDER

The following docket control order shall apply to this case unless modified by the court. If no date is given below, the item is governed by the Texas Rules of Civil Procedure.

1. **NO NEW JOINDER. All parties must be added and served, whether by amendment or third party practice, by this date. THE PARTY CAUSING THE JOINDER SHALL PROVIDE A COPY OF THIS DOCKET CONTROL ORDER AT THE TIME OF SERVICE.**
PARTIES
2. **EXPERT WITNESS DESIGNATION.** Expert witness designations are required and must be served by the following dates. The designation must include the information listed in Rule 194.2(f). Failure to timely respond will be governed by Rule 193.6.
(a) 11/24/09 Experts for parties seeking affirmative relief.
(b) 01/11/10 All other experts.
3. **STATUS CONFERENCE.** Parties shall be prepared to discuss all aspects of the case, including ADR, with the court on this date. TIME:
Failure to appear will be grounds for dismissal for want of prosecution.
4. **DISCOVERY LIMITATIONS.** The discovery limitations of Rule 190.2, if applicable, or otherwise of Rule 190.3 apply unless changed below:
(a) Total hours per side for oral depositions.
(b) Number of interrogatories that may be served by each party on any other party.
5. **ALTERNATIVE DISPUTE RESOLUTION.**
(a) By this date the parties must either (1) file an agreement for ADR stating the form of ADR requested and the name of an agreed mediator, if applicable; or (2) set an objection to ADR. If no agreement or objection is filed, the court may sign an ADR order
(b) ADR conducted pursuant to the agreement of the parties must be completed by this date.
6. 04/19/10 **DISCOVERY PERIOD ENDS.** All discovery must be conducted before the end of the discovery period. Parties seeking discovery must serve requests sufficiently far in advance of the end of the discovery period that the deadline for responding will be within the discovery period. Counsel may conduct discovery beyond this deadline by Agreement. Incomplete discovery will not delay the trial.
7. **DISPOSITIVE MOTIONS AND PLEAS.** Must be heard by oral hearing or submission.
(a) If subject to an interlocutory appeal, dispositive motions or pleas must be heard by this date.
(b) Summary judgment motions not subject to an interlocutory appeal must be heard by this date.
(c) Rule 166a(i) motions may not be heard before this date.
8. **CHALLENGES TO EXPERT TESTIMONY.** All motions to exclude expert testimony and evidentiary challenges to expert testimony must be filed by this date, unless extended by leave of court.
9. 03/08/10 **PLEADINGS.** All amendments and supplements must be filed by this date. This order does not preclude prompt filing of pleadings directly responsive to any timely filed pleadings.
10. 05/14/10 **DOCKET CALL**
Parties shall be prepared to discuss all aspects of trial with the court on this date.
TIME: 08:00 AM Failure to appear will be grounds for dismissal for want of prosecution.
11. 05/24/10 **TRIAL.** If not assigned by the second Friday following this date, the case will be reset.

SIGNED

NEIL C. MCCABE
440 LA SUITE 2300
HOUSTON, TX 77002

13335300

TONY LINDSAY
Judge, 280TH DISTRICT COURT
Date Generated 05/20/2009

JUN 07 2009

Case No. 200824181

ORTX

ARTHUR, VIRGIE
vs.
STERN, HOWARD K

IN THE DISTRICT COURT OF
HARRIS COUNTY, TEXAS
80th JUDICIAL DISTRICT

ORDER RESETTING TRIAL

This case is reset for TRIAL for the two week period beginning 05-24-2010.

If the case has not been reached by the second Friday after this date, the trial will be reset. All previous pre-trial deadlines remain in effect, unless changed by the court.

If you have any questions regarding this notice, please contact the court coordinator, LORIS GARRETT at (713) 368-6098.

Signed

LARRY WEIMAN
Judge, 80TH DISTRICT COURT
Generated on: 10/05/2009

RECEIVED
OCT 07 2009
BY: LC

Neil C. McCabe
440 Louisiana St
Houston TX 77002-1639

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EXHIBIT B

