

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

ROBERT H. BRAVER, an individual,)	
)	
Plaintiff,)	
)	
vs.)	Case No.: CIV-05-210-T
)	
NEWPORT INTERNET MARKETING)	
CORPORATION, a California corporation, and)	
ROBERT ALAN SOLOWAY, an individual,)	
)	
Defendants.)	

**PLAINTIFF’S OBJECTION, IN PART, TO DEFENDANTS’
MOTION TO WITHDRAW AND FOR EXTENSION OF TIME**

The Plaintiff, Robert H. Braver, by and through his counsel, Michael R. McKee (“Plaintiff”), hereby objects in part to the motion of Michael D. McClintock, Blake Sonne, and McAfee and Taft A Professional Corporation (collectively “Movant”) to withdraw and for an extension of time for Defendants Newport Internet Marketing Corporation and Robert Alan Soloway (“Defendants”) to answer or otherwise plead. In support of his Objection, Plaintiff would show the Court as follows:

1. Plaintiff filed his original Petition in Cleveland County District Court on December 21, 2004.

2. Plaintiff’s Seattle process server attempted service upon Mr. Soloway multiple times beginning on December 28, 2004. Mr. Soloway, who has indicated that he is an experienced defendant, appears to have avoided service. (See Exhibits “A” and “B”).

3. Due to the difficulties in effecting personal service, Plaintiff attempted service via Certified Mail, Restricted Delivery on January 25, 2005. The return receipt and USPS records indicate a delivery date of January 29, 2005. (See Exhibit "C").
4. At about the time that Defendants' answer was due, Defendants' counsel contacted Plaintiff's counsel and advised that they would be removing the case to this Court. Plaintiff agreed to an extension of time until March 22, 2005 for Defendants' to answer or otherwise plead as a matter of course, in addition to Defendants' agreement to waive any challenges to the sufficiency of service.
5. On or about March 19, 2005, Defendants' counsel again contacted Plaintiff's counsel seeking an extension of time. While considering Defendant's request, Plaintiff contemplated filing an Amended Complaint adding additional parties. Accordingly, on March 25, the parties agreed that Defendants would not file an answer or otherwise plead to Plaintiff's First Amended Complaint but rather await Plaintiff's Second Amended Complaint and answer or otherwise plead in the time allowed under the Federal Rules of Civil Procedure.
6. On May 3, 2005, Plaintiff's counsel informed Defendants and Movant that it would not be filing a Second Amended Complaint, and to accommodate Defendants' counsel's trial schedule, it was agreed that the Defendants would file their answer to Plaintiff's First Amended Complaint on or before May 18, 2005. (See Exhibit "D").
7. Plaintiff's counsel was not made aware of Movant's desire to withdraw from the case until May 19, one day after Defendants were to answer.

8. Counsel conferred as to Movant's withdrawal, to which Plaintiff had no objection. However, Plaintiff's counsel was not informed that Movant's motion to withdraw would contain a requested additional forty-five (45) day extension.
9. Defendants have not properly utilized the time previously extended to them in good faith, as it is apparent from the following brief summary of Defendants' behavior that Defendants have not assisted in the preparation of their defense, but have instead utilized their time to undertake a campaign of threats, intimidation, and retaliation against Plaintiff and others who have asserted claims and/or filed suit against Defendants.
10. On March 25, the same day Plaintiff agreed to Defendants' second requested extension, a person later determined to be Mr. Soloway began anonymously broadcasting a message clearly designed to threaten, harass, intimidate, and cast aspersions on the Plaintiff. The ostensible gist of the message appears to be an attempt to solicit persons with unspecified claims against the Plaintiff to participate in litigation of an unspecified subject matter against Plaintiff in the states of California, Washington, and/or Oklahoma, in which participants' fees and costs would be paid for. The message was sent to various public online forums involving spam remediation where Plaintiff and his peers would be likely to see it. (See Exhibit "E").
11. On April 8, 2005 in a Washington State case in which Microsoft Corporation has brought similar claims against these same Defendants, Microsoft was ultimately awarded a default judgment against the Defendants as a sanction for failure to make discovery. (See Exhibit "F"). Plaintiff has been informed that in the time between the Washington court's entry of its order and the approval of Microsoft's entry of a \$7.85 million

judgment against Defendants on May 20, Defendants' Washington counsel had also withdrawn and Defendants proceeded pro se¹.

12. On May 17, 2005, Mr. Soloway posted a message to an online spammer's forum apparently in response to reports of his loss in the Microsoft case stating, among other things, that he has, "been sued for hundreds of millions of dollars and have had my business running for over 10 years without ever paying a dime regardless to (sic) the outcome of any lawsuits," Mr. Soloway further states that he is forming class action suits in 38 states against Microsoft for, "their violations of state spam laws, the computer fraud and abuse act and the can-spam act." Mr. Soloway finishes by stating, "there's only one winner in the Microsoft suit against me.. me... and in regards to the braver (sic) suit, if he doesn't drop the case on me shortly, I will bring it all the way to trial costing him a fortune and win, as I always do, not to mention he will have about \$500,000 in legal bills defending himself from some of the best legal firms in 4 states due to his previous abuses in the telemarketing and junk fax arena regarding previous individuals that used to reside near his location..... I always win.. regardless of the judgement (sic) amount.. losing is not an option, and I never ever, ever, have to pay a single cent to anyone..."

13. On May 18, 2005 at approximately 2:15 P.M., Plaintiff's counsel received a faxed letter from Defendants' counsel stating, in essence, that Defendants would file a defamation lawsuit in California against Plaintiff unless Plaintiff agreed to dismiss the instant case. Plaintiff is not aware of anything that could possibly give rise to a defamation claim with respect to the Defendants, nor was any indication as to a basis for any such claim offered.

¹ Copies of the relevant recent court documents from the Washington case are presently en route to Plaintiff.

Further, the letter from Defendants' counsel gave no indication that the Defendants would not file their answer or responsive pleading by the deadline at end of the day, or that the Movant desired to withdraw.

14. Also on May 18 2005, Mr. Soloway issued a "Press Release" announcing his organization of "SPAMIS: Strategic Partnership Against Microsoft Illegal Spam." The full announcement as posted on Mr. Soloway's web site runs 16 printed pages, single-spaced, and promises to be the first of 22 parts to be released weekly. Mr. Soloway further promises that his screeds will be, "emailed to over 1,940,000,000 internet user email addresses and 16,310 media outlets worldwide," with the goal of, "99.9% saturation of the Internet public." (First and last pages attached as Exhibit "G").

15. Defendant has spent what Plaintiff believes, particularly in light of Defendants' obligations in the instant case, an inordinate amount of time and effort participating in online discussions where he reiterates his threats, bravado, and sabre-rattling.

16. Plaintiff would be prejudiced by the proposed 45-day extension to answer as there is every indication that Defendants will simply use the opportunity to continue, if not escalate, his campaign of harassment and intimidation against Plaintiff while further stalling this case, apparently in hopes that Plaintiff will eventually relent.

17. Plaintiff would be prejudiced by the proposed 45-day extension in that Plaintiff's customers and server facilities continue to receive fraudulent spam from Defendants in violation of various civil and criminal state and federal statutes.

WHEREFORE, Plaintiff agrees to Movant's request to withdraw from this matter, but respectfully objects to the requested 45-day extension of time with which to answer or otherwise plead. In light of the foregoing, Plaintiff suggests that the Defendants be allowed to secure replacement counsel or otherwise appear pro se, as appropriate, and answer within (10) days.

Respectfully submitted,

s/Michael R. McKee
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ATTORNEY FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that on May 22, 2005, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing. Based on the electronic records currently on file, the Clerk of Court will transmit a Notice of Electronic Filing to the following ECF registrants:

Michael D. McClintock
McAfee & Taft A Professional Corporation
Tenth Floor, Two Leadership Square
211 N. Robinson Ave.
Oklahoma City, OK 73102
michael.mcclintock@mcafeetaft.com

s/Michael R. McKee _____
Michael R. McKee