

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION**

BRUCE AND WENDY ANDERSON,  
(in propria persona)

Plaintiffs,

v.

AMWAY/QUIXTAR, INC., a corporation;  
MICHAEL YOUNG McCORMICK,  
DONALD E. CHRISTOPHER,  
HAL GOOCH,

Defendants.

Case 3:07-cv-00844-HLA-JRK

**QUIXTAR INC.'S MOTION TO STRIKE THE ANDERSONS' MEMORANDUM IN  
SUPPORT OF PLAINTIFFS' MOTION TO SUBPOENA CRITICAL EVIDENCE  
PRIOR TO DISCOVERY AND INCORPORATED MEMORANDUM IN SUPPORT**

Plaintiffs' Memorandum in Support of Plaintiffs' Motion to Subpoena Critical Evidence Prior to Discovery (Dkt. No. 61) ("Reply") violates Local Rule 3.01(c). Accordingly, Quixtar Inc. ("Quixtar") (erroneously denominated as Amway/Quixtar, Inc. in the Amended Complaint (Dkt. No. 4)) respectfully requests the Court to strike Plaintiffs' Reply.

**MEMORANDUM OF LAW IN SUPPORT**

On March 12, 2008, Plaintiffs, the Andersons, filed their Motion to Subpoena Critical Evidence Prior to Discovery and for Second Enlargement of Time (Dkt. No. 57) ("Andersons' Motion"). Pursuant to Local Rule 3.01(b), Quixtar filed its response on March 26, 2008 (Dkt. No. 58) ("Response"). On April 11, 2008, the Andersons filed their Reply. Although styled as a "Memorandum in Support" of the Andersons' Motion, the document is a reply brief as it attempts (albeit, unsuccessfully) to provide further support for the Andersons' Motion in reply to

Quixtar's Response. As explained below, the Andersons' Reply violates the Local Rules and should be struck.

Local Rule 3.01(c) provides that "[n]o party shall file any reply or further memorandum directed to the motion or response allowed in (a) and (b) unless the Court grants leave." A party proceeding *pro se* must conform to the Court's procedural rules. *See Albra v. Advan, Inc.*, 490 F.3d 826, 829 (11th Cir. 2007) (refusing to review argument on appeal for *pro se* party's procedural errors); *Loren v. Sasser*, 309 F.3d 1296, 1304 (11th Cir. 2002) (dismissing complaint for *pro se* party's procedural errors).

By filing their Reply without seeking leave from this Court, the Andersons plainly have not complied with Local Rule 3.01(c). In the (unlikely) event that this Court views the Andersons' Reply as inherently seeking leave to file it, such a request also violates Local Rule 3.01(g) as the Andersons failed to conduct a meet and confer with Quixtar's counsel and failed to attach the required certification. *See* LR 3.01(g). Should the Court anyhow permit the Reply, the Andersons' Motion should still be denied for the reasons stated in Quixtar's Response because it violates the Federal Rules of Civil Procedure 26 and 45 as well as the Local Rules. (*See* Quixtar's Response.)

#### **LOCAL RULE 3.01(g) CERTIFICATION**

Pursuant to M.D. Fla. Loc. R. 3.01(g), the undersigned certifies that she has consulted with Plaintiffs and has been informed that Plaintiffs object to this Motion.

WHEREFORE, Quixtar respectfully requests the Court strike to the Andersons' Reply for the foregoing reasons.

DATED: April 23, 2008

Respectfully submitted,

s/ Sarah G. Maroon

Sarah G. Maroon

Florida Bar Number 181757

email: sarah.maroon@akerman.com

**AKERMAN SENTERFITT**

50 N. Laura Street, Suite 2500

Jacksonville, Florida 32202

Telephone: (904) 798-3700

Facsimile: (904) 798-3730

and

Timothy Q. Delaney (admitted *pro hac vice*)

tqd@usebrinks.com

Jon H. Beaupré (admitted *pro hac vice*)

jbeaupre@usebrinks.com

Andrea Lynn Evensen (pending *pro hac vice*)

aevensen@usebrinks.com

**BRINKS HOFER GILSON & LIONE**

455 N. Cityfront Plaza Drive, Suite 3600

Chicago, Illinois 60611

Telephone: (312) 321-4200

Facsimile: (312) 321-4299

**ATTORNEYS FOR DEFENDANT,  
QUIXTAR INC.**

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on April 23, 2008, I electronically filed the foregoing, QUIXTAR INC.'S MOTION TO STRIKE THE ANDERSONS' MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION TO SUBPOENA CRITICAL EVIDENCE PRIOR TO DISCOVERY AND INCORPORATED MEMORANDUM IN SUPPORT, with the Clerk of Court by using the CM/ECF system which will send notification of such filing to the following:

Donald E. Christopher  
Email: dchristopher@litchfordchristopher.com  
Keith E. Rounsaville  
Email: krounsaville@litchfordchristopher.com  
LITCHFORD & CHRISTOPHER  
Professional Association  
Bank of America Center  
390 North Orange Avenue  
Post Office Box 1549  
Orlando, FL 32802

Gerald F. Richman  
Email: grichman@richmangreer.com  
Leora Beth Freire  
Email: lfreire@richmangreer.com  
Richman Greer  
Suite 1504, 250 Australian Ave. South  
West Palm Beach, FL 33401

William E. West, Jr.  
wewlaw@bellsouth.net  
3000 Bethesda Place, Suite 703  
Winston-Salem, North Carolina 27103

I further certify that I mailed the foregoing document and the notice of electronic filing by first-class mail to the following non-CM/ECF participants on April 23, 2008:

Bruce and Wendy Anderson  
11211 Portside Drive  
Jacksonville, FL 32225-1516

Michael Y. McCormick  
1900 West Loop South, Suite 700  
Houston, Texas 77027

**/s Sarah G. Maroon**  
One of the attorneys for Defendant, Quixtar Inc.