

**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 No.: 3:07-cv-00844-HLA-JRK

**QUIXTAR INC.'S RESPONSE TO
PLAINTIFFS' MOTION TO SUBPOENA CRITICAL EVIDENCE
PRIOR TO DISCOVERY AND FOR SECOND ENLARGEMENT OF TIME**

Defendant QUIXTAR, INC., by its undersigned counsel, and pursuant to Local Rule 3.01 (b), responds to Plaintiffs' Motion to Subpoena Critical Evidence Prior to Discovery and for Second Enlargement of Time (Dkt. No. 57) ("Motion") and states:

I. THE MOTION SHOULD BE DENIED BECAUSE IT VIOLATES THE FEDERAL RULES OF CIVIL PROCEDURE AND THE LOCAL RULES

Plaintiffs' Motion is improper under the Federal Rules of Civil Procedure and this Court's Local Rules. A party appearing *pro se* must conform to procedural rules. *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).

Specifically, the Court should deny the instant Motion because it improperly seeks discovery prior to a Rule 26(f) conference. *Frazier v. Cummings Leasing, Inc.*, No. 3:07-cv-209-J-20TEM, 2007 WL 2225965, at *2 (M.D. Fla. Aug. 2, 2007) (discovery is proper only after

Rule 26(f) conference is held). Federal Rule of Civil Procedure 26(d) provides: “A party may *not* seek discovery from any source before the parties have conferred as required by Rule 26(f), except in a proceeding exempted from initial disclosure under Rule 26(a)(1)(B), or when authorized by these rules, by stipulation, or by court order.” Fed. R. Civ. P. 26(d) (2008) (emphasis added).

The Parties have not held a Rule 26(f) conference or the Case Management Conference pursuant to Local Rule 3.01(c)(2)(B). Accordingly, no discovery plan has been set. *See* LR 3.01(c)(2)(C)(ii)-(iii). This is due in part to Plaintiffs’ request for an extension of time for holding such conference. (*See* Pls.’ Mot. for Extension of Time (Dkt. No. 48); Feb. 12, 2008 Order at 2 (Dkt. No. 49).) Notably, Plaintiffs now seek a second extension of time. (Pls.’ Mot. (Dkt. No. 57) at 2-3.)

The instant Motion impermissibly seeks production of an alleged video tape and a list of those who attended an alleged safari trip. Plaintiffs fail to provide any basis for their wrongful conclusion that some alleged video is “critical to this case” and needed “in the interest of justice.” (Pls.’ Mot. at 1.) Instead, it is clear that the instant Motion is merely a fishing expedition seeking irrelevant, untimely, and improper discovery in violation of the Federal Rules of Civil Procedure and the Local Rules—and Plaintiffs cite no authority to the contrary. Accordingly, this Court should deny the Motion because it clearly violates Rule 26(d) and Local Rule 3.01(c)(2). *Frazier*, 2007 WL 2225965 at *2 (denying motion to compel discovery prior to holding Rule 26(f) conference because it violated Federal Rules of Civil Procedure and Local Rules).

Second, Plaintiffs submit their subpoena against Quixtar to this Court with the hope that this Court will “approve” the subpoena. (Pls.’ Mot. at 2.) However, Plaintiffs cite no authority

condoning such an “approval” process—and even if such an “approval” process existed, because the subpoena is so laden with errors, it needs to be denied. First, the subpoena improperly seeks discovery before the occurrence of the Rule 26(f) conference and Case Management Conference in violation of Rule 26(d) and Local Rule 3.01(c)(2)(B). *Frazier*, 2007 WL 2225965 at *2. Second, the subpoena lists Bruce and Wendy Anderson as the issuing officers, yet because they are not attorneys or a Clerk of the Court, they are not able to issue a subpoena. *See* Rule 45(a)(3). Third, even if Plaintiffs were properly named as issuing officers, they have failed to sign the subpoena in violation of Rule 45(a)(3). Fourth, the subpoena fails to state a date and time for any requested production of documents and things in violation of Rule 45(a)(1)(A)(iii).

Finally, Plaintiffs’ Motion also fails to follow this Court’s Local Rules. Specifically, Plaintiffs failed to follow Local Rule 3.01(g) which states, in part:

Before filing any motion in a civil case . . . *the moving party shall confer with counsel for the opposing party in a good faith effort to resolve the issues raised by the motion*, and shall file with the motion a statement (1) certifying that the moving counsel has conferred with opposing counsel and (2) stating whether counsel agree on the resolution of the motion.

Local Rule 3.01(g) (emphasis added).

Plaintiffs never contacted counsel for Quixtar for a meet and confer on the instant Motion. Had they done so, they would have learned that counsel for Quixtar does not oppose Plaintiffs’ request for a second enlargement of time—but not for the reasons suggested by Plaintiffs. Thus, Quixtar does *not* agree to an extension of time because Plaintiffs’ discovery request is proper (which it is not) or because “[t]he list of defendants is expected to increase dramatically and change the complexion of the case,” (which it should not). (Pls.’ Mot. at 2.) Rather, Quixtar would have agreed to the extension of time as a courtesy. Instead of following

the rules, Plaintiffs waste this Court's time by having Quixtar respond to Plaintiffs' request for an extension of time.

II. CONCLUSION

The instant Motion violates the Federal Rules of Civil Procedure, and in particular Rules 26 and 45. The instant Motion also violates the Local Rules. Accordingly, this Court should deny it.

WHEREFORE, Quixtar respectfully requests this Court enter an Order denying Plaintiffs' Motion to Subpoena Critical Evidence Prior to Discovery and for Second Enlargement of Time and grant it such other relief as the Court deems just and proper.

DATED: March 26, 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

**ATTORNEYS FOR DEFENDANT,
QUIXTAR INC.**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 26, 2008, I electronically filed the foregoing, QUIXTAR INC.'S RESPONSE TO PLAINTIFFS' MOTION TO SUBPOENA CRITICAL EVIDENCE PRIOR TO DISCOVERY AND FOR SECOND ENLARGEMENT OF TIME, with the Clerk of Court by using the CM/ECF system which will send notification of such filing to the following:

Donald E. Christopher
Keith E. Rounsaville
LITCHFORD & CHRISTOPHER
Professional Association
Bank of America Center
390 North Orange Avenue
Post Office Box 1549
Orlando, FL 32802

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:

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

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

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

/s/ Sarah G. Maroon
Attorney