

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
No. 1:02CV382

STEVE WINTER AND PRERAPTURE SOLUTIONS, INC.,
D/B/A SELLCOM,

Plaintiffs,

v.

MARK BASSETT, PETER WILLIAM SACHS, MICHAEL
SCHIDELL, STEVE ADAMS, WILLIAM COUSERT,
CAMILLE KLEIN, DAVE RATCLIFFE, DONNIE R. HAYES,
WILLIAM ARTHUR MILLER, JR., JERRY MOON, CARL
MCCASKEY, MARK GWYNN, BRIAN BOGGS, ANDY
ENGLE, GOSPEL FILMS, INC., d/b/a GOSPEL.COM.NET,
VERIZON SOUTH, INC., TIME WARNER TELECOM HOLD-
INGS, INC., d/b/a RR.COM, STEVE BUEHLER, AMERICAN
TELEPHONE AND TELEGRAPH COMPANY (AT&T), PSI
NET, INC., KC DATA CORPORATION, d/b/a SLURP.NET,
and YAHOO! INC.,

Defendants.

**RESPONSE OF DEFENDANT
STEPHEN M. ADAMS IN OPPOSITION TO PLAINTIFFS' MOTION
TO EXTEND TIME AND FOR
CONSOLIDATED BRIEFING
SCHEDULE**

The undersigned, having received by mail on 22 July 2002 a copy of Plaintiff's motion to extend and consolidate, joins in the response filed by AT&T, Verizon, and Yahoo on 18 July 2002 as to why Plaintiffs' motion to extend and consolidate should be denied, and further responds with the following as Plaintiffs' motion relates to the undersigned.

Plaintiffs, by and through their attorney, have moved out of time for an extension of time within which to respond to the various motions to dismiss previously filed by several defendants, including the undersigned, on June 12, 2002. Plaintiffs' motion is tardy in the extreme and fails to comply with the rules of this Court and should be denied; Plaintiffs' motion for consolidated briefing schedule should also be denied. In response to Plaintiffs' motions, the undersigned shows the following:

1. The undersigned incorporates and reasserts AT&T, Verizon, and Yahoo's Response in Opposition to Plaintiffs' Motion to Extend Time and for Consolidated Briefing Schedule, filed 18 July 2002, by reference as though fully set out herein.

2. The undersigned has to date not been served in this case, and responded initially to preserve his good name.

3. The undersigned immediately and timely filed a motion to dismiss in the State matter on 26 April 2002, and proof of service on Plaintiffs' attorneys was obtained; the motion was entered into this Court's file on 20 May 2002, after the State matter was removed to this Court. That motion was scheduled to be referred to the Court for consideration on 16 July 2002, the day Plaintiffs filed their motion for extension and consolidation.

4. Under the State's Rules of Civil Procedure, Plaintiffs had until 26 May 2002 to file their response or motion to extend. Even by the most liberal of time calculations (20 days from the date the undersigned's State motion was entered into this Court's file per Local Rule 7.3(f)), Plaintiffs had until 5 July 2002 in which to file a response to the motion or move for an extension of time to respond. Plaintiffs' motion is dated over a month after that deadline. Plaintiff allowed time to run out on at least 8 motions, including that of the undersigned, before filing a response.

5. Plaintiff has failed to show "excusable neglect" in his briefing. Plaintiffs' attorney(s), not staff members, are responsible to the court for deadlines and proper practice. In addition, it was Plaintiff who began an action against more than 30 defendants, and as such, should have been fully aware of the number of responses likely to be filed, and should have been prepared for it.

6. The undersigned most strenuously objects to Plaintiffs' tardy motions.

WHEREFORE, the undersigned prays that the Court:

1. Deny Plaintiffs' motion to extend time for responding to the motion to dismiss filed by the undersigned, since the Plaintiffs' motion is untimely;
2. Deny Plaintiffs' motion for consolidated briefing schedule;
3. Grant the unopposed motion to dismiss filed by the undersigned on 30 April 2002 in the State Court and removed to this court on 20 May 2002.
4. Dismiss the case with prejudice as to the undersigned;
5. Award the undersigned costs incurred in responding to this action and these motions, including but not limited to copying/reproduction cost, postage and overnight courier fees;
6. Order such further relief for the undersigned that the Court deems just and proper.

This the 25th day of July, 2002.

STEPHEN M. ADAMS, *PRO SE*
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CERTIFICATE OF SERVICE

I hereby certify that I caused the foregoing Response in Opposition to Plaintiffs' Motions to Extend Time and For Consolidated Briefing Schedule to be served on all parties in the manner required by Rule 5 by depositing a copy in the United States mail, postage prepaid and addressed as follows, unless otherwise noted:

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