

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

DAVID ALLISON, doing business as)	
CHEAT CODE CENTRAL, a sole)	
proprietorship,)	
)	
Plaintiff,)	Case No. 2:08-cv-00157-MHW-MRA
)	
vs.)	
)	
JEREMY N. WISE, an individual, and)	
WISE BUY NOW LLC, an Ohio Corporation)	
)	
Defendant.)	

AFFIDAVIT OF WENDI S. TEMKIN

I, Wendi S. Temkin, do swear and affirm as follows:

1. I am an attorney licensed to practice law in the states of Colorado and California,¹ and have been admitted *pro hac vice* in the above-captioned matter. I am an associate with the law firm Garlin Driscoll Howard, LLC. Our firm represents Plaintiff David Allison in this lawsuit.
2. Lay Witness Discovery closed on July 31, 2009 in this case pursuant to the Amended Scheduling Order filed on May 29, 2009.
3. In anticipation of this closure, opposing counsel and I talked about extending the deadline with respect to specific depositions that both parties still needed to conduct. We agreed that each side would be allowed to conduct depositions of the parties in this suit, as well as a specifically defined subset of contract employees. This agreement was confirmed in writing by

¹ I am currently on inactive status in California.

Charles Mudd, Jr. in an email dated July 29, 2009. Over the next couple of days we further refined this agreement to add in individuals D-F as named in Defendants' Supplemental Rule 26(a)(1) Disclosures. In my confirming email of July 31, 2009, I expressly stated that my agreement to add in individuals D-F in no way constituted a waiver to the other witnesses disclosed at the eleventh hour in Defendants' Supplemental Disclosures. It is these other individuals with whom Plaintiff's Motion for Sanctions is concerned. Attached as *Exhibit 1* are copies of the various emails referred to in this paragraph.

4. On July 31, 2009, Defendants supplemented their Supplemental Rule 26(a)(1) Disclosures of July 29, 2009 by providing a list of contact information for 13 of the potential new witnesses listed on the July 29th disclosure. Three of the newly disclosed witnesses have no contact information at all. Another eight include only an email address as contact information (and in some cases, a country or county and state of residence, but no address). Only one witness has a telephone number. Another witness has an address but no phone number. At least five of these witnesses apparently reside in other countries, including Finland and Brazil.

5. On September 21, 2009, I sent emails to the two witnesses who provided affidavits on behalf of Defendants: Brandon Mizera and Kevin Merrel. Although these parties were cooperative enough to go somewhere and have a statement notarized, they apparently did not provide Defendants with a home address or telephone number, because neither witness's contact information included this information. Attached as *Exhibit 2* are copies of my two emails.

6. On September 22, 2009, I sent emails to the remaining seven new witnesses with email addresses, requesting that they contact me so that I could communicate with them. Copies of these seven emails are attached as *Exhibit 3*.

7. Only three of the potential witnesses responded to my emails. First I heard from Brandon Mizera. In his response, he provided his telephone number and allowed me to call him, but expressly limited my telephone conversation time to a maximum of 10 minutes. A copy of Mr. Mizera's email is attached as *Exhibit 4*.

8. I called Mr. Mizera on September 22, 2009. We spoke for approximately seven minutes. Mr. Mizera is now 18 years old and was 15 in 2006. During our call he willingly provided his mailing address.

9. The next potential witness who responded to my email was James Stretch. He told me that he is 15 years old and that his parents did not want him to get involved in this lawsuit, and asked that I never contact him again.

10. The final witness who responded to my email was Arnan Brown. He also declined to provide any additional contact information.

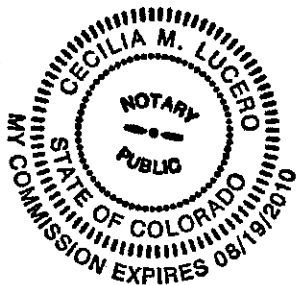
FURTHER AFFIANT SAYETH NOT.

Dated: September 25, 2009

By: Wendi S. Temkin
Wendi S. Temkin

State of Colorado)
) ss:
County of Boulder)

Subscribed and sworn to before me on this 3rd day of September, 2009 by Wendi S. Temkin.



Cecilia M. Lucero
Notary Public

My commission expires: 8/19/2010