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14 UNITED STATES DISTRICT COURT
 15 FOR THE CENTRAL DISTRICT OF CALIFORNIA

16
 17 **VPN.COM LLC,**
 18 Plaintiff;
 19 v.
 20 **George Dikian et al.,**
 21 Defendants.
 22
 23

Case No.
 2:22-cv-04453-AB-MAR
**MEMORANDUM IN
 SUPPORT OF MOTION
 TO MODIFY
 [Cilento Declaration and
 exhibits submitted herewith]**

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1 **INTRODUCTION**

2 Plaintiff VPN.COM LLC (“VPN”) respectfully requests an order
3 modifying the current scheduling order, setting a new trial date, and
4 extending certain case deadlines, including the trial date, by approximately
5 120 days. Although the parties previously stipulated to brief extensions of
6 specific deadlines, this is the first extension request that would impact the
7 overall case schedule or trial date.

8 In support, VPN relies on three grounds: (1) despite VPN’s diligent
9 efforts, fact discovery has proceeded slowly against Defendant; (2) recent
10 discovery suggests that Defendant’s son is a potential co-conspirator, and
11 VPN is seeking to obtain discovery from Defendant’s son; and (3) the current
12 schedule contains errors that will need to be corrected regardless, and the
13 current case posture warrants additional time for pretrial litigation.

14 First, despite VPN’s diligent efforts, fact discovery has proceeded
15 slowly. As just one example, VPN promptly served RFPs on February 8,
16 2023, but Defendant did not produce *any* documents until April 11, and even
17 then, Defendant withheld many responsive documents. On July 16—four
18 months after VPN’s RFPs were served, *after* the initial fact discovery
19 deadline, and two weeks before his deposition—Defendant made a massive
20 supplement that nearly doubled the size of the overall production. Likewise,
21 Defendant amended his interrogatory responses on July 19, again after the
22 original fact discovery deadline, to disclose basic information that he should
23

1 have disclosed earlier. This included *five* new email accounts owned and
2 operated by Defendant.

3 Second, recent discovery implicates Defendant's son as a potential co-
4 conspirator. During his July 31 deposition (noticed on April 7 May 23),
5 Defendant contradicted his own expert by claiming that logins to his email
6 account from an Amazon IP address, which occurred after he changed his
7 password multiple times and activated two-factor authentication, were not
8 authorized. Defendant also testified that he has an unemployed son named

9 [REDACTED]
10 [REDACTED] accessed Defendant's
11 primary email account – the account at the center of the alleged fraud in the
12 Complaint – through Amazon. (Many of the fraudulent emails at issue in this
13 dispute also copied [REDACTED]@37.net – and Defendant is the owner of 37.net.)

14 VPN has diligently sought information about and from Defendant's
15 son, however, Defendant and his son are delaying that. For example, during
16 his deposition, Defendant feigned ignorance and gave conflicting answers to
17 even simple questions about [REDACTED], including whether he has a job, why he
18 dropped out of college, whether Defendant paid for his college tuition, and
19 who pays his expenses now. After Defendant's deposition, VPN issued
20 subpoenas for documents and for deposition testimony from [REDACTED], but so
21 far [REDACTED] has skirted several attempts at personal service at Defendant and
22 [REDACTED] residence. Defendant and his counsel, for their part, have refused to
23 aid in service of the subpoenas on [REDACTED]. Thus, because VPN has been unable

1 to serve █████ with the subpoenas, despite diligent efforts, VPN needs to and
2 will be moving for leave to serve the subpoenas on █████ by alternative
3 means. The scheduling order, including the discovery cutoff date, need to be
4 modified so VPN can properly serve █████ and then compel, if needed, his
5 compliance with the subpoenas.

6 Next, while Defendant opposes this Motion, Defendant has implicitly
7 conceded that the schedule needs to be modified and discovery extended by
8 Defendant's issuing of 8 different subpoenas to eight different entities on
9 September 5, 2023 – a day after the current deadline of September 4, 2023,
10 for fact discovery to be **completed**. Defendant's refusal to agree to extending
11 discovery while at the same time issuing 8 subpoenas after the discovery
12 deadline is inexplicable. Fact discovery thus also needs to be extended so that
13 the 8 subpoenas issued last week by Defendant can be responded to and
14 objected to as necessary, as well as so any evidence therefrom can be properly
15 admitted or excluded at trial.

16 Finally, due to an inadvertent mistake by the parties in proposing an
17 initial case schedule, the current scheduling order has inconsistent pretrial
18 filings deadlines that are two weeks too late, including a motion in limine
19 deadline that post-dates the currently-scheduled final pretrial conference.
20 Thus, some changes to the scheduling order will be necessary in any event.
21 Given this necessity, and given the current posture of the case, VPN
22 respectfully submits that its proposed extension is both modest and
23 reasonable and to the benefit of the parties and the Court.

FACTS

A. Pre-Discovery

Although VPN originally filed suit on June 29, 2022, it took nearly six months to receive an answer. (Decl. of Michael D. Cilento, Esq., in Support of Motion to Modify dated September 20, 2023 (“Cilento Dec.”) ¶¶ 3-8). Initially, Defendant’s use of pseudonyms, inaccurate addresses, and mailbox services precluded personal service, forcing VPN to file an application for alternative service. (*Id.* ¶ 4). Then, after the Court granted that Motion and VPN made alternative service, Defendant defaulted. (*Id.* ¶ 5). Ultimately, Defendant appeared, the parties stipulated to set aside the default, and Defendant filed an answer on December 9, 2022. (*Id.* ¶¶ 6-8). The parties then submitted a joint pre-trial report on January 27, 2023, and the Court entered a scheduling order on February 9. (*Id.* ¶ 9). That order set trial for November 7, 2023. (*Id.*)

B. Written Discovery

VPN promptly began discovery. On February 8, one day before the Court entered the initial scheduling order, VPN served its RFPs. (*Id.* ¶ 10). However, Defendant took 62 days to make *any* production. (*Id.* ¶ 11). On April 11, Defendant produced 798 Bates-stamped pages, approximately 10% of which came from third-party subpoenas responses. (*Id.*) For comparison, VPN produced 4072 pages on March 24. (*Id.* ¶ 12).

VPN also served interrogatories on Defendant on April 7, and received a response on May 8. (*Id.* ¶¶ 13-14). However, after reviewing the responses,

1 Defendant’s production, and third-party productions, VPN found numerous
2 deficiencies, which culminated in a Rule 37-1 letter on June 28. (*Id.* ¶ 15).

3 After a meet and confer over this dispute, Defendant acknowledged
4 the deficiencies. On July 16, he made a second production, which contained
5 631 pages, or approximately 45% of Defendant’s total productions to date.
6 (*Id.* ¶ 16). On July 19, Defendant amended his interrogatory responses which,
7 among other things, disclosed five additional email accounts that Defendant
8 maintains. (*Id.* ¶17).

9 **C. Third-Party Discovery**

10 VPN also served subpoenas on third parties, mainly seeking forensic
11 evidence relating to email or other online accounts, such as IP addresses,
12 user-agent strings, and email headers. (*Id.* ¶ 18). Although some third parties
13 responded promptly, others did not. For example, although not disclosed in
14 his original interrogatory responses, VPN discovered Defendant extensively
15 used a “live.com” email address to conduct business. (*Id.* ¶ 19). On May 11,
16 VPN issued a subpoena to Microsoft for information pertaining to that and
17 one other email account. (*Id.* ¶ 20). However, despite prompt service and
18 repeated follow-ups to Microsoft’s counsel, Microsoft did not produce
19 documents until late in the day on July 31—the same day that Defendant was
20 deposed. (*Id.* ¶¶ 21).

21 **D. Expert Discovery**

22 On July 3, the deadline for expert disclosures, Defendant disclosed
23 three experts: Rod Rasmussen, Alan Perlman, and Mark Seiden. (*Id.* ¶ 22).

1 The disclosure included their reports, exhibits, and evidence they relied upon.
2 (*Id.*). Rasmussen and Perlman relied extensively on evidence in Defendant’s
3 possession that was responsive to VPN’s RFPs, yet Defendant had not
4 previously produced the materials. (*Id.* ¶ 23). However, many of these
5 documents were then included in Defendant’s supplemental production on
6 July 16. (*Id.*).

7 On July 27, Defendant’s counsel sent an email: “We have just realized
8 that the annexes to Mark Seiden’s expert report may have been inadvertently
9 omitted from our disclosure earlier this month. They are attached.” (*Id.* ¶ 24).
10 However, metadata suggests most of these “inadvertently omitted” annexes
11 were created after July 3, and at least one document displays internet posts
12 from mid-July. (*Id.*; **Exhibit A.**)

13 Rasmussen’s expert disclosure included an attachment labeled “Dikian
14 - Yahoo Google Hostgator ISP Analysis.” (*Id.* ¶ 25; **Exhibit B.**) This “ISP
15 Analysis” purports to list IP addresses for connections to three accounts, plus
16 the corresponding internet service provider, associated “services”, and IP
17 location. (*Id.*) Connections that Rasmussen opines were associated with the
18 fraud or “unauthorized access” are highlighted. (*Id.*)

19 The last highlighted connection to Defendant’s Yahoo account was on
20 March 17, 2022. (*Id.* ¶ 26). According to Rasmussen, this was around the
21 time Defendant “closed off unauthorized access to it by changing the
22 password and deploying two-factor authentication.” (*Id.*) Thereafter, there
23 were numerous connections from Google and Amazon ISPs, all labeled

1 “Services: Datacenter.” (*Id.*) Two of the Amazon connections were on April
2 26, weeks after Defendant allegedly secured his account. (*Id.*)

3 Rasmussen states that Packethub S.A. is “also known as ‘NordVPN’.”
4 (*Id.* ¶ 27). NordVPN claims that it has “over 5,842 servers in 60 countries,”
5 including in 15 major cities in the United States. (*Id.* ¶; **Exhibit C**).
6 NordVPN’s “Quick Connect” button will “connect you to the best VPN
7 server for you at the moment.” (*Id.*) In practice, this is typically the closest
8 physical server. (*Id.*)

9 The ISP analysis highlighted ten connections from Packethub-
10 NordVPN. (*Id.* ¶ 28). It states that three of these VPN connections were made
11 from Los Angeles, six were from Miami, and one was from New York. (*Id.*)
12 The single New York connection was on June 5, 2022. (*Id.*)

13 The Seiden report states that Defendant uses an “ATT hotspot.” (*Id.* ¶
14 29). The ISP Analysis lists 22 AT&T Mobility LLC connections, none of
15 which are highlighted as “unauthorized.” (*Id.*) Five of these connections were
16 made from New York between May 27, 2022, and June 9, 2022. (*Id.*; Exhibit
17 C).

18 **E. Defendant’s Deposition**

19 VPN originally noticed Defendant’s deposition on April 7, 2023, for
20 May 23 (*Id.* ¶ 30). However, due to scheduling conflicts and other discovery
21 delays, it did not occur until July 31. (*Id.*) As previously noted, Defendant
22 nearly doubled his document production on July 16, and then substantially
23

1 amended his interrogatory responses on July 19—just two weeks before the
2 deposition. (*Id.* ¶¶ 15-16).

3 During his deposition, Defendant was unable (or unwilling) to provide
4 answers to many basic questions, repeatedly claiming that he did not
5 understand the question or did not recall the answer. For example:

6 Q: What about drugs or alcohol, have you consumed any drugs or
7 alcohol today?

8 A: I don't understand your question. I don't know what you mean,
9 drugs.

10 Q: You don't know what drugs are?

11 ...

12 A: I think coffee could be considered a drug, so I am not sure what you
13 mean.

14 Q: Did you have coffee today?

15 A: No.

16 (*Id.* ¶ 32).

17 Q: Did you ever meet your attorney, Mike Rodenbaugh, before this
18 case started?

19 A: I don't understand your question.

20 Q: Why not? What don't you understand?

21 A: Because there is many differences of "meet."

22 (*Id.* ¶ 33).

23 Q: Mr. [Z.] do you use any names other than [Defendant]?

1 A: I don't understand your question. Use?

2 Q: Yeah, use.

3 A: I don't know "use."

4 (*Id.* ¶ 34).

5 Q: Are you employed?

6 A: I don't understand the question.

7 (*Id.* ¶ 35).

8 Q: Do you work?

9 A: I am retired.

10 ...

11 Q: When did you retire?

12 A: I don't understand your question.

13 (*Id.* ¶ 36).

14 Q: So do you know approximately how much revenue you generated
15 2022?

16 A: No.

17 ...

18 Q: Do you know if it was more than one thousand dollars?

19 A: I don't know.

20 (*Id.* ¶ 37).

21 Q: Did you produce this document in this litigation?

22 A: I am not sure.

23

1 Q: You are not sure? What about the stamp at the bottom, does that
2 help you remember?

3 A: Nothing helps me. I am not sure what my attorneys produced.

4 (*Id.* ¶ 38).

5 Q: Did he [Defendant's son] graduate from college?

6 A: No.

7 Q: Why not?

8 A: I don't know.

9 Q: You did not ask him?

10 A: I don't recall.

11 Q: Did you pay for his college tuition?

12 A: I don't recall.

13 (*Id.* ¶ 39).

14 Q: Does your son have a job?

15 A: I don't know.

16 (*Id.* ¶ 40).

17 Nevertheless, Defendant did disclose that his son is named [REDACTED], that
18 he speaks with [REDACTED] regularly, and that Defendant owns a house in [REDACTED]
19 [REDACTED] where [REDACTED] lives. (*Id.* ¶ 42-43). When asked who pays for [REDACTED]
20 expenses, Defendant responded: "He does not really have expenses. He lives
21 in my home and drives my car. I buy the food or whatever, he buys it. Or I
22 don't know. He collects the rent for me and that's it. I don't know. I don't
23 pay for anything." (*Id.* ¶ 44).

1 Defendant also disclosed that Defendant primarily lives in Florida and
2 has taken many domestic trips in the last two years: “Los Angeles. Las Vegas.
3 Many destinations in Florida. Up and down the east coast, all the way to New
4 York and back. Many stops on the way.” (*Id.* ¶¶ 45-46). When asked: “[d]o
5 you know now if you were in New York City on these dates, from May 27th
6 to June 9th?” Defendant responded: “I am not sure, but could have been my
7 RV trip at that time. I am not sure.” (*Id.* ¶ 47).

8 Defendant repeatedly denied knowledge of Google and Amazon’s
9 cloud services, or logging into his Yahoo account through them, even though
10 Defendant’s expert has stated that such logins were not unauthorized:

11 Q: You don’t know what Google Cloud Services is?

12 A: No. I don’t know exactly what it is. I don’t know. I don’t know.

13 (*Id.* ¶ 48).

14 Q: What about Amazon Elastic Cloud, have you ever heard of it?

15 A: No.

16 (*Id.* ¶ 49).

17 Q: Those April 26 connections from Amazon that we’re looking at,
18 that is more than a month after you said you secured your account,
19 your email account; right? Remember when you secured your
20 email account?

21 A: Yes.

22 ...

23

1 Q: And these were in late April 2022, more than a month after you
2 contend that you secured your account; correct?

3 A: Yes.

4 (*Id.* ¶ 50).

5 Q: You never logged into your email accounts through Amazon or
6 Google?

7 A: Through Amazon?

8 Q: Yeah, through Amazon.

9 A: Logging into email through, no. I don't know how to do that. What
10 did you say, through Google also?

11 Q: Through Amazon or Google, have you ever logged into your --

12 A: Into my Yahoo account?

13 Q: Yes.

14 A: No, I don't know how you can do that. Never did.

15 (*Id.* ¶ 51).

16 However, Defendant did eventually go on to state that his son had in
17 fact logged into Defendant's account through Amazon:

18 Q: Have you ever logged into your Yahoo email through Amazon?

19 A: No. My son did.

20 (*Id.* ¶ 52). Defendant then attempted to recant his unambiguous response that
21 his son had logged into this Yahoo account with the following explanation:

22 Q: Did your son use your email account to sell things on Amazon?
23

1 A: He didn't have access to the email account. I think he tried to sell
2 on Amazon and he needed an email to get correspondence from
3 and I suggested G.Dikian@yahoo.com since that email is on my
4 phone, always accessible for me. The phone reception in Bel Air
5 where he lives is close to zero. And he -- I think he needed a
6 response from Amazon to do something with sales, so he -- I
7 suggested he use my email since I will get the response on my
8 email and I can tell him what it was.

9 (*Id.* ¶ 53). Defendant was then adamant that his prior statement was incorrect:

10 Q: Do you think it's possible that your son has been logging into your
11 email account? Is it possible?

12 A: Impossible.

13 (*Id.* ¶ 54).

14 When asked about security for his Yahoo account, Defendant provided
15 conflicting answers:

16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]

21 (*Id.* ¶ 55).

22 Later in the deposition, Defendant admitted [REDACTED]

23 [REDACTED] (*Id.* ¶ 56).

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 Q: Where your son lives?
13 A: My son lives there right now, yes.
14 Q: How long has he lived there?
15 A: Since three months old.
16 (*Id.* ¶ 57).

17 Many of the emails used to perpetrate the fraud copied someone named
18 “Adam Warren” at the email Adam@37.net (*Id.* ¶ 58). When asked “Who is
19 Adam Warren?” Defendant responded, “No idea.” (*Id.*).

20 **F. VPN’s Attempts to Serve [REDACTED]**

21 On August 7, VPN issued subpoenas to [REDACTED] at the address provided
22 by Defendant during his deposition. (*Id.* ¶ 59). VPN’s process server tried to
23 make personal service on August 10, 11, and 12. (*Id.* ¶ 60). However,

1 Defendant's house sits behind a large metal gate surveilled by cameras. When
2 the server used the callbox, no one answered. (*Id.*) The process server also
3 left a note, but no one responded to that either. (*Id.*) Defendant's attorney also
4 refused to accept service on ██████'s behalf or to consent to a stipulation for
5 alternative service. (*Id.* ¶ 61). VPN now intends to file a motion for
6 alternative service of the subpoenas on Adam. (*Id.*)

7 **G. Defendant Serves Subpoenas After Discovery Deadline**

8 The non-expert discovery cutoff in this action was September 4, 2023.
9 (*See* ECF 58) (August 9, 2023, Court Order granting the parties' stipulation
10 to extend the non-expert discovery cutoff to September 4). The non-expert
11 discovery cut-off deadline means the "final day for **completion of discovery**,
12 including resolution of all discovery motions." ECF 34 at p. 3 (emphasis in
13 original). Indeed, the "discovery cut-off date is the last day by which all
14 depositions must be completed, responses to previously-served written
15 discovery must be provided, and motions concerning discovery disputes must
16 be heard." *Id.* at p. 5. Despite this clear deadline, Defendant issued eight
17 subpoenas on September 5, 2023 (without giving VPN any advance notice of
18 such issuance). (*See* Cilento Dec. ¶ 62-63, **Exhibit D**).

19 **LEGAL STANDARD**

20 This Court regularly applies the following standard on a motion to
21 modify:

22 Under Rule 16(b)(4), a "schedule may be modified only for good cause
23 and with the judge's consent." To show good cause for an extension, a

1 party must provide specific, detailed, and non-conclusory reasons for
2 granting the extension, including a showing of diligence in pursuing
3 the litigation. *See* Fed. R. Civ. P. 16(b)(4) (requiring good cause
4 showing); *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609
5 (9th Cir. 1992) (noting that the standard focuses on a party’s diligence
6 and that “the inquiry should end” when diligence is not shown).
7 “Although the existence or degree of prejudice to the party opposing
8 the modification might supply additional reasons to deny a motion, the
9 focus of the inquiry is upon the moving party’s reasons for seeking
10 modification.” *Johnson*, 975 F.2d at 609 (citing *Gestetner Corp. v.*
11 *Case Equip. Co.*, 108 F.R.D. 138, 141 (D. Me. 1985)).

12 *Addaday, Inc. v. Artist Int’l Co., Ltd*, No. 221CV05525ABPLAX, 2022 WL
13 16859853 (C.D. Cal. Aug. 18, 2022) (Birotte, J.) (granting extension but also
14 limiting it to approximately 90 days since the plaintiff “fail[ed] to provide
15 any explanation in support of their proposed length for the extension”). VPN
16 does not seek a departure from this standard.

17 ARGUMENT

18 Despite VPN’s diligent efforts, discovery in this case has proceeded
19 slower than expected. Substantial discovery took place in the second half of
20 July—after the original fact discovery deadline. That discovery also raised
21 serious questions about Defendant’s son’s access to his email account and
22 potential involvement in the fraud. Given these circumstances as well as
23 existing errors in the pretrial schedule, and Defendant’s own discovery

1 served after the discovery deadline, there is good cause to grant an
2 approximately 120-day extension to certain dates in the scheduling order.

3 **A. Further Discovery is Needed**

4 **i. Slow Discovery by Defendant**

5 In contemplation of the original July 10 fact discovery deadline, VPN
6 promptly served RFPs in February, and interrogatories and a deposition
7 notice in April. (*Id.* ¶¶ 10, 13, 30). However, Defendant was not prompt with
8 its responses. In fact, Defendant failed to provide any information, including
9 basic disclosures, for several months, forcing VPN to serve one formal Rule
10 37-1 letter notice and then another formal LR 37-1 letter on June 28, 2023 as
11 to numerous deficiencies in Defendant's original responses to RFPs and
12 ROGs. (*Id.* ¶ 15).

13 The parties held a meet and confer on the deficiencies, and Defendant's
14 initial document production was ultimately supplemented by a production on
15 July 16 that nearly doubled its size (*Id.* ¶ 16). The interrogatory responses
16 were likewise missing basic information, and were substantially amended on
17 July 19, including the disclosure of five new email accounts. (*Id.* ¶ 17).
18 Finally, Defendant's deposition did not take place until July 31, even though
19 the deposition was originally noticed on April 7, 2023 for May 23, 2023. (*Id.*
20 ¶ 30).

21 At that deposition, Defendant was severely obstructive and refused or
22 was unable to answer basic questions, such as how much money he makes,
23 when he retired, whether his live-in son has a job, whether he paid for his

1 son's college tuition, and whether he had consumed any drugs on the day of
2 the deposition. (*Id.* ¶¶ 32-40). Whether those were credible answers is
3 certainly a question. Regardless, it made the deposition less productive and
4 is illustrative of Defendant's responses to more complicated questions.
5 Accordingly, VPN must now pursue follow-up discovery to secure relevant
6 information about Defendant, his travel history, his businesses, and his son's
7 involvement with Defendant as to the alleged fraud.

8 VPN was also reasonably prompt in pursuing third party discovery in
9 this action. For example, although not disclosed in his initial interrogatory
10 responses, VPN eventually discovered that Defendant used a "live.com"
11 email address, and subpoenaed Microsoft for related information in May. (*Id.*
12 ¶ 20). But it took Microsoft more than three months to provide the requested
13 information, which it served on July 31—after Defendant's deposition. (*Id.*
14 ¶¶ 21).

15 Likewise, within days of learning about ██████, and his use and access
16 to Defendant's email, VPN issued subpoenas directed to him at the address
17 provided by his father. (*Id.* ¶ 59). However, ██████ has been avoiding personal
18 service behind the metal gates of his father's home and is ignoring his email.
19 (*Id.* ¶ 60). Defendant, as both ██████'s father and the person providing his
20 financial support, has not facilitated this process or allowed Defendant's
21 counsel to facilitate. (*Id.* ¶ 61). In fact, Defendant has even refused to consent
22 to a motion for alternative service and is apparently confounding the issue of
23

1 service with whether [REDACTED] or Defendant would be entitled to a protective
2 order. (*Id.*).

3 **ii. Discovery Needed as to [REDACTED]**

4 Defendant’s theory of the case is that he is not technically sophisticated
5 and an unknown “fraudster” somehow gained access to his Yahoo account
6 and used it to scam VPN. In support, he relies on expert reports claiming that
7 there were allegedly unauthorized connections to his Yahoo account that
8 ceased after he changed his password and activated two-factor authentication.
9 But there are two major problems with this theory.

10 First, the Rasmussen report shows all but one of the “unauthorized”
11 VPN connections were from Miami and Los Angeles, *i.e.*, the locations of
12 the NordVPN servers closest to where Defendant and Adam live. The one
13 exception was a connection in New York City on June 5, during the very
14 same period Defendant was using an AT&T hotspot in or around the city on
15 an RV trip.

16 Second, Rasmussen’s analysis shows allegedly unauthorized access
17 *after* Defendant changed his password, as well as authorized access from an
18 Amazon datacenter (*i.e.*, cloud services) *after* Defendant activated two-factor
19 authentication. Yet, during his deposition, Defendant contradicted his expert
20 by testifying that he did not login to his email through Amazon and did not
21 know how to do so. (*Id.* ¶ 51).

22 When asked about this discrepancy, Defendant admitted that [REDACTED]
23 logged into his Yahoo email through Amazon. (*Id.* ¶ 52). While Defendant

1 It is also worth noting that, despite not knowing answers to many basic
2 questions—approximately how much money he makes, how he met his
3 attorney, or whether he paid for his son’s college tuition—Defendant was
4 quick to testify, with absolute certainty, that it was “impossible” for his live-
5 in son to access his account. (*Id.* ¶ 54). Yet at the same time, he had no
6 explanation for allegedly unauthorized connections weeks after he changed
7 his password and activated 2FA. His only explanation, in a moment of truth,
8 was:

9 Q: Have you ever logged into your Yahoo email through Amazon?

10 A: No. My son did.

11 (*Id.* ¶ 52).

12 Given that ██████ is the only other person to have accessed Defendant’s
13 email account that is the center of the fraud, and given that ██████

14 ██████, documents and testimony from ██████ is appropriate in this action.

15 Accordingly, VPN promptly issued subpoenas to ██████. (*Id.* ¶ 59). However,

16 ██████ has avoided service in a gated property and Defendant has made clear

17 that he intends to fight discovery on his son through every means, including

18 service. (*Id.* ¶¶ 60-61). A modest extension of approximately 120 days should

19 allow time for the parties and ██████ to address the service dispute, brief any

20 motions for alternative service and for a protective order (as Defendant has

21 indicated he would do), and to ultimately get discovery from ██████ and if

22 warranted for VPN to prepare a second amended complaint naming ██████.
23

1 **iii. Defendant's 8 Outstanding Subpoenas**

2 Given Defendant's obstruction of basic discovery and given Defendant
3 has opposed this Motion every step of the way, it is inexplicable that
4 Defendant would then issue on September 5, 2023, 8 substantive subpoenas
5 to 8 different entities *after* the completion of discovery deadline of September
6 4, 2023, that the parties had agreed to. (*Id.* ¶ 62-63). Defendant's issuing of
7 the late subpoenas, without any prior notice, is telling, as it shows that further
8 discovery of the claims and defenses in this action is needed. The modest and
9 reasonable extension of 120 days to the case schedule would allow for that
10 further discovery to take place. Furthermore, as to Defendant's specific 8
11 subpoenas that are outstanding, and that were improperly issued after the
12 discovery cutoff, VPN (and presumably Defendant too) needs time to review
13 any new information or evidence that becomes available, and to object to any
14 questionable requests or evidence that is ultimately offered.

15 **B. Errors in the Current Schedule and Current Case Posture**

16 When jointly preparing the initial case schedule, the parties made an
17 inadvertent yet significant mistake. They calculated the pretrial filing dates
18 based on weeks before trial, rather than weeks before the final pretrial
19 conference ("FPTC") (*See* ECF 39). As a result, trial filings deadlines are
20 approximately two weeks too late to prepare and argue the motions at the
21 FPTC, currently scheduled on October 20. For example, oppositions to
22 motions in limine are currently due on October 23, after the FPTC. (*Id.*)

23

1 To make matters worse, the parties already agreed and stipulated to
2 extensions of several of the earlier dates, thus removing flexibility that might
3 otherwise be available within the existing schedule. (*See* ECF Nos. 45, 58).
4 For example, with a current discovery deadline of September 4, and with
5 VPN’s First Amended Complaint pending before the Court, it seems
6 completely impractical to move the pretrial filings deadlines up earlier so that
7 they can be timely briefed by the FPTC. Rather than trying to cram all these
8 important deadlines in at the last minute, it would be far easier on both the
9 parties and the Court to push the trial date out. Given the other issues
10 identified above and winter holidays, VPN submits that an approximately
11 120-day extension would be reasonable.

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1 **CONCLUSION**

2 For the foregoing reasons, VPN respectfully requests that the Court
3 enter the accompanying proposed scheduling order, setting a new trial date
4 and extending and reopening certain discovery and pretrial deadlines in the
5 case by approximately 120 days.

6 Respectfully Submitted,

7
8 Dated: September 20, 2023

By: /s/ Michael Cilento
Michael D. Cilento

9
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CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record Plaintiff VPN.COM LLC, certifies that this brief contains 5,036 words, which complies with the word limit of L.R. 11-6.1.

By: /s/ Michael Cilento
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