COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss. SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

XXXX, *Plaintiffs* v. XXXX, *Defendants*	Civil Docket No.

PLAINTIFFS' OPPOSITION TO JOINT DEFENSE MOTION TO AMEND TRACKING ORDER

The Plaintiffs in the above captioned action oppose Defendants' joint motion for an order amending the Tracking Order to enlarge the discovery deadline, and concomitant deadlines by one and a half months, up to and including February 29, 2008.

First, Defendant's Joint Motion incorrectly describes the period to be extended, as the first Joint Motion to Amend Tracking Order of September 18, 2007 (hereinafter the "September 2007 Amendment") sets a deadline for the "completion of discovery" of January 31, 2008 (See "Exhibit A"), and an enlargement up to and including February 29, 2008 would again enlarge the period by one month rather than by one month and a half.

Although the September 2007 Amendment states that this is "nominally a 2003 case" this is a *2003* case and Plaintiffs have endured more than enough delay. The September 2007 Amendment states that the previous "requested extension will permit the orderly completion of discovery (including depositions out of state and out of the country) consistent with the schedules of counsel and the parties."

However, the schedules of defense counsel and the parties have been completely inconsistent with orderly completion of discovery, to the point where Defense counsel have used discovery to unfairly harass Plaintiffs, and caused Plaintiffs to incur unnecessary expense.

Significantly, on December 3, 2007 counsel for the parties came to an agreement solicited by defense counsel regarding remaining discovery and the remaining time for such to be completed. This agreement had at its basis a bargain to exchange:

1. cooperative and collaborative deposition scheduling of the remaining depositions; in exchange for
2. assent to a joint motion to enlarge the period for discovery by one month.

Unfortunately, the deposition scheduling after December 2, 2007 was anything but cooperative and collaborative due to the actions of defense counsel, as depositions out of state were noticed without prior consultation, depositions out of state were indefinitely rescheduled indicating such discovery intended merely to harass Plaintiffs, and scheduling activities were used as an adversarial façade to allow for gamesmanship which annoy and harassed Plaintiffs while intentionally driving up Plaintiffs expenses to prosecute this action. In fact, deponents were willing to travel to Massachusetts at their own expense for their deposition, and counsel for Defendants noticed these depositions out of state without any consultation or collaboration with counsel for Plaintiffs.

As a result of this conduct, Defense counsel was notified via electronic mail on December 27, 2007 that counsel for Plaintiffs deemed the Defendants to be in breach of the agreement described above, and as such Plaintiffs would not assent to a motion to enlarge the period for discovery. This determination regarding the breach of the agreement between counsel was communicated to counsel for Defendants more than a month before the January 31, 2008 deadline to complete discovery.

Since that time, counsel for the Defendants continue to engage in gamesmanship regarding the scheduling of depositions, while claiming that the three large law firms working on behalf of Defendants have somehow been unfairly disadvantaged, by noticing and scheduling depositions at various locations at the same time despite protests by counsel for Plaintiffs (See "Exhibit B").

Further, counsel for Defendants complain that they are not the recipients of the collaboration and cooperation (that was not afforded Plaintiffs) because they rescheduled the noticed depositions of the Plaintiffs (See "Exhibit C") when in fact an agreement between previous counsel for Plaintiffs and existing counsel for Defendants required that Defendant XXXX be deposed before Plaintiffs XXXX and XXXX be deposed (See "Exhibit D"). Utilizing the additional opportunities for gamesmanship that three separate defense counsel on one case provides, Attorney AAAA notes that he never agreed to such ordering of the depositions (See "Exhibit E") and that the continuance of the depositions of XXXX and XXXX until the XXXX deposition was completed was actually providing Plaintiffs with a courtesy.

Plaintiffs assert that this discovery gamesmanship has allowed Defendants to frustrate the interests of justice. During a previous companion action in U.S. District Court the case entered Discovery for the first time, and a date was set for the deposition of XXXX. Shortly before the date of deposition, Mr. XXXX suddenly left for Europe alleging that he had to attend to the needs of a dying friend. No details were ever provided, and Defendant began a pattern of behavior targeted at delay and avoidance of discovery. Further, Plaintiffs have made every effort to reasonably comply with discovery, and have responded to document requests by submitting over 20,000 pages of documents, while Defendants have not supplied a single page or document in discovery.

WHEREFORE, the Plaintiffs request that the Court deny the Joint Defense Motion to Amend Tracking Order with prejudice.

RESPECTFULLY SUBMITTED,

FOR XXXX AND XXXX

By their attorney,

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Dated: ----------, 2008