

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

FEDERAL TRADE COMMISSION,)	
)	
Plaintiff,)	
)	
v.)	
)	
LATRESE & KEVIN ENTERPRISES INC.,)	
a Florida Corporation, also doing business as)	
HARGRAVE & ASSOCIATES FINANCIAL)	
SOLUTIONS,)	Case No. 3:08-cv-01001-MMH-JRK
)	
LATRESE HARGRAVE, also known as,)	
Latrese V. Williams, individually and as an)	
officer of Latrese & Kevin Enterprises Inc., and)	
)	
KEVIN EDWARD WADE, also known as,)	
Kevin Hargrave, Sr., individually and)	
as an officer of Latrese & Kevin Enterprises Inc.)	
)	
Defendants.)	
)	

**PLAINTIFF’S REPLY IN OPPOSITION TO
DEFENDANTS’ MOTION FOR INVOLUNTARY DISMISSAL**

Plaintiff Federal Trade Commission respectfully submits this Reply in Opposition to Defendants’ Motion for Voluntary Dismissal. The Court should deny Defendants’ Motion for the following reasons: 1) the Court authorized expedited discovery pursuant to the Temporary Restraining Order and Stipulated Preliminary Injunction Order; (2) Defendants agreed to allow the FTC to “mirror” the corporate computers; and (3) Defendants have waived any objection. Moreover, Rule 61, as relied on by the Defendants, does not apply, and any improper disclosure was inadvertent and constitutes harmless error which does not

justify any sanction.

I. BUSINESS RECORDS PROVIDED TO PLAINTIFF WERE AUTHORIZED PURSUANT TO THE TRO

All documents and records produced to Plaintiff by the Receiver, were produced with Defendants' knowledge, without objection, pursuant to the Temporary Restraining Order ("TRO," Dkt. No. 6) and the Stipulated Preliminary Injunction Order ("PI," Dkt. No. 18). At the initiation of this case, Plaintiff requested this Court, as part of the TRO, to require Defendants to immediately produce documents and records that would enable Plaintiff "to quickly determine: (1) the full scope of Defendants' law violations, (2) the identities of injured consumers, (3) the total amount of consumer injury, and (4) the nature, extent, and location of the Defendants' assets." (Dkt. No. 6, page 26). Consequently, the TRO granted Plaintiff leave to:

Demand the production of documents from any person or entity, whether or not a party, relating to the nature, status, and extent of the assets of Defendants, and Defendants' affiliates and subsidiaries; the nature and location of documents reflecting the business transactions of Defendants, and Defendants' affiliates and subsidiaries; the location of any premises where Defendants, directly or through any third party, conduct business operations; the Defendants' whereabouts. (Dkt. No. 6, Paragraphs XIII.B.).

In compliance with these Orders, the Receiver, with Defendants' full knowledge and agreement, provided Plaintiff business records that included consumer complaints, customer lists, financial statements, promotional materials, and scripts, all of which were essential for immediately assessing the full scope of Defendants' law violations, identities of injured consumers, the total amount of consumer injury, and the nature, extent, and location of the Defendants' assets. Defendants were notified by letter and email transmitting the records.

(Attachment A). Furthermore, the originals were expeditiously returned to the Defendants.

II. DEFENDANTS AGREED TO THE PRODUCTION OF THESE RECORDS

Defendants negotiated and consented to the Stipulated Preliminary Injunction Order that contained the same expedited discovery provision as the TRO cited above. (*See* Dkt. No. 18, “PI,” Paragraph XIV.B.). Also, each individual Defendant willingly and knowingly stipulated to entry of the PI.

Additionally, Defendants agreed to production of their business records. As part of the Receiver’s duty to preserve and maintain the assets of the Receivership estate and because Defendant Kevin Hargrave had informed the Receiver of the Defendants’ intent to dismantle their existing business and open another, the Receiver communicated to Defendants his need to preserve corporate records by copying the hard drives of corporate computers. Defendants objected to the cost of hiring an outside contractor. Thereafter, the parties agreed to having the FTC “mirror” the systems, rather than the Receiver hiring an outside contractor. Defendants’ counsel agreed, as evidenced by the letter to the Receiver and email to Mr. Johnson and the Receiver, regarding mirroring by FTC. (Attachment B). When the “mirroring” was completed, Defendants were informed and given contact information for the FTC’s Information Technology specialist because the FTC’s security procedures required Defendants to personally request the mirrored information to eliminate any data security issues. (Attachment C, email messages regarding accessing the mirrored records).

III. DEFENDANTS HAVE WAIVED THEIR ABILITY TO OBJECT

At no time prior to Defendants' current motion did they object to the production of documents to the FTC. Now, after more than a year of silence, Defendants suddenly contend that records were provided to Plaintiff without their knowledge or permission, and that some or all of the documents produced were privileged and/or confidential. Records provided to Plaintiff were simultaneously given to Defendants, and the originals were also expeditiously returned.

Defendants' Motion does not state which documents are supposedly privileged and/or confidential. Defendants do not state which privileges apply, or on what basis the documents should be held to be confidential. Bald assertions of privilege are insufficient, as the Federal Rules require that a claim of privilege be specific enough that the trial court has sufficient information to rule knowledgeably on the privilege claimed. *See* Fed. R. Civ. P. 26(b)(5). During discovery, as at trial, objections must be made timely and specifically to give the opponent an opportunity for argument on the question. *See* Fed. R. Civ. P. 26(a)(3)(B). Because Defendants failed to object in a timely and specific manner, Plaintiff was not informed of any privilege or confidentiality when it might have taken some mitigating action, and the Court was not given an opportunity to assess the situation or to correct the alleged erroneous disclosure. Consequently, because the disclosures were made with Defendants' knowledge and Defendants waited a year to make their objection known, Defendants have waived their right to object.

Finally, Defendants complain that they did not obtain any of their imaged records.

(Dkt. No. 110, Motion at p. 10). This was purely the Defendants' choice. Plaintiff notified Defendants that the records were available. Defendants have not contacted the FTC's IT to access their imaged records, nor have Defendants ever mentioned to Plaintiff that they attempted or desired to access these records. Had the Defendants requested their imaged records the FTC's IT staff would have immediately turned those records over to them.

IV. DISMISSAL UNDER RULE 41(b) IS UNWARRANTED

The Defendants' request for dismissal under Rule 41(b) is unreasonable and unwarranted. Under Rule 41(b) a court may dismiss an action for, among other things, failure to comply with an order, to prevent undue delay in the disposition of pending cases, and to avoid congestion in the court's calendar. Fed. R. Civ. P. 41(b). However, the Eleventh Circuit "has clearly stated that because dismissal is considered a drastic sanction, a district court may only implement it as a last resort, when: (1) a party engages in a clear pattern of delay or willful contempt (contumacious conduct); and (2) the district court specifically finds that lesser sanctions would not suffice." *World Thrust Films, Inc. v. International Family Entertainment, Inc.*, 41 F. 3d 1454, 1457 (11th Cir. 1995) (citing *Kilgo v. Ricks*, 983 F. 2d 189, 192); *see also Betty K. Agencies, Ltd. v. M/V Monada*, 432 F. 3d 1333, 1338 (11th Cir. 2005)(dismissal order vacated because there was no finding of willful or contumacious disregard for court rules, and without finding that lesser sanctions were somehow inadequate).

Defendants have not, and indeed cannot, demonstrate satisfaction of this two-pronged

test. Here, Plaintiff has not disregarded either willfully or otherwise any Court order.¹

V. DEFENDANTS MISAPPLY RULE 61

Rule 61 concerns error objected to at trial, but found on appeal not to have affected a party's substantial rights and is therefore considered "harmless." Fed. R. Civ. P. 61.

Although inapplicable here, Rule 61 does provide guidance on the Federal Rules' philosophy on the treatment of errors. Under the Federal Rules, errors or defects that do not affect a party's substantial rights must be disregarded. Defendants have not proven that their substantial rights have been affected. Fed. R. Civ. P. 61. Moreover, even if Defendants' contention that documents were erroneously produced was correct, given the overwhelming evidence Plaintiff presented to support entry of the TRO (Dkt. No. 6, Volumes I-IV), it is highly improbable that such alleged error would have affected Defendants' substantial rights.

VI. CONCLUSION

Clearly, Defendants were aware of every document the Receiver provided to Plaintiff because the documents were simultaneously produced to them. Not until filing Defendants' Motion did they raise any objection to production or claim confidentiality or privileged. Because Defendants did not make their objections known, a year ago, when the disclosures were made, it would be unfair for this Court to allow them to use their untimely objections to debunk this proceeding. Consequently, Defendants' Motion is unsupported and is

1

Defendants' citation of *Tower Venture, Inc. v. City of Westfield*, 296 F. 3d 43 (1st Cir. 2002) for the proposition that violations of court orders warrant dismissal with prejudice is a misapplication of law. This case involves a party ignoring a case management order after that court extended the discovery deadline to accommodate that party's failure to meet the previous deadline. The situation here is not at all analogous.

completely devoid of any merit, and their defamatory statements far exceed the legal boundaries of advocacy. Plaintiff respectfully urges this Court to deny Defendants' Motion as it is nothing more than an attempt to mislead the Court and prejudice Plaintiff. However, in the alternative, Plaintiff urges this Court to take a lesser action than dismissal.

Dated: October 16, 2009

Respectfully submitted,

/s/Jessica D. Gray

JESSICA D. GRAY, Trial Counsel
Special Florida Bar Number A5500840
FEDERAL TRADE COMMISSION
Southeast Regional Office
225 Peachtree Street, N.E., Suite 1500
Atlanta, Georgia 30303
Office: 404-656-1350 (Gray)
Facsimile: 404-656-1379
Email: jgray@ftc.gov

ATTACHMENT A**Gray, Jessica D.**

From: Gray, Jessica D.
Sent: Wednesday, December 03, 2008 8:22 AM
To: 'jaxlawfl@aol.com'; 'dempsey4321@bellsouth.net'; 'dempsey4321@comcast.net'
Cc: Gray, Jessica D.
Subject: FW: Hargrave & Associates- Case No. 3:08-cv-01001-J-34JRK
Attachments: Accountant Docs AE 10.31.08.pdf; Acctg Records Ltr EJ 10.31.08.pdf

Forwarding message previously sent by receiver on 11.12.08.

From: Jodie Breece [mailto:jbreece@lbfmiami.com]
Sent: Wednesday, November 12, 2008 12:14 PM
To: Gray, Jessica D.
Cc: Earl M. Johnson; Amir Isaiah; Randy Kroner; Daniel Stermer; Chris Tomlinson; Lewis Freeman
Subject: RE: Hargrave & Associates- Case No. 3:08-cv-01001-J-34JRK

"Accountant Docs AE 10.31.08" were the documents that Mr. Enofe gave us, and "Acctg Records Ltr EJ 10.31.08" are the documents that Mr. Johnson sent.

From: Gray, Jessica D. [mailto:JGRAY@ftc.gov]
Sent: Wednesday, November 12, 2008 11:23 AM
To: Jodie Breece
Cc: Earl M. Johnson; Amir Isaiah; Randy Kroner; Daniel Stermer; Chris Tomlinson; Lewis Freeman
Subject: RE: Hargrave & Associates- Case No. 3:08-cv-01001-J-34JRK

Jodie, did you receive copies of tax returns and other financial statements. Please forward them to me as soon as possible. Also, send a copy of Mr. Johnson.

From: Jodie Breece [mailto:jbreece@lbfmiami.com]
Sent: Wednesday, October 29, 2008 1:58 PM
To: Gray, Jessica D.
Cc: Earl M. Johnson; Amir Isaiah; Randy Kroner; Daniel Stermer; Chris Tomlinson; Lewis Freeman
Subject: RE: Hargrave & Associates- Case No. 3:08-cv-01001-J-34JRK

FYI, we located accountant-prepared end of 07 financial statements since the below e-mail was sent. We will include it among the items we forward to you.
 -Jodie

From: Gray, Jessica D. [mailto:JGRAY@ftc.gov]
Sent: Wednesday, October 29, 2008 11:55 AM
To: Jodie Breece
Cc: Earl M. Johnson; Amir Isaiah; Randy Kroner; Daniel Stermer; Chris Tomlinson; Lewis Freeman
Subject: RE: Hargrave & Associates- Case No. 3:08-cv-01001-J-34JRK

Thank you.

From: Jodie Breece [mailto:jbreece@lbfmiami.com]
Sent: Tuesday, October 28, 2008 7:37 PM

Attachment A, p. 1 of 9

To: Gray, Jessica D.
Cc: Earl M. Johnson; Amir Isaiah; Randy Kroner; Daniel Stermer; Chris Tomlinson; Lewis Freeman
Subject: RE: Hargrave & Associates- Case No. 3:08-cv-01001-J-34JRK

Hello, Ms. Gray:

To date we do have observed or were provided with

1. customer lists
2. some sales records
3. corporate tax returns for 2005, 2006, and 2007
4. internally created financial statements
5. consumer complaints,
6. correspondence from an attorney general's office
7. a radio script(s)
8. a list of advertising vendors
9. part of a consulting agreement

To date we have not observed or been informed of

1. Documents sufficient to show total injury to consumers
2. Tax returns prior to 2005 for the corporation
3. Tax returns of any kind for the individuals or any affiliates or subsidiaries
4. A consumer complaint file
5. Correspondence between the defendants and consumers, law enforcement entities or the BBB or other consumer advocacy groups
6. Training scripts
7. Files relating to third-party advertising agents (contact name, address and telephone number)

This is not to say that these materials are not here and/or do not exist, just that Mr. Isaiah and I have not seen them.

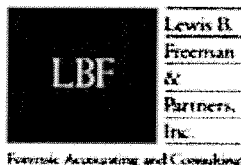
I will forward an e-mail to you immediately following this one that attaches two zip files of customer lists, one for the past six months and the other for the past two years, provided us by Kevin Hargrave via his employee who works on I.T. issues, Tyrone Jackson.

I will also forward an e-mail that attaches the three corporate tax returns, provided to us by counsel for Mr. Hargrave.

The other materials need to be scanned and will be e-mailed to you tomorrow, as we do not have scanning capabilities here at this time.

Jodie Breece

Principal
Lewis B. Freeman & Partners, Inc.
3225 Aviation Avenue, Suite 501
Miami, Florida 33133
Telephone: 305-443-6622
Cellular: 786-201-4817



Attachment A, p. 2 of 9

Attention: The information contained in this e-mail is confidential and may be a legally privileged document intended only for the use of the individual(s) named above. If you are not the intended recipient, you are hereby notified that any review, dissemination, distribution or duplication of this document is strictly prohibited. If you have received this document in error, please destroy.

From: Lewis B. Freeman [mailto:lfreeman@lbfmiami.com]
Sent: Tuesday, October 28, 2008 1:20 PM
To: Jessica Gray; Lewis Freeman
Cc: Earl M. Johnson; Jodie Breece; Amir Isaiah; Randy Kroner; Daniel Stermer; Chris Tomlinson
Subject: Re: Hargrave & Associates- Case No. 3:08-cv-01001-J-34JRK

Jodie do we have. If so ftc should get copy

Lewis B. Freeman
LEWIS B. FREEMAN & PARTNERS, INC.
3225 Aviation Avenue, Suite 501
Miami, Florida 33133

305-443-6622 (t)
305-285-3441 (f)

www.lbfmiami.com

Attention: The information contained in this e-mail is confidential and may be a legally privileged document intended only for the use of the individual(s) named above. If you are not the intended recipient, you are hereby notified that any review, dissemination, distribution or duplication of this document is strictly prohibited. If you have received this document in error, please destroy.

From: "Gray, Jessica D." <JGRAY@ftc.gov>
Date: Tue, 28 Oct 2008 12:38:54 -0400
To: <lfreeman@lbfmiami.com>
CC: <jaxlawfl@aol.com>
Subject: Hargrave & Associates- Case No. 3:08-cv-01001-J-34JRK
Lew,

Pursuant to Paragraph XIII, "Expedited Discovery" of TRO, the FTC was granted access to the following information. However, Defendants' counsel represents that this information was given to your representatives. This information is required before we can proceed with negotiating a stipulated preliminary injunction order, as such, consider this to be a formal request that you provide this information to me as soon as possible:

10. customer lists,
11. documents sufficient to show total injury to consumers, including, but not limited to tax returns and income statements for 2003 through the present,
12. consumer complaints,
13. correspondence between the defendants and consumers, law enforcement entities or the BBB or other consumer advocacy groups,
14. scripts, including training scripts, advertising scripts, etc., and
15. third-party advertising agents (contact name, address and telephone number).

Thank you,
Jessica

10/8/2009

Attachment A, p 4 of 9

Gray, Jessica D.

From: Gray, Jessica D.
Sent: Thursday, October 30, 2008 3:23 PM
To: 'jaxlawfl@aol.com'
Subject: Hargrave & Associates

Am speaking with the receiver. The TRO does not require the receiver to fill out the Financial Disclosure Statement for the Corporate Defendant. That is for you and your client to do. The TRO provided that the Financial Disclosure Statements be completed and produced with 3 days of the order being entered. I need for you all to complete and provide the corporate financial statement. Also, I thought you were going to give receiver the records from the CPA. You said you were picking them up at 1pm. Please do so.

Attachment 3 p.5 of 9

10/6/2009

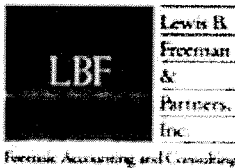
Gray, Jessica D.

From: Sheva Levin [slevin@lbfmiami.com]
Sent: Tuesday, December 09, 2008 4:46 PM
To: CTomlinson@gray-robinson.com; dempsey4321@comcast.net; Gray, Jessica D.; jaxlawfl@aol.com
Cc: Jodie Breece; Lewis Freeman; Amir Isaiah; Kolman Kenigsberg
Subject: Hargrave
Attachments: Letter CD JB 12.9.08.pdf; Letter w CD JB 12.9.08.pdf

Attached please find correspondence regarding a CD going out by UPS overnight to Mr. Tomlinson (to arrange for delivery to Mr. Johnson) and to Ms. Gray.

Sheva Levin

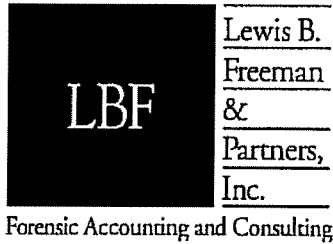
Lewis B. Freeman & Partners, Inc.
3225 Aviation Avenue, Suite 501
Miami, Florida 33133
Telephone: 305-443-6622



Forensic Accounting and Consulting

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Attachment A, p 6 of 9



December 8, 2008

Ms. Jessica D. Gray
Federal Trade Commission
225 Peachtree Street, Suite 1500
Atlanta, GA 30303

Mr. Earl M. Johnson, Jr.
P.O. Box 40091
Jacksonville, Florida 32203-0091

Dear Ms. Gray and Mr. Johnson:

Enclosed please find two CD's labeled

Hargrave/Bank Records
JB 12/5/08

and

Hargrave
LBF 0001 – LBF 0801
JB 12/8/08

These contain (1) scans of documents provided to us by banks, as well as (2) scans of some of the documents we removed on October 31, 2008, from 3450 Dunn Avenue, Suites 101-104, in Jacksonville. Because UPS was unable to deliver the last two CDs to Mr. Johnson, who has a P.O. box, Mr. Johnson's copies of the above CDs are being forwarded to our counsel Christopher Tomlinson of Gray Robinson in Jacksonville, who will arrange for personal delivery.

An additional CD with the remaining documents removed on October 31, 2008, will follow.

Any questions can be directed to me at 786-201-4817 or to Mr. Tomlinson at 904-652-3295.

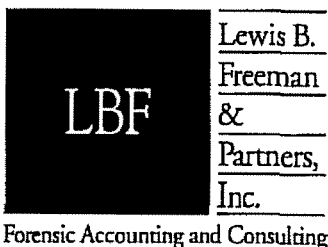
Sincerely,


Jodie Breece
Principal

Enc.

cc: L. Freeman
C. Tomlinson

Attachment A, A7 of 9



December 9, 2008

Ms. Jessica D. Gray
Federal Trade Commission
225 Peachtree Street, Suite 1500
Atlanta, GA 30303

Mr. Earl M. Johnson, Jr.
P.O. Box 40091
Jacksonville, Florida 32203-0091

Dear Ms. Gray and Mr. Johnson:

Enclosed please find one CD . labeled

Hargrave
LBF 0802 – LBF 1120
JB 12/9/08

It contains scans of the remaining documents we removed on October 31, 2008, from 3450 Dunn Avenue, Suites 101-104, in Jacksonville. Because UPS was unable to deliver to Mr. Johnson's P.O. box, Mr. Johnson's copy of the above CD is being forwarded to our counsel Christopher Tomlinson of Gray Robinson in Jacksonville, who will arrange for personal delivery.

Any questions can be directed to me at 786-201-4817 or to Mr. Tomlinson at 904-652-3295.

Sincerely,


Jodie Breece
Principal

Enc.
cc: L. Freeman
C. Tomlinson

Attachment A, p. 8 of 9

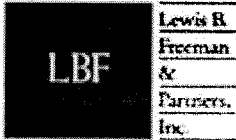
Gray, Jessica D.

From: Jodie Breece [jbreece@lbfmiami.com]
Sent: Monday, December 08, 2008 5:46 PM
To: Christopher A. Tomlinson; Gray, Jessica D.; Earl M. Johnson; dempsey4321@comcast.net
Cc: Lewis Freeman; Amir Isaiah; Kolman Kenigsberg
Attachments: Ltr w. CDs JB 12.08.08.pdf

Attached please find correspondence regarding two CDs going out by UPS overnight to Mr. Tomlinson (to arrange for delivery to Mr. Johnson) and to Ms. Gray. Another CD should follow from me tomorrow.

Jodie Breece

Principal
Lewis B. Freeman & Partners, Inc.
3225 Aviation Avenue, Suite 501
Miami, Florida 33133
Telephone: 305-443-6622
Cellular: 786-201-4817



Forensic Accounting and Consulting

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ATTACHMENT B

Gray, Jessica D.

From: Gray, Jessica D.
Sent: Tuesday, October 28, 2008 2:01 PM
To: 'Lewis B. Freeman (lfreeman@lbfmiami.com)'; 'cbreece@bellsouth.net'
Cc: 'Earl Johnson, Esq (jaxlawfl@aol.com)'
Subject: Hargrave & Associates - Case No. 3:08-cv-01001-J-34JRK
Attachments: Request of Receiver to allow FTC IT.pdf

Lew, attached is a formal request that the FTC be allowed to mirror the receivership defendant's computers to defray costs to the receivership estate.

Attachment **B, p 1** of **2**

10/8/2009



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
SOUTHEAST REGION

225 Peachtree Street, N.E.
Suite 1500
Atlanta, Georgia 30303

Jessica D. Gray
Attorney

Direct Dial
404-656-1350

October 28, 2008

Lewis B. Freeman
LEWIS B. FREEMAN & PARTNERS, INC.
3225 Aviation Avenue, Suite 501
Miami, Florida 33133

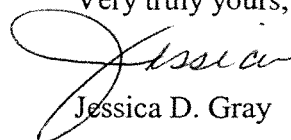
Re: *FTC v. Latrese & Kevin Enterprises, Inc.*, et al., Case No. 3:08-cv-01001-J-JRK

Dear Mr. Freeman:

Earlier today I had conversations with your associate, Jodie Breece, Esq. regarding whether you had accessed the computers and network of the Receivership Defendant and whether copies had been made. She stated that the system has not been mirrored. Given the cost associated with that task, I suggested that you permit the Federal Trade Commission ("FTC") to send its IT staff to Jacksonville to perform this task. I have spoken with Earl Jackson, Esq., counsel for the Defendants, and he has given his consent.

Please send me your written confirmation that the FTC may perform this task.

Very truly yours,


Jessica D. Gray

ATTACHMENT C

Gray, Jessica D.

From: Gray, Jessica D.
Sent: Wednesday, December 03, 2008 8:17 AM
To: 'jaxlawfl@aol.com'; 'Christopher A. Tomlinson'; 'dempsey4321@comcast.net';
'dempsey4321@bellsouth.net'
Cc: Gray, Jessica D.
Subject: FW: Hargrave & Associates

Because Mr. Johnson does not recall receiving this message regarding the imaging of the Hargrave & Associates' computers, I am resending it. Also, as I explained to Messrs. Johnson and Dempsey, because of security and chain of custody concerns requests for this data must be made directly to the IT representative as instructed below.

From: Gray, Jessica D.
Sent: Wednesday, November 19, 2008 11:26 AM
To: 'Christopher A. Tomlinson'; 'jaxlawfl@aol.com'
Cc: 'Lewis Freeman'
Subject: Hargrave & Associates

Good morning gentlemen.

I was informed that the information captured from the computers at Hargrave & Associates offices is now available upon request. For copies of that information, please submit your requests directly to Luke Erickson via e-mail (Lerickson@ftc.gov) and please copy me. Thank you.

Attachment C, A 1 of 1

CERTIFICATE OF SERVICE

I, Jessica D. Gray, hereby certify that on October 16, 2009, Plaintiff's Reply in Opposition to Defendants' Motion for Involuntary Dismissal was electronically filed with the Clerk of Court using CM/ECF and a courtesy copy mailed to the following:

Donald L. Dempsey, Esq.
4321 Roosevelt Boulevard
Jacksonville, FL 32210
Office: (904) 387-5262
Facsimile: (904) 387-5263

Christopher A. Tomlinson, Esq.,
GrayRobinson, P. A.
Suite 2200
201 North Franklin Street
P.O. Box 3324
Tampa, Florida 33601
Office: 904-598-9929
Facsimile: 904-598-9109

I hereby certify that the foregoing is true and correct. Executed on this 16th day of October 2009, at Atlanta, Georgia.

/s/ Jessica D. Gray

Jessica D. Gray
Attorney for Plaintiff