

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
Miami Division

CASE NO. 97-3924-CIV-SIMONTON

JERRY GREENBERG, individually,

Plaintiff,

vs.

NATIONAL GEOGRAPHIC  
SOCIETY, a District of Columbia  
corporation, NATIONAL GEOGRAPHIC  
ENTERPRISES, INC., a corporation,  
and MINDSCAPE, INC., a  
California corporation,

Defendants.

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**PLAINTIFF'S MOTION TO STRIKE DEFENDANTS'  
NOTICE OF FILING SUPPLEMENTAL AUTHORITY;  
ALTERNATIVELY, MOTION FOR LEAVE TO  
FILE MEMORANDUM IN RESPONSE; AND  
ACCOMPANYING MEMORANDUM OF LAW**

Plaintiff, JERRY GREENBERG ("Greenberg"), moves to strike Defendants' Notice of Filing Supplemental Authority in Support of Their Judgment as a Matter of Law. Alternatively, Greenberg moves for leave to file a memorandum in response to the supplemental authority.

On December 12, 2003, the defendants filed and served the aforementioned notice. A certificate of service accompanying the notice indicates that a copy was served on undersigned counsel by facsimile and mail on that date. No copy was received, by either delivery method, in

the office of Greenberg's counsel.<sup>1</sup> The notice was discovered in the court's docket by Greenberg's counsel only days ago, and the defendants' counsel has provided a fresh set of the documents. Those documents arrived on the date of service of this motion.

### **MEMORANDUM OF LAW**

The defendants' pending Motion for Judgment as a Matter of Law, to which the supplemental authority is directed, was served by the defendants on May 5, 2003. After a response by Greenberg, the defendants filed a reply memorandum in support of the motion on June 2, 2003.

Rule 7.1 C. provides that, after the filing of a reply memorandum, “[n]o further or additional memoranda of law shall be filed without prior leave of Court.” The notice filed by the defendants includes a brief memorandum that discusses and argues the relevance of the court decision that was being filed.

The notice and memorandum does not comport with the rules of this Court, and the notice should be stricken. Alternatively, plaintiff Greenberg should be given an opportunity to discuss why the court order at issue is not relevant to the proceedings here.

Respectfully submitted,

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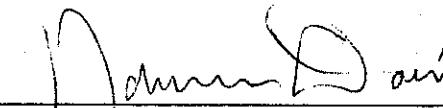
<sup>1</sup> Nothing was received by mail. The firm's communications department has now determined that the fax was timely received, but the cover sheet for the 55-page transmittal was buried inside at page 30 and was not detected for distribution purposes.

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Norman Davis FBN 475335

Certificate of Service

I hereby certify that a copy of the foregoing motion was served by electronic means on Stephen N. Zack, Boies, Schiller & Flexner LLP, 2800 Bank of America Tower, 100 Southeast Second Street, Miami, FL 33131; and by mail on Robert G. Sugarman, Esq., Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York NY 10153 this 12th day of February, 2004.

  
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Norman Davis