

ORIGINAL

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

0001
Eckley M. Keach, Esq.
Nevada Bar No. 1154
ECKLEY M. KEACH, CHTD.
520 South Fourth Street
Las Vegas, NV 89101
(702) 384-5563

Robert E. Murdock, Esq.
Nevada Bar No. 4013
MURDOCK & ASSOCIATES, CHTD.
520 South Fourth Street
Las Vegas, NV 89101
(702) 384-5563
Attorneys for Plaintiffs

DISTRICT COURT
CLARK COUNTY, NEVADA

JAY RUTHERFORD, an individual; and)
SPEED TRUCK CHALLENGE, INC., a)
California corporation,)
)
Plaintiffs)
)
vs.)
)
CMKM DIAMONDS, INC., a Nevada)
corporation; CMKXtreme, Inc., a Nevada)
corporation, d/b/a CMKXtreme.com;)
URBAN CASAVANT, an individual;)
DOES I-X, and ROE CORPORATIONS)
I-X, inclusive,)
)
Defendants.)

CASE NO. A515435
DEPT. NO. V

PLAINTIFFS' MOTION TO STRIKE
ANSWER AND ENTER DEFAULT IN
PLAINTIFF'S FAVOR AS TO
CMKXTREME, INC., dba
CMKXTREME.COM AND URBAN
CASAVANT

Hearing Date: 11/28/07
Hearing Time: 9:30am

Before the Discovery Commissioner
DISCOVERY COMMISSIONER

COME NOW Plaintiffs Jay Rutherford and Speed Truck Challenge, Inc., by and through
their attorneys of record, Eckley M. Keach, Chtd. and Murdock & Associates, Chtd., and hereby file
their Motion to Strike Answer and Enter Default in Plaintiff's Favor as to CMKXtreme, Inc., dba
CMKXtreme.com and Urban Casavant, as follows:

///

1 This Motion is made and based on the attached points and authorities, all pleadings and
2 papers on file herein, and argument of counsel.

3 DATED this 30 day of October, 2007.

4 ECKLEY M. KEACH, CHTD.
5 MURDOCK & ASSOCIATES, CHTD.

6 

7

Eckley M. Keach Bar No. 1154
8 Robert E. Murdock Bar No. 4013
9 520 South Fourth Street
10 Las Vegas, NV 89101
11 Attorneys for Plaintiffs

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ORDER SHORTENING TIME

Good cause appearing therefore, it is hereby ORDERED that the time for the hearing of the above Motion may be shortened to 9:30 a.m. on the 28 day of NOV, 2007, before the Discovery Commissioner.


DATED this 30 day of October, 2007.



Discovery Commissioner

Submitted by:

ECKLEY M. KEACH, CHTD.
MURDOCK & ASSOCIATES, CHTD.



Eckley M. Keach Bar No. 1154
Robert E. Murdock Bar No. 4013
520 South Fourth Street
Las Vegas, NV 89101
Attorneys for Plaintiffs

1 POINTS AND AUTHORITIES

2 As this Honorable Court is well aware, Rule 37 of the Nevada Rules of Civil Procedure
3 gives the power to the Court to dismiss a case. See **GNLV Corp. v. Service Control Corp.**, 111
4 Nev. 866, 900 P2d 323 (1995). While certainly the sanction must fit the violation, as long as the
5 Court finds there is a willful non-compliance, a pleading can be stricken. See **Stubli v. Big D**
6 **Intern'l Trucks, Inc.**, 107 Nev. 309, 810 P2d. 785 (1991).

7 Furthermore, where there is a failure to attend a deposition without explanation, the
8 Courts have found that striking a responsive pleading was not an unduly harsh sanction and did
9 not constitute an abuse of discretion. See **Skeen v. Valley Bank**, 89 Nev. 301, 511 P2d 1053
10 (1973).

11 Furthermore, it has been held where there is no explanation as to why a defendant failed
12 to appear for the taking of her deposition, a court was entirely justified in concluding that there
13 was a willful non-compliance and the answer was stricken and a default was entered. **Schatz v.**
14 **DeVitte**, 75 Nev. 124, 335 P2d 783 (1959).

15 Mr. Casavant's deposition was set for Monday, March 19, 2007 at 1:30 p.m. at Murdock
16 & Associates, Chtd. See Notice of Taking Deposition of Urban Casavant attached as Exhibit 1.
17 Pursuant to request from Mr. Casavant's former counsel, David Chesnoff, the deposition was
18 moved to May 15, 2007. Mr. Casavant failed to show. See transcript of proposed deposition,
19 along with exhibits to same as Exhibit 2 attached hereto.

20 In addition, on Tuesday, May 15, 2007, there was supposed to be a deposition of
21 CMKXtreme, Inc., which was a person most knowledgeable. See Notice of Taking Deposition
22 attached as Exhibit 3. The reporter certified that she was present until 1:45 p.m. and that nobody
23 from CMKXtreme, Inc. showed up to the deposition.

24 ///

25 ///

26 ///

27 ///

28 ///

CERTIFICATE OF MAILING

1
2 The undersigned hereby declares she is an employee of Murdock & Associates, Chtd. and
3 that on NOV 2, 2007, she deposited a true copy of the foregoing PLAINTIFFS'
4 MOTION TO STRIKE ANSWER AND ENTER DEFAULT IN PLAINTIFF'S FAVOR AS TO
5 CMKXTREME, INC., dba CMKXTREME.COM AND URBAN CASAVANT in the United
6 States mail, postage fully prepaid, addressed as follows:

7 David R. Koch, Esq.
8 Turner Green Afrasiabi & Arledge LLP
9 701 N. Green Valley Parkway, Suite 200
10 Henderson, Nevada 89074

11 Urban Casavant
12 8380 W. Sahara Avenue, Suite 120
13 Las Vegas, Nevada 89117

14 Urban Casavant
15 30 Princeville Lane
16 Las Vegas, Nevada 89113

17 CMKXtreme, Inc.
18 30 Princeville Lane
19 Las Vegas, Nevada 89113



An Employee of Murdock & Associates, Chtd.

EXHIBIT 1

1 NOTC
2 Eckley M. Keach, Esq.
3 Nevada Bar No. 1154
4 ECKLEY M. KEACH, CHTD.
5 520 South Fourth Street
6 Las Vegas, NV 89101
7 (702) 384-5563

8 Robert E. Murdock, Esq.
9 Nevada Bar No. 4013
10 MURDOCK & ASSOCIATES, CHTD.
11 520 South Fourth Street
12 Las Vegas, NV 89101
13 (702) 384-5563
14 Attorneys for Plaintiff

FILED
FEB 27 9 26 AM '07
CLERK OF THE COURT

15 DISTRICT COURT
16 CLARK COUNTY, NEVADA

17 JAY RUTHERFORD, an individual; and
18 SPEED TRUCK CHALLENGE, INC., a
19 California corporation,

20 Plaintiffs

21 vs.

22 CMKM DIAMONDS, INC., a Nevada
23 corporation; CMKXtreme, Inc., a Nevada
24 corporation, d/b/a CMKXtreme.com;
25 URBAN CASAVANT, an individual;
26 DOES I-X, and ROE CORPORATIONS
27 I-X, inclusive,

28 Defendants.

CASE NO. A515435
DEPT. NO. V

NOTICE OF TAKING DEPOSITION
OF URBAN CASAVANT

DATE: March 19, 2007
TIME: 1:30 p.m.

29 TO: ALL DEFENDANTS HEREIN; and

30 TO: MORAN & ASSOCIATES, Their Attorneys of Record

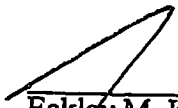
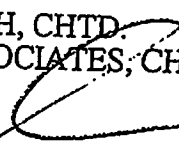
31 Pursuant to Rules 26 and 30 of the Nevada Rules of Civil Procedure, please take notice that
32 on Monday, March 19, 2007, at 1:30 p.m. at Murdock & Associates. Chtd., 520 South Fourth Street,
33 Las Vegas, Nevada 89101, Plaintiffs will take the deposition of Defendant Urban Casavant.

34 //

1 Said deposition will taken by stenographic and/or video tape means before a notary public
2 or before some other officer authorized by law to administer oaths. Testimony shall continue from
3 day to day until completed. You are invited to attend and cross-examine.

4 DATED this 26th day of February, 2007.

5 ECKLEY M. KEACH, CHTD.
6 MURDOCK & ASSOCIATES, CHTD.

7
8 
9 
10 Eckley M. Keach Bar No. 1154
11 Robert E. Murdock Bar No. 4013
12 520 South Fourth Street
13 Las Vegas, NV 89101
14 Attorneys for Plaintiffs

15 **AFFIRMATION PURSUANT TO NRS 239B.030**

16 The undersigned does hereby affirm that the preceding NOTICE OF TAKING DEPOSITION
17 OF URBAN CASAVANT, Case No. A515435:

18 Does not contain the Social Security number of any person.

19 - OR -

20 Contains the Social Security number of a person as required by:

21 A. A specific state or federal law, to wit:

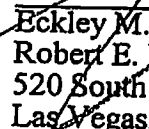
22 (State specific law)

23 - OR -

24 B. For the administration of a public program or for an application for a federal or state
25 grant.

26 DATED this 26th day of January, 2007.

27 ECKLEY M. KEACH, CHTD.
28 MURDOCK & ASSOCIATES, CHTD.


Eckley M. Keach Bar No. 1154
Robert E. Murdock Bar No. 4013
520 South Fourth Street
Las Vegas, NV 89101
Attorneys for Plaintiffs

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

RECEIPT OF COPY

RECEIPT of a copy of the foregoing NOTICE OF TAKING DEPOSITION OF URBAN
CASAVANT is hereby acknowledged this 27 day of February, 2007.

MORAN & ASSOCIATES

John T. Moran
John T. Moran, III, Esq.
630 South Fourth Street
Las Vegas, NV 89101

EXHIBIT 2

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

DISTRICT COURT
CLARK COUNTY, NEVADA

JAY RUTHERFORD, an
individual; and SPEED
TRUCK CHALLENGE, INC., a
California corporation,

Plaintiffs,

vs.

CMKM DIAMONDS, INC., a
Nevada corporation,
CMKXTREME, INC., a Nevada
corporation, d/b/a
CMKXTREME.COM; URBAN
CASAVANT, an individual;
DOES I-X, and ROE
CORPORATIONS I-X,
inclusive,

Defendants.

COPY

CASE NO. A515435

PROPOSED DEPOSITION OF URBAN CASAVANT

On Tuesday, May 15, 2007

At 9:00 a.m.

At 520 South Fourth Street

Las Vegas, Nevada

Reported by: Carol O'Malley, CCR 178, RMR

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES:

For the Plaintiffs: MURDOCK & ASSOCIATES, CHTD.
520 South Fourth Street
Second Floor
Las Vegas, Nevada 89101
BY: ROBERT E. MURDOCK, ESQ.
Phone: (702) 384-5563

For the Defendant TURNER GREEN AFRASIABI & ARLEDGE
CMKM Diamonds, Inc.: 701 N. Green Valley Parkway
Suite 200
Henderson, Nevada 89074
BY: DAVID R. KOCH, ESQ.
Phone: (702) 990-3155

INDEX

<u>Examination</u>	<u>Further Examination</u>
None	

EXHIBITS

Page

Plaintiffs' Exhibit 1 - Re-Notice of Taking Deposition of Urban Casavant	3
---	---

1 MR. MURDOCK: This is the time set for
2 the deposition of Urban Casavant, who was duly
3 noticed. It was moved pursuant to requests from
4 Mr. Moran's office and Mr. Chesnoff's office. I made
5 those accommodations. I was told that he would be
6 here.

7 Apparently Mr. Casavant is not
8 here. It is now 9:30. We've been waiting for a half
9 hour for them to show up, but nobody has shown up for
10 Mr. Casavant. I have received no phone calls
11 regarding Mr. Casavant's showing up or not showing
12 up, and that's why we're making a record at this
13 time.

14 I will attach as Plaintiffs'
15 Exhibit 1 the Re-Notice of Taking Deposition of Urban
16 Casavant for today's date, which was ROC'd on April
17 6th by John T. Moran, Esquire, and also David
18 Chesnoff on April 9, '07.

19 MR. KOCH: For the record, my
20 appearance, David Koch, on behalf of Defendant CMKM
21 Diamonds, Inc.

22 (Plaintiffs' Exhibit 1 marked.)

23

24

(Whereupon the proceedings were concluded.)

25

REPORTER'S CERTIFICATE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

I, Carol O'Malley, a duly commissioned Notary Public, Clark County, State of Nevada, do hereby certify:

That on Tuesday, May 15, 2007 at the hour of 9:30 a.m. I appeared at the office of MURDOCK & ASSOCIATES, 520 South Fourth Street, Las Vegas, Nevada, for the purpose of reporting the deposition of URBAN CASAVANT; that I remained in attendance until 9:35 a.m., at which time neither the deponent nor his counsel had appeared. The foregoing is a true and accurate record of the proceedings held at that time.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in my office in the County of Clark, State of Nevada, this 15th day of May, 2007.

Carol O'Malley
Carol O'Malley
CCR #178, RMR

1 RNOT
Eckley M. Keach, Esq.
2 Nevada Bar No. 1154
ECKLEY M. KEACH, CHTD.
3 520 South Fourth Street
Las Vegas, NV 89101
4 (702) 384-5563

5 Robert E. Murdock, Esq.
Nevada Bar No. 4013
6 MURDOCK & ASSOCIATES, CHTD.
520 South Fourth Street
7 Las Vegas, NV 89101
(702) 384-5563
8 Attorneys for Plaintiff

APR 10 1 37 PM '07.

Carol O'Malley
CLERK OF THE COURT

P. J. S. Depo. Exh.# 1
Carol O'Malley, CCR No. 178, RMR

10 DISTRICT COURT
11 CLARK COUNTY, NEVADA

13 JAY RUTHERFORD, an individual; and)
SPEED TRUCK CHALLENGE, INC., a)
14 California corporation,)
15 Plaintiffs)
16 vs.)
17 CMKM DIAMONDS, INC., a Nevada)
corporation; CMKXtreme, Inc., a Nevada)
18 corporation, d/b/a CMKXtreme.com;)
URBAN CASAVANT, an individual;)
19 DOES I-X, and ROE CORPORATIONS)
I-X, inclusive,)
20 Defendants.)
21

CASE NO. A515435
DEPT. NO. V

RE-NOTICE OF TAKING
DEPOSITION OF URBAN
CASAVANT


DATE: May 15, 2007
TIME: 9:00 a.m.

23 TO: ALL DEFENDANTS HEREIN; and
24 TO: MORAN LAW FIRM and CHESNOFF & SCHONFELD, Their Attorneys of Record
25 Pursuant to Rules 26 and 30 of the Nevada Rules of Civil Procedure, please take notice that
26 on Tuesday, May 15, 2007, at 9:00 a.m. at Murdock & Associates. Chtd., 520 South Fourth Street,
27 Las Vegas, Nevada 89101, Plaintiffs will take the deposition of Defendant Urban Casavant.
28 //

1 Said deposition will taken by stenographic and/or video tape means before a notary public,
2 or before some other officer authorized by law to administer oaths. Testimony shall continue from
3 day to day until completed. You are invited to attend and cross-examine.

4 DATED this 5th day of April, 2007.

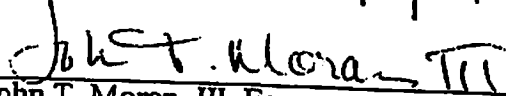
5 ECKLEY M. KEACH, CHTD.
6 MURDOCK & ASSOCIATES, CHTD.

7
8 
9 Eckley M. Keach Bar No. 1154
10 Robert E. Murdock Bar No. 4013
11 520 South Fourth Street
12 Las Vegas, NV 89101
13 Attorneys for Plaintiffs

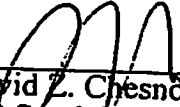
14 **RECEIPT OF COPY**

15 RECEIPT of a copy of the foregoing RE-NOTICE OF TAKING DEPOSITION OF URBAN
16 CASAVANT is hereby acknowledged this ____ day of May, 2007.

17 MORAN LAW FIRM 4/6/07

18 
19 John T. Moran, III, Esq.
20 630 South Fourth Street
21 Las Vegas, NV 89101

22 CHESNOFF & SCHONFELD

23  4-9-07
24 David Z. Chesnoff, Esq.
25 520 South Fourth Street
26 Las Vegas, NV 89101

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding RE-NOTICE OF TAKING DEPOSITION OF URBAN CASAVANT, Case No. A515435:

Does not contain the Social Security number of any person.

- OR -

Contains the Social Security number of a person as required by:

A. A specific state or federal law, to wit:

(State specific law)

- OR -

B. For the administration of a public program or for an application for a federal or state grant.

DATED this 5th day of April, 2007.

ECKLEY M. KEACH, CHTD.
MURDOCK & ASSOCIATES, CHTD.

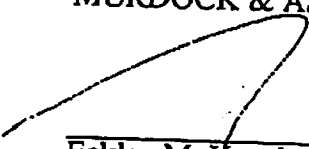
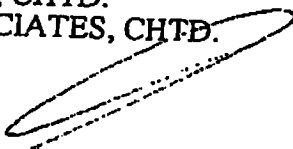


Eckley M. Keach Bar No. 1154
Robert E. Murdock Bar No. 4013
520 South Fourth Street
Las Vegas, NV 89101
Attorneys for Plaintiffs

EXHIBIT 3

1 ANOT
Eckley M. Keach, Esq.
2 Nevada Bar No. 1154
ECKLEY M. KEACH, CHTD.
3 520 South Fourth Street
Las Vegas, NV 89101
4 (702) 384-5563
5 Robert E. Murdock, Esq.
Nevada Bar No. 4013
6 MURDOCK & ASSOCIATES, CHTD.
520 South Fourth Street
7 Las Vegas, NV 89101
(702) 384-5563
8 Attorneys for Plaintiff

FILED

APR 25 4 31 PM '07

Chris [Signature]
CLERK OF THE COURT

9
10 DISTRICT COURT
11 CLARK COUNTY, NEVADA
12

13 JAY RUTHERFORD, an individual; and
14 SPEED TRUCK CHALLENGE, INC., a
California corporation,

Plaintiffs

16 vs.

17 CMKM DIAMONDS, INC., a Nevada
corporation; CMKXtreme, Inc., a Nevada
18 corporation, d/b/a CMKXtreme.com;
URBAN CASAVANT, an individual;
19 DOES I-X, and ROE CORPORATIONS
I-X, inclusive,
20

Defendants.

CASE NO. A515435
DEPT. NO. V

AMENDED NOTICE OF TAKING
OF PERSON(S) MOST
KNOWLEDGEABLE OF
CMKXtreme, Inc.

DATE: May 15, 2007
TIME: 1:30 p.m.

22
23
24 TO: ALL DEFENDANTS HEREIN; and
25 TO: MORAN & ASSOCIATES, Their Attorneys of Record

26 PLEASE TAKE NOTICE that the deposition of the Person(s) Most Knowledgeable of
27 Defendant CMKXtreme, Inc., previously scheduled for April 26, 2007, will now take place on
28 Tuesday, May 15, 2007, at 1:30 p.m.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Said deposition will taken by stenographic and/or video tape means before a notary public,
or before some other officer authorized by law to administer oaths. Testimony shall continue from
day to day until completed. You are invited to attend and cross-examine.

DATED this 25th day of April, 2007.

ECKLEY M. KEACH, CHTD.
MURDOCK & ASSOCIATES, CHTD.

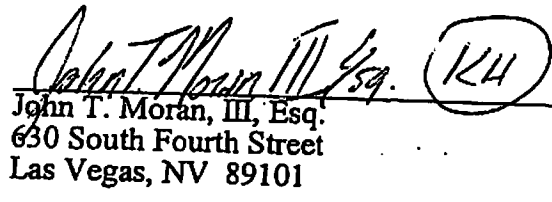


Eckley M. Keach Bar No. 1154
Robert E. Murdock Bar No. 4013
520 South Fourth Street
Las Vegas, NV 89101
Attorneys for Plaintiffs

RECEIPT OF COPY

RECEIPT of a copy of the foregoing AMENDED NOTICE OF TAKING DEPOSITION OF
PERSON(S) MOST KNOWLEDGEABLE OF CMKXtreme, Inc. is hereby acknowledged this
25 day of April, 2007.

MORAN & ASSOCIATES



John T. Moran, III, Esq.
630 South Fourth Street
Las Vegas, NV 89101

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding AMENDED NOTICE OF TAKING DEPOSITION OF PERSON(S) MOST KNOWLEDGEABLE OF CMKXtreme, Inc., Case No. A515435:

Does not contain the Social Security number of any person.

- OR -

Contains the Social Security number of a person as required by:

A. A specific state or federal law, to wit:

(State specific law)

- OR -

B. For the administration of a public program or for an application for a federal or state grant.

DATED this 25th day of April, 2007.

ECKLEY M. KEACH, CHTD.
MURDOCK & ASSOCIATES, CHTD.

Eckley M. Keach Bar No. 1154
Robert E. Murdock Bar No. 4013
520 South Fourth Street
Las Vegas, NV 89101
Attorneys for Plaintiffs