EXHIBIT A

Matthew Leili <mleili@oelegal.com>

FW: e-Numerate: pleading schedule

Gerard O'Rourke <gorourke@orourkefirm.com>   Thu, Aug 1, 2019 at 12:09 PM
To: Matthew Leili <mleili@oelegal.com>

From: Gerard O'Rourke
Sent: Friday, July 19, 2019 4:23 PM
To: Bolden, Scott (CIV) <Scott.Bolden@usdoj.gov>; 'Sean O'Kelly' <sokelly@oelegal.com>
Cc: Kuan, Nelson <kuann@SEC.GOV>
Subject: RE: e-Numerate: pleading schedule

Scott,

You are not willing to have a call with the Clerk's office to discuss this? Seriously?

Jerry

From: Bolden, Scott (CIV) [mailto:Scott.Bolden@usdoj.gov]
Sent: Friday, July 19, 2019 4:20 PM
To: Gerard O'Rourke <gorourke@orourkefirm.com>; 'Sean O'Kelly' <sokelly@oelegal.com>
Cc: Kuan, Nelson <kuann@SEC.GOV>
Subject: RE: e-Numerate: pleading schedule

Jerry and Sean,

Our interpretation of the rules is justified by the plain language and by our past practice before the Court. I thought that the government's draft motion that I provided you as a courtesy was fair and accurate, but you apparently disagree. I have asked for specifics, but have not received any. I respect your right to disagree – even if I don't understand it – and the Court's Rules provide you with an opportunity to explain your disagreement. Even if this particular motion is opposed, I will continue to work with you to try and resolve disputes in the future. Thanks,

Scott

From: Gerard O'Rourke <gorourke@orourkefirm.com>
Sent: Friday, July 19, 2019 3:52 PM
To: Bolden, Scott (CIV) <SBolden@CIV.USDOJ.GOV>; 'Sean O'Kelly' <sokelly@oelegal.com>
Cc: Kuan, Nelson <kuann@SEC.GOV>
Subject: RE: e-Numerate: pleading schedule

Scott,

We disagree with you and so does the Clerk's office. I called and asked this exact question of them. They said a stipulation was fine under these circumstances.

Given that your answer is not due until August 11 without an extension, why don't we jointly call over to the Clerk's office to discuss this when you get back to resolve it? I am around starting the week of July 29. Alternatively, why not just file a stipulation embodying our agreement? As we said, we are happy to grant you the extension, but we feel our agreement should be embodied in a stipulation. If the Court rejects the stipulation, you should have plenty of time to file a motion (which we will not oppose). Please let us know. Thanks.

Jerry

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From: Bolden, Scott (CIV) [mailto:Scott.Bolden@usdoj.gov]
Sent: Friday, July 19, 2019 3:08 PM
To: Gerard O'Rourke <gorourke@orourkefirm.com>; 'Sean O'Kelly' <sokelly@oelegal.com>
Cc: Kuan, Nelson <kuann@SEC.GOV>
Subject: RE: e-Numerate: pleading schedule

Jerry,

I agree with you that a "request" to the Court is not limited to a motion. But a "stipulation" is not a "request" to the Court; it will likely be viewed as an attempt to tell the Court what it must do.   And, while we understand that some courts permit such stipulations, this Court does not. The Rules specifically acknowledge situations where the parties may agree to an extension by stipulation (e.g., RCFC 26(d), RCFC 29), but this is not one of those situations.

I'm happy to work with you to resolve your concerns, but we cannot obtain relief through a motion without good cause. While a motion is, by nature, an "advocacy piece," I have limited the "advocacy" to providing the "good cause" required by RCFC 6. I tried to make my statements as accurate, fair and neutral as reasonably possible.

If we cannot reach an agreement, the rules contemplate that you will have an opportunity to oppose my motion. In accordance with RCFC 6.1(b), I ask you to inform me whether you will oppose. I plan to file it tonight (revising it, if necessary, as an opposed motion), so I request a response by 5:00pm. Thanks,

Scott

From: Gerard O'Rourke <gorourke@orourkefirm.com>
Sent: Friday, July 19, 2019 11:37 AM
To: Bolden, Scott (CIV) <SBolden@CIV.USDOJ.GOV>; 'Sean O'Kelly' <sokelly@oelegal.com>
Cc: Kuan, Nelson <kuann@SEC.GOV>
Subject: RE: e-Numerate: pleading schedule

Scott,

What are you relying on for your statement that we cannot file a stipulation to extend time? As we read Rule 6(b)(1)(A), it refers to a "request" and is not limited to motions.   That is, it would cover a stipulation. Rule 6.1 relates to motions for enlargement and appears to be limited to adversarial situations.

As we mentioned to you, your entire motion is an advocacy piece that you are asking us to agree to and we simply cannot do that. We are more than happy to give you the 60 days based on the agreement we reached. We have attached a draft stipulation for your review that we think effectuates the parties' agreement.   The WHEREAS clauses in here are neutral and factually true.   Please let us know your thoughts. Thanks.

Jerry

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From: Bolden, Scott (CIV) [mailto:Scott.Bolden@usdoj.gov]
Sent: Friday, July 19, 2019 10:10 AM
To: Gerard O'Rourke <gorourke@orourkefirm.com>; 'Sean O'Kelly' <sokelly@oelegal.com>
Cc: Kuan, Nelson <kuann@SEC.GOV>
Subject: RE: e-Numerate: pleading schedule

Jerry and Sean,

The courtesy draft that I sent you is intended to be a motion that is filed on behalf of the Government. Since the motion seeks particular relief from the Court, the motion needs to advocate for that relief. In this Court, the parties cannot simply stipulate to an extension of a filing deadline. Instead, the parties must move the Court for the extension, and justify the extension.

You have generally objected to some of the characterizations of the IPR, but you have not explained any specific objections to the language I used. In the IPR section, I purposely used language that would capture both of our positions, i.e., "the IPRs *might* simplify the issues...", "the requested extension *may* allow...". I also acknowledge your argument: "...Plaintiffs have not expressly asserted the challenged claims in this particular case..." These characterizations appear neutral and fair to me. Let me know if there are specific facts that I cite that you believe are incorrect.

It sounds like we have three options at this point:

1.   I indicate at the beginning of the motion that you do not oppose the motion and the relief sought, but that you dispute some of the characterizations. For example, at the last sentence of the first paragraph could read: "On July 19, 2019, Plaintiffs stated that they do not oppose the Government's motion and the relief sought, but dispute some of the characterizations in the unopposed motion."

2.   You oppose the motion, and I file an opposed motion.

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