

IN THE UNITED STATE DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION

LOCAL ACCESS, LLC,  
A Florida Limited Liability  
Company,

Plaintiff,

CASE NO.: 6:17-cv-00236-PGB-TBS

vs.

PEERLESS NETWORK, INC.,  
An Illinois Corporation,

Defendant.

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**PLAINTIFF'S MOTION TO COMPEL PEERLESS NETWORK, INC. FOR  
DISCOVERY AND FOR SANCTIONS**

Plaintiff, LOCAL ACCESS, LLC (“Local Access”), by and through its undersigned counsel, and pursuant to Local Rule 3.01 and Federal Rules of Civil Procedure 37(a)(3)(B) and 37(d) hereby moves this Court for an order compelling Defendant, Peerless Network, Inc. (“Peerless”) to provide responses to Local Access’s Third Set of Requests for Documents (the “Third Request”), stating as follows:

**I. INTRODUCTION AND FACTUAL BACKGROUND**

Local Access filed an Amended Complaint, alleging two counts – the first count for breach of contract of the Homing Tandem Agreement and First Amendment for failure to pay Local Access for its share of Collected Tandem Access revenue and the second and alternative count for a contract implied in law. (Doc. 86). In response, on January 12, 2018, Peerless filed an answer denying almost all of the allegations, asserted seventeen affirmative defenses, and a counterclaim (the “Answer and Counterclaim”) (*Doc. 94*).

On January 26, 2018, Local Access served its Third Request seeking the documents that Peerless believes support the claims and defenses it asserted in its Answer and Counterclaim. (**Exhibit 1**). On February 26, 2018, Peerless served its response. (**Exhibit 2**). As set forth below, Peerless asserted attorney-client privilege and work-product doctrine as to ALL but one of Local Access's document requests leaving Local Access without the information it needs to defend itself against Peerless's claims and defenses.<sup>1</sup> Peerless also failed to produce a single document and instead indicated that it would now commence its search for responsive documents. Peerless's failure to produce documents further delays Local Access's discovery and prejudices its ability to take meaningful depositions which are scheduled to begin in April.

## **II. SPECIFIC REQUESTS FOR PRODUCTION**

### **A. Requests 36-40, 43-50 and 56-59**

**DOCUMENT REQUEST 36:** All documents, ESI, and things relating to, referencing, or identifying any facts or information in support of Your Answer numbered 15 in the Answer and Counterclaim whereby "Peerless denies that Local Access submitted "written proof of a competitive offer to Peerless' sufficient to satisfy the terms of Exhibit A to the Amended Complaint on February 22, 2014".

**DOCUMENT REQUEST 37:** All documents, ESI, and things relating to, referencing, or identifying any facts or information of any requirements which would constitute "written proof of a competitive offer to Peerless' sufficient to satisfy the terms of Exhibit A to the Amended Complaint" as referenced in Answer numbered 15 in the Answer and Counterclaim.

**RESPONSE TO 36 - 37:** Peerless objects to this Request to the extent it seeks documents and information protected by the attorney-client privilege, work-product doctrine, or any privilege. Peerless further objects to this Request because it calls for the compilation of information related to the legal conclusion of whether the February 22, 2014 offer satisfied the terms of Exhibit A to the Amended Complaint. Peerless further objects to this request on the basis that it seeks the production of attorney work product; Peerless is not required to provide documents which its counsel considers supportive of Peerless's contentions. Subject to and without waiving the foregoing, Peerless will conduct a reasonable search and produce resulting documents in its possession, custody, or control

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<sup>1</sup> The only request that Peerless did not claim work product or privilege was Request 42.

that it may use to support its claims or defenses, unless the use would be solely for impeachment.

**DOCUMENT REQUEST 38:** All documents, ESI, and things relating to, referencing, or identifying any facts or information in support of Your denial in Answer numbered 19 to the Amended Complaint that “Local Access accurately and fully represented to Peerless the terms of any purported competitive offer, and denies that Local Access provided to Peerless the full terms of the Inteliquent proposal” then existing as of August 3, 2015.

**DOCUMENT REQUEST 39:** All documents, ESI, and things relating to, referencing, or identifying any facts or information in support of Your denial to paragraph numbered 23 of the Answer and Counterclaim that Local Access performed under the Contract and First Amendment.

**DOCUMENT REQUEST 40:** All documents, ESI, and things relating to, referencing, or identifying any facts or information in support of Your denial that “Local Access did not re-route traffic from Peerless to the carrier who had provided the most recent competitive offer until after Peerless declined to match the most recent competitive offer” as set forth in Paragraph numbered 29 of the Answer and Counterclaim.

**RESPONSE TO 38-40:** Peerless objects to this Request to the extent it seeks documents and information protected by the attorney-client privilege, work-product doctrine, or any privilege. Peerless further objects to this Request because it calls for the compilation of information related to the legal conclusion of whether the Local Access (sic) satisfied the terms of Exhibit A to the Amended Complaint. Peerless further objects to this request on the basis that it seeks the production of attorney work product; Peerless is not required to provide documents which its counsel considers supportive of Peerless’s contentions. Subject to and without waiving the foregoing, Peerless will conduct a reasonable search and produce resulting documents in its possession, custody, or control that it may use to support its claims or defenses, unless the use would be solely for impeachment.

**DOCUMENT REQUEST 43:** All documents, ESI, and things relating to, referencing, or identifying any facts or information relating to Your assertion that “Local Access committed fraud to obtain the compensation sought in the Amended Complaint”.

**DOCUMENT REQUEST 44:** All documents, ESI, and things relating to, referencing, or identifying any facts or information evidencing that “Local Access committed fraud to avoid performance of its duties under the HAS” as set forth in the Third Affirmative Defense of the Amended Complaint.

**DOCUMENT REQUEST 45:** All documents, ESI, and things relating to, referencing, or identifying any facts or information concerning or relating to Your statement that “Local Access breached the HTA before the timeframe at issue in the Amended Complaint” as set forth in Fourth Affirmative Defense of the Answer and Counterclaim.

**DOCUMENT REQUEST 46:** All documents, ESI, and things relating to, referencing, or identifying any facts or information concerning or relating to Your statement that “the HTA contains an exclusivity provision” as set forth in Sixth Affirmative Defense of the Answer and Counterclaim.

**DOCUMENT REQUEST 47:** All documents, ESI, and things relating to, referencing, or identifying any facts or information evidencing that “Local Access’s actions frustrated the purchase of the HTA and the First Amendment” as set forth in the Eighth Affirmative Defense of the Answer and Counterclaim.

**DOCUMENT REQUEST 48:** All documents, ESI, and things relating to, referencing, or identifying any facts or information evidencing that “These exclusivity provisions were a principal purpose of the HTA and was the basic assumption on which the HTA was made” as set forth in the Eighth Affirmative Defense of the Answer and Counterclaim.

**DOCUMENT REQUEST 49:** All documents, ESI, and things relating to, referencing, or identifying any facts or information evidencing that “Local Access failed to exercise reasonable diligence to mitigate its damages from Peerless’s alleged breach of the HTA and/or First Amendment” as set forth in the Ninth Affirmative Defense of the Answer and Counterclaim.

**DOCUMENT REQUEST 50:** All documents, ESI, and things relating to, referencing, or identifying any facts or information evidencing that “at or around October 2015, Peerless informed Local Access that it would not compensate Local Access for any remaining traffic on the Peerless network” as set forth in the Eleventh Affirmative Defense of the Answer and Counterclaim.

**DOCUMENT REQUEST 56:** All documents, ESI, and things relating to, referencing, or identifying any facts or information in support of any of the claims set forth in the Answer and Counterclaim.

**DOCUMENT REQUEST 57:** All documents, ESI, and things relating to, referencing, or identifying any facts or information in support of any of the defenses set forth within the Affirmative Defenses.

**DOCUMENT REQUEST 58:** All documents, ESI, and things relating to, referencing, or identifying any facts or information evidencing any damages sustained or claimed by You within the Answer and Counterclaim.

**DOCUMENT REQUEST 59:** All documents, ESI, and things relating to, referencing, or identifying any facts or information evidencing the “fair market value of the services performed by Peerless” as referenced in the ad damnum clause of County VIII of the Answer and Complaint.

**RESPONSE TO 43-50 AND 56-59:** Peerless objects to this Request to the extent it seeks documents and information protected by the attorney-client privilege, work-product doctrine, or

any privilege. Peerless further objects to this Request because it calls for the compilation of information related to the Peerless's (sic) pleadings. Peerless further objects to this request on the basis that it seeks the production of attorney work product; Peerless is not required to provide documents which its counsel considers supportive of Peerless's contentions. Subject to and without waiving the foregoing, Peerless will conduct a reasonable search and produce resulting documents in its possession, custody, or control that it may use to support its claims or defenses, unless the use would be solely for impeachment.

### **1. Wrongful Claim of Privilege and Work Product**

Each of the above requests seeks documents regarding the underlying facts and information directly relating to Peerless's Answer and Counterclaim. The requested documents seek support for Peerless's (i) denials of allegations of Local Access's Amended Complaint, (ii) affirmative defenses, (iii) counterclaims and damages. Peerless wrongly asserts that it does not have to produce these documents that go to the heart of its claims and defenses as they are either subject to the attorney-client privilege or Peerless's counsel's selection and compilation of documents responsive to the requests constitutes work product.

As to the attorney-client privilege, the privilege is narrowly construed to protect only confidential communications between a lawyer and his or her client. *See Maplewood Partners, L.P. v. Indian Harbor Insurance Company*, 295 F.R.D. 550, 583 (S.D. Fla. 2013). The party invoking the privilege has the burden of proof and Florida District Courts have rejected blanket claims of privilege and require specific detail as to the content of documents and their authors and recipients. *Id.* at 585. Peerless did not produce any privilege log or detail to support its claims of attorney client privilege and its objection on such basis should be overruled.

As to the claim of work product, not every selection and compilation of documents by counsel transforms that material into attorney work product. *Hunter's Ridge Golf Co., Inc. v. Georgia-Pacific Corp.*, 223 F.R.D. 673, 682-683 (M.D. Fla. 2006); *Liles v. Stuart Weitzman, LLC*, CASE NO. 09-61448-CIV-COHN/SELTZER, 2010 WL 1150129 \*6 (S.D. Fla.

04/22/2010). Construing work product too broadly can interfere with the essential function of discovery. *Chase v. Nova Southeastern University, Inc.*, No. 11-61290-CIV, 2012 WL 204172 \*1 (S.D. Fla. Jan. 24, 2014). Florida District Courts have consistently refused to elevate an attorney's selection of documents supporting facts alleged in a pleading to work product. The Courts have held that discovery requests tailored to the facts a party contends support its allegations do not encompass mental impressions of attorneys and will not reveal litigation strategy. *United States v. Big Apple Consulting, LLC*, Case No. 6:09-cv-199963-Orl-28GJK, 2010 WL 11475254 \*5 (M.D. Fla. 11/02/2010) (the requirement of producing documents that support the factual allegations of a complaint reveal no more than already revealed by the filing of the complaint); *Koster v. Landmark American Insurance Company*, Case No. 5:14-cv-689-Oc-37PRL, 2016 WL 3014605 \*3 (documents supporting a party's affirmative defenses are discoverable and party's request for such documents does not invade counsel's thought processes); *Chase v. Nova Southeastern, supra.* at \*1 (court required production of all documents consulted or referred to in answering interrogatories even though it would require counsel to select documents); *Calderon v. Reederei Claus-Peter Offen GmbH & Co.*, No. 07-61022-CIV, 2009 WL 1748089 \* 4 (S.D. Fla. June 19, 2009) (court denied "selection based opinion work product" objection and required plaintiff to produce documents supporting its damage claim). In order to assert its "selection based work product" protection, Peerless must show a real and not speculative concern that its counsel's thought process in relation to this litigation will be revealed through disclosure of the compiled documents. *Liles, supra*, at \*6.

Peerless's broad application of work product and/or attorney client privilege is unreasonable and prevents Local Access from defending against Peerless's claims and defenses. Peerless cannot hide behind work product or attorney client privilege to withhold the documents

that it contends support its claims and defenses from discovery and then use those documents at trial. Such documents are clearly discoverable and should be produced. If Peerless refuses to produce them, then it should not be allowed to use them at trial and its claims and defenses should be stricken

Moreover, not every document touched, prepared or reviewed by Peerless's attorneys is protected as privileged or work product. If Peerless's counsel's involvement is so pervasive that counsel has worked on all facts and documents, then perhaps its counsel should be witnesses in these proceedings rather than representing Peerless.

## **2. Failure to Produce Documents**

Peerless also failed to produce even a single document in response to the Third Request. Instead, Peerless indicated that it "will conduct a reasonable search and produce resulting documents in its possession, custody, or control". It is unreasonable for Peerless to START its search for documents after the 30 day period allotted for the actual production of documents under Federal Rule 34(b)(2)(A) has expired. Peerless's delay is calculated and prejudicial. It is critical that Peerless produce its documents immediately as depositions are currently being scheduled in this case and will start as early as April. Local Access acted diligently as it served its Third Request two weeks after Peerless filed its Answer and Counterclaim. Peerless's delay is unacceptable. It should have started its search so that documents were produced within 30 days. This Court should order Peerless to produce its responsive documents immediately.

## **B. Requests 41**

**DOCUMENT REQUEST 41:** All documents, ESI, and things relating to, referencing, or identifying any facts or information in support of Your denial of paragraph 36 of the Amended Complaint wherein You denied that "The Contract and First Amendment required Peerless to pay to Local Access seventy-five percent (75%) of Collected Tandem Access revenue it received on traffic associated with Local Access."

**RESPONSE:** Peerless objects to this Request to the extent it seeks documents and information protected by the attorney-client privilege, work-product doctrine, or any privilege. Peerless further objects to this Request because it calls for the compilation of information related to the legal conclusion of whether the Local Access (sic) satisfied the terms of Exhibit A to the Amended Complaint. Peerless further objects to this request on the basis that it seeks the production of attorney work product; Peerless is not required to provide documents which its counsel considers supportive of Peerless's contentions. Peerless further objects to this request because it is moot given the Stipulation of the Parties during the February 21, 2018 hearing before Magistrate Smith.

As set forth above, Peerless's assertion of the work product doctrine and attorney client privilege is improper. In addition, Peerless's contention that the request is moot is wholly improper. The stipulation entered at the February 21, 2018 hearing was that all amounts Peerless billed on Local Access's traffic was collected. This has nothing to do with this request that seeks documents supporting Peerless's denial of the allegation that "The Contract and First Amendment required Peerless to pay to Local Access seventy-five percent (75%) of Collected Tandem Access revenue it received on traffic associated with Local Access."

**C. Request 42**

**DOCUMENT REQUEST 42:** All documents, ESI, and things relating to, referencing, or identifying any reports, accountings or payments to Local Access under the terms of the Contract and First Amendment since August 2015.

**RESPONSE:** Peerless objects to this Request because it is overbroad and unduly burdensome to the extent it seeks documents or information unrelated to the traffic and services at issue under the Contract and First Amendment. Peerless further objects to this request as overly broad and unduly burdensome to the extent it requests all information related to any potential payments under the terms of the Contract and First Amendment since August 2015. This information is duplicative of Local Access's prior Request Nos. 16, 17, 25, 26 and was the subject to the Court's consideration of Local Access's Motion to Compel (ECF 87). Peerless will comply with the Court's order on Local Access's Motion to Compel when issued.

Peerless erroneously contends that Request 42 is duplicative of prior Requests 16, 17, 25 and 26 and that such requests are the subject of Local Access's prior Motion to Compel (Doc. 87). Peerless states that it will produce documents in accordance with any order of this Court regarding the Motion to Compel when issued. Peerless is just plain wrong.

First, Request 42 is not duplicative. Requests 16, 17, 25 and 26 are as follows:

**DOCUMENT REQUEST 16:** All documents, ESI, internal communications, and things describing, interpreting, discussing, identifying and/or confirming any of Peerless's obligations under the First Amendment to Master Service Agreement. (Exhibit B to the Complaint).

**DOCUMENT REQUEST 17:** All documents, ESI, internal communications, and things describing, interpreting, discussing, identifying and/or confirming any of Peerless's obligations under the Homing Tandem Service Agreement. (Exhibit A to the Complaint).

**DOCUMENT REQUEST 25:** All documents, ESI, internal communications, and things describing, interpreting, discussing, identifying and/or confirming Local Access's demands for payment from Peerless between August 20, 2015 and August 8, 2017.

**DOCUMENT REQUEST 26:** All documents, ESI, internal communications, and things describing, interpreting, discussing, identifying and/or confirming Peerless's Compensation Statement report(s), including all such reports and the creation, preparation, formulas, templates(s), spreadsheets, instructions, or retention thereof. 2017.

(See **Exhibit 3**, pp. 8-9, 14).

Second, Requests 16, 17, 25 and 26 were not the subject of Local Access's prior Motion to Compel. (Doc. 87). To the extent, this Court believes that Request 42 is duplicative, then Local Access requests this Court to treat the instant Motion as a motion to compel Requests 16, 17, 25 and 26.

Peerless also wrongly contends that the request is overly broad and too burdensome. The Request only seeks information regarding Peerless's reports, accountings and payments dating back approximately two and one half years. Such a request is narrowly tailored and proper.

**D. Requests 51-55**

**DOCUMENT REQUEST 51:** All documents, ESI, and things relating to, referencing, or identifying any facts or information evidencing that “Local Access has never had traffic to flow from Local Access to Peerless under the HTA (“Outbound Traffic”), or otherwise” as set forth in paragraph 17 of the Answer and Counterclaim.

**RESPONSE:** Peerless objects to this Request to the extent it seeks documents and information protected by the attorney-client privilege, work-product doctrine, or any privilege. Peerless further objects to this Request because it calls for the compilation of information related to the Peerless’s [sic] pleadings. Peerless further objects to this request on the basis that it seeks the production of attorney work product; Peerless is not required to provide documents which its counsel considers supportive of Peerless’s contentions. Subject to its General Objections and the objections stated herein, Peerless will produce non-privileged documents relating to traffic delivered from Local Access to Peerless under the Contract, if any exist, after a reasonable search for such documents.

**DOCUMENT REQUEST 52:** All documents, ESI, and things relating to, referencing, or identifying any facts or information evidencing that Local Access represented that Inteliquent would be “the exclusive provider” of homing tandem services in Footprint as set forth in paragraph 25 of the Answer and Counterclaim.

**RESPONSE:** Peerless objects to this Request to the extent it seeks documents and information protected by the attorney-client privilege, work-product doctrine, or any privilege. Peerless further objects to this Request because it calls for the compilation of information related to the Peerless’s [sic] pleadings. Peerless further objects to this request on the basis that it seeks the production of attorney work product; Peerless is not required to provide documents which its counsel considers supportive of Peerless’s contentions. Subject to its General Objections and the objections stated herein, Peerless will produce non-privileged documents relating to Inteliquent as the provider of homing tandem services to Local Access, if any exist, after a reasonable search for such documents.

**DOCUMENT REQUEST 53:** All documents, ESI, and things relating to, referencing, or identifying any facts or information evidencing that “By at least August 12, 2015, Local Access violated the HTA and First Amendment by . . . causing traffic to be [sic] routed through Inteliquent within the Peerless footprint” as set forth in paragraph 40 of the Answer and Counterclaim.

**RESPONSE:** Peerless objects to this Request to the extent it seeks documents and information protected by the attorney-client privilege, work-product doctrine, or any privilege. Peerless further objects to this Request because it calls for the compilation of information related to the Peerless’s [sic] pleadings. Peerless further objects to this request on the basis that it seeks the production of attorney work product; Peerless is not

required to provide documents which its counsel considers supportive of Peerless's contentions.

Subject to its General Objections and the objections stated herein, Peerless will produce non-privileged documents relating to Local Access's routing of traffic through Inteliquent within the Peerless footprint, if any exist, after a reasonable search for such documents.

**DOCUMENT REQUEST 54:** All documents, ESI, and things relating to, referencing, or identifying any facts or information evidencing that Local Access "was using a homing tandem provider other than Peerless sometime prior to August 5, 2015" as set forth in paragraph 112 of the Answer and Counterclaim.

**RESPONSE:** Peerless objects to this Request to the extent it seeks documents and information protected by the attorney-client privilege, work-product doctrine, or any privilege. Peerless further objects to this Request because it calls for the compilation of information related to the Peerless's [sic] pleadings. Peerless further objects to this request on the basis that it seeks the production of attorney work product; Peerless is not required to provide documents which its counsel considers supportive of Peerless's contentions.

Subject to its General Objections and the objections stated herein, Peerless will produce non-privileged documents relating to Local Access's use of a homing tandem provider other than Peerless, if any exist, after a reasonable search for such documents.

**DOCUMENT REQUEST 55:** All documents, ESI, and things relating to, referencing, or identifying any facts or information evidencing that Peerless actually "terminated the Homing Tandem Agreement for cause, effective December 31, 2017" as set forth in paragraph 139 of the Answer and Counterclaim.

**RESPONSE:** Peerless objects to this Request to the extent it seeks documents and information protected by the attorney-client privilege, work-product doctrine, or any privilege. Peerless further objects to this Request because it calls for the compilation of information related to the Peerless's [sic] pleadings. Peerless further objects to this request on the basis that it seeks the production of attorney work product; Peerless is not required to provide documents which its counsel considers supportive of Peerless's contentions.

Subject to its General Objections and the objections stated herein, Peerless will produce non-privileged documents relating to Peerless's notice of the termination of the parties' agreement., [sic] if any exist, after a reasonable search for such documents.

As set forth above, Peerless's assertion of the work product doctrine and attorney client privilege is improper and its indication that it will just now commence its search is unreasonable.

In addition, Peerless's qualification that the production is subject to its "General Objections and

the objections stated herein” is vague and ambiguous. Peerless’s response did not contain any “General Objections” and Local Access should not have to speculate as to what “objections stated herein” Peerless is referring to. Peerless needs to specifically state in detail any objections it has to production of its documents. Peerless also paraphrased the type of documents it will be producing. Peerless needs to produce all documents responsive to the each of the above Requests without limitations.

#### **IV. SANCTIONS**

Where a party fails to disclose the requested information or documents, and the failure is not substantially justified, the court must require the party to pay the movant’s reasonable expenses incurred in making the motion, including attorney’s fees. Fed. R. Civ. P. 37(a)(5). Sanctions under Rule 37 are available in order to prevent unfair prejudice and insure the integrity of the discovery process. *Bray & Gillipsie Mgmt. LLC v. Lexington Ins. Co.*, 259 F.R.D. 568, 583 (M.D. Fla. 2009).

Peerless’s refusal to identify the requests to which the documents it produced were responsive, its refusal to provide documents responsive to legitimate requests, and its reliance on privilege and work product was willful and not substantially justified. Accordingly, the imposition of sanctions is justified.

Local Access requests that this Court sanction Peerless in the amount of Local Access’s reasonable attorneys’ fees incurred in compelling proper responses to the discovery. Should this request for the imposition of sanctions be granted, Local Access will file an appropriate affidavit advising the Court of the time it has spent on these issues.

V. **CONCLUSION**

Based on all of the foregoing, the Plaintiff, LOCAL ACCESS, LLC, respectfully requests that this Court:

1. Overrule Peerless's objections to each request set forth in Local Access's Third Set of Requests for Documents and require the production of documents responsive to those requests within 15 days of its Order;
2. Sanction Peerless for failing to make discovery pursuant to Fed. R. Civ. P. 37 in the amount of the attorney's fees incurred by Local Access in addressing the discovery issues raised herein; and
3. Grant such further relief that is equitable and just under all of the circumstances.

Respectfully submitted, this 12th day of March, 2018.

/s/ Ernest J. Myers  
**ERNEST J. MYERS, ESQUIRE**  
Florida Bar No.: 947350  
Email: emyers@marcusmyerslaw.com

**LOCAL RULE 3.01(g) CERTIFICATION**

**I HEREBY CERTIFY** that, pursuant to Local Rule 3.01(g), on March 12, 2018, before the filing of this motion, the undersigned counsel for plaintiff personally conferred with counsel for defendant regarding the relief sought herein, and represents that the defendant **OPPOSES** the requested relief. Further, counsel for defendant has indicated that defendant will prepare and serve amended responses to the request to produce, indicating that defendant has provided some documents responsive to some requests. However, counsel for defendant has indicated that defendant will not identify the documents it has produced that it claims are responsive to any requests. Further counsel for defendant has indicated that the amended response will not indicate that all responsive documents have been produced, but rather will indicate that it will continue to search for additional documents that may be produced at an indeterminate time in the future. These representations by counsel for defendant do not resolve any issues raised herein. However, should Peerless serve a response which does moot any issue raised herein, Local Access will so notify the Court

/s/ Ernest J. Myers  
**ERNEST J. MYERS, ESQUIRE**  
Florida Bar No.: 947350  
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**CERTIFICATE OF SERVICE**

I **HEREBY CERTIFY** that on the 12th day of March, 2018, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to all counsel of record.

/s/ Ernest J. Myers

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