

UNITED STATES DISTRICT COURT

for the

Northern District of Alabama

CABLZ, Inc.

Plaintiff

v.

CHUMS, Inc.

Defendant

Civil Action No. 2:14-CV-00091

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To:

Croakies, a Wyoming corporation

(Name of person to whom this subpoena is directed)

☒ **Testimony:** YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Place: Holland & Hart LLP
25 South Willow Street, Suite 200
Jackson, WY 83001

Date and Time:
06/05/2014 9:30 am

The deposition will be recorded by this method: video and/or stenographer/court reporter

☒ **Production:** You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material: See attached "Exhibit B"

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 5/8/14

CLERK OF COURT

OR

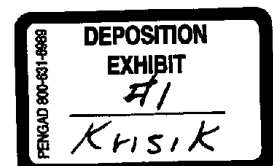
Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) Cablz, Inc., who issues or requests this subpoena, are:
Jonathan C. "Rudy" Hill, 445 Dexter Avenue, Suite 9075 Montgomery, AL 36104, rhill@babco.com, 334-956-7660

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).



Civil Action No. 2:14-CV-00091

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for (name of individual and title, if any) _____
on (date) _____.

☐ I served the subpoena by delivering a copy to the named individual as follows: _____
_____ on (date) _____; or

☐ I returned the subpoena unexecuted because: _____
_____.

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance.

(1) *For a Trial, Hearing, or Deposition.* A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) *For Other Discovery.* A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(3) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

For access to subpoena materials, see Fed. R. Civ. P. 45(a) Committee Note (2013).

EXHIBIT A

INSTRUCTIONS AND DEFINITIONS

1. The term "YOU" (and any form thereof set forth entirely in capital letters) means and refers to Croakies and any PERSON acting on behalf of or purporting to act on behalf of Croakies, including, but not limited to, Croakies's agents, accountants, representatives, employees, investigators, and, unless privileged, attorneys.

2. The term "PERSON" (and any form thereof set forth entirely in capital letters) means and refers to natural persons, governmental entities (or agencies thereof), quasi-public entities, trusts, estates, corporations, partnerships, proprietorships, ventures, and all other forms of organizations, associations, business entities, groups, or groups of persons.

3. The term "DOCUMENT" (and any form thereof set forth entirely in capital letters) means and refers to the broadest permissible definition of the term "documents" set forth in Rule 34 of the *Federal Rules of Civil Procedure*, including, but not limited to, accounts, affidavits, agreements, books, books of accounts, cassette tapes, checks, compact discs, computer stored or carried data (whether stored on tape, disk, memory device or otherwise), contracts, copies, correspondence, deeds, diaries, digital files, digital video discs, drafts, drawings, emails, electronic data, electronic files, electronic media, facsimiles, files, films,

images, interviews, investigations, journals, leases, ledgers, letters, manuscripts, maps, memoranda, microfiche, microfilm, minutes, notes, papers, patents, photocopies, photographs, pictures, receipts, recordings, records, records of telephone conversations, regulations, reports, reports of examinations, sound recordings, statements, statutes, summaries, summaries of telephone conversations, tape recordings, tapes, telecommunication transmissions, telefaxes, telegrams, telephone messages, telexes, transcripts, videotapes, voice messages, workbooks, worksheets, and writings of any kind. "DOCUMENTS" also includes any summaries, compilations, or indices of DOCUMENTS.

4. The term "THINGS" (and any form thereof set forth entirely in capital letters) means and refers to any tangible objects not included within the definition of the term DOCUMENT in Paragraph 3, above.

5. Where knowledge or information is requested, such discovery requests include knowledge or information within the possession, custody, or control of YOU or YOUR agents, accountants, representatives, employees, investigators, and, unless privileged, attorneys. Should YOU be aware of the existence of information responsive to a discovery request, but, for whatever cause, be unable to answer or respond to the same, YOU shall IDENTIFY those PERSONS believed to have the information requested. Where facts set forth in the answers or responses, or portions thereof, are supplied upon information and

belief, rather than upon personal knowledge, YOU should so state and specifically IDENTIFY and describe the source or sources of such information and belief.

6. For information and/or DOCUMENTS and/or THINGS withheld on the grounds of privilege or work product, YOU are requested, pursuant to Rule 26(b)(5)(A) of the *Federal Rules of Civil Procedure*, to support such a claim by a description of the nature of the alleged privileged information and/or DOCUMENTS, communications, or THINGS not provided sufficient to enable the requesting party to contest the claim, including the date, type of information, DOCUMENT, or THING, author, recipient, and general subject matter.

7. If YOU have multiple copies of a DOCUMENT or THING that any of the following discovery requests require YOU to IDENTIFY and/or produce, YOU shall IDENTIFY and/or produce all non-identical copies (whether different from the originals because of notes made on such copies or otherwise) of any such DOCUMENT or THING.

8. Each request for production contemplates production of the DOCUMENT or THING in its entirety, without abbreviation or expurgation.

9. The term "268 Patent" means and refers to U.S. Patent No. 8,366,268.

10. The term "Chums" shall mean and refer to Chums, Inc., and its directors, officers, employees, and agents.

Any alleged prior art to the '268 Patent that Croakies contends renders U.S. Pat. No. 8,366,268 (the '268 Patent) invalid, either alone or in combination with other prior art references.

Plaintiff requests Croakies to designate one or more persons knowledgeable regarding, and who consents to testify on its behalf, about the following categories:

1. That certain "Leather Spec Cord" Croakies product which John Krisik of Croakies sent by mail to Ron Williams of Cablz on or about February 15, 2014.
2. Any other product sold by Croakies before May 8, 2007, that Croakies contends is relevant to the validity of the '268 Patent, including the Croakies Spec Cord Eyewear Retainer, the Croakies Terra Cord Eyewear Retainer, the Croakies Neoprene Eyewear Retainer, and the Croakies Micro Suiter Eyewear Retainer.
3. Any product sold by others before May 8, 2007, that Croakies contends is relevant to the validity of the '268 Patent.
4. Any other ground on which Croakies contends that the '268 Patent is invalid.
5. The materials from which Croakies made eyewear retainers before May 8, 2007.
6. Any communications with Chums, Inc. regarding the above-referenced case.

7. Any communications with any third party regarding the above-referenced case.

8. Any discussions with Chums or Chums's counsel regarding potential testimony, including the subjects of such testimony, by Croakies at the trial of the above-referenced case.

9. Any communications between counsel for Croakies and counsel for Chums regarding the above-referenced case.

EXHIBIT B

INSTRUCTIONS AND DEFINITIONS

1. The term "YOU" (and any form thereof set forth entirely in capital letters) means and refers to Croakies and any PERSON acting on behalf of or purporting to act on behalf of Croakies, including, but not limited to, Croakies's agents, accountants, representatives, employees, investigators, and, unless privileged, attorneys.

2. The term "PERSON" (and any form thereof set forth entirely in capital letters) means and refers to natural persons, governmental entities (or agencies thereof), quasi-public entities, trusts, estates, corporations, partnerships, proprietorships, ventures, and all other forms of organizations, associations, business entities, groups, or groups of persons.

3. The term "DOCUMENT" (and any form thereof set forth entirely in capital letters) means and refers to the broadest permissible definition of the term "documents" set forth in Rule 34 of the *Federal Rules of Civil Procedure*, including, but not limited to, accounts, affidavits, agreements, books, books of accounts, cassette tapes, checks, compact discs, computer stored or carried data (whether stored on tape, disk, memory device or otherwise), contracts, copies, correspondence, deeds, diaries, digital files, digital video discs, drafts, drawings, emails, electronic data, electronic files, electronic media, facsimiles, files, films,

images, interviews, investigations, journals, leases, ledgers, letters, manuscripts, maps, memoranda, microfiche, microfilm, minutes, notes, papers, patents, photocopies, photographs, pictures, receipts, recordings, records, records of telephone conversations, regulations, reports, reports of examinations, sound recordings, statements, statutes, summaries, summaries of telephone conversations, tape recordings, tapes, telecommunication transmissions, telefaxes, telegrams, telephone messages, telexes, transcripts, videotapes, voice messages, workbooks, worksheets, and writings of any kind. "DOCUMENTS" also includes any summaries, compilations, or indices of DOCUMENTS.

4. The term "THINGS" (and any form thereof set forth entirely in capital letters) means and refers to any tangible objects not included within the definition of the term DOCUMENT in Paragraph 3, above.

5. Where knowledge or information is requested, such discovery requests include knowledge or information within the possession, custody, or control of YOU or YOUR agents, accountants, representatives, employees, investigators, and, unless privileged, attorneys. Should YOU be aware of the existence of information responsive to a discovery request, but, for whatever cause, be unable to answer or respond to the same, YOU shall IDENTIFY those PERSONS believed to have the information requested. Where facts set forth in the answers or responses, or portions thereof, are supplied upon information and

belief, rather than upon personal knowledge, YOU should so state and specifically IDENTIFY and describe the source or sources of such information and belief.

6. For information and/or DOCUMENTS and/or THINGS withheld on the grounds of privilege or work product, YOU are requested, pursuant to Rule 26(b)(5)(A) of the *Federal Rules of Civil Procedure*, to support such a claim by a description of the nature of the alleged privileged information and/or DOCUMENTS, communications, or THINGS not provided sufficient to enable the requesting party to contest the claim, including the date, type of information, DOCUMENT, or THING, author, recipient, and general subject matter.

7. If YOU have multiple copies of a DOCUMENT or THING that any of the following discovery requests require YOU to IDENTIFY and/or produce, YOU shall IDENTIFY and/or produce all non-identical copies (whether different from the originals because of notes made on such copies or otherwise) of any such DOCUMENT or THING.

8. Each request for production contemplates production of the DOCUMENT or THING in its entirety, without abbreviation or expurgation.

9. The term “268 Patent” means and refers to U.S. Patent No. 8,366,268.

10. The term “Chums” shall mean and refer to Chums, Inc., and its directors, officers, employees, and agents.

Plaintiff requests Croakies to produce documents and things falling within these categories:

1. Any alleged prior art to the '268 Patent that Croakies contends renders U.S. Pat. No. 8,366,268 (the '268 Patent) invalid, either alone or in combination with other prior art references.
2. That certain "Leather Spec Cord" Croakies product which John Krisik of Croakies sent by mail to Ron Williams of Cablz on or about February 15, 2014.
3. Any other product sold by Croakies before May 8, 2007, that Croakies contends is relevant to the validity of the '268 Patent, including the Croakies Spec Cord Eyewear Retainer, the Croakies Terra Cord Eyewear Retainer, the Croakies Neoprene Eyewear Retainer, and the Croakies Micro Suiter Eyewear Retainer.
4. Any product sold by others before May 8, 2007, that Croakies contends is relevant to the validity of the '268 Patent.
5. The materials from which Croakies made eyewear retainers before May 8, 2007.
6. Any communications with Chums, Inc. regarding the above-referenced case.
7. Any communications with any third party regarding the above-referenced case.

8. Any communications between counsel for Croakies and counsel for Chums regarding the above-referenced case.

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