

UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 08-21600 CIV-UNGARO/SIMONTON

BARBARO R. DAVILA,

Plaintiff,

v.

AWARE DIGITAL, INC.,
a Florida Corporation,

Defendant.

**MOTION TO COMPEL COMPLIANCE WITH
SETTLEMENT AGREEMENT AND FOR SANCTIONS**

COMES NOW the Plaintiff, BARBARO R. DAVILA, by and through his undersigned counsel, and pursuant to the parties' January 12, 2009 JOINT MOTION AND STIPULATION FOR APPROVAL OF SETTLEMENT AND FOR DISMISSAL WITH PREJUDICE(D.E.49) (the "Stipulation) and this Court's January 15, 2009 ORDER OF DISMISSAL (D.E.50) moves this court to compel Defendant, AWARE DIGITAL, INC., to comply with the aforesaid stipulation and for an award of his attorneys fees as a sanction under F.R.Civ.P. 70(a) for having to file this motion and as grounds for the motion states:

1. The parties amicably agreed to resolve this matter at mediation and proceed to commemorate said compromise via the Stipulation.
2. The Stipulation was filed on January 15, 2009 and that same this Court issued its order of dismissal.
3. To date, Defendant has failed to pay Plaintiff the agreed amount settlement monies notwithstanding numerous attempts by Plaintiff's counsel to obtain the settlement monies from Defendant. See attached composite Exhibit "A".

4. The Stipulation reads, in pertinent part, as follows:
 7. It is further agreed and understood that Defendant shall, within ten (10) days of receipt by Defendant's attorney of a fully executed settlement and general release agreement, forward the settlement proceeds, which shall be held in Plaintiff's counsel's escrow and/or trust account and such funds shall not be released until January 9, 2008 and receipt Court approval of the settlement agreement and dismissal of the above-styled cause of action with prejudice, to Jose Antonio Llerena, Plaintiff's attorney as follows:
 - (a) One thousand eight hundred and two dollars and forty-two cents (\$1,802.42) will be allocated as payment for Plaintiff's claims in the civil action, which represents back pay, overtime compensation
 - (b) Eight thousand one hundred ninety-seven dollars and fifty-eight cents (\$8,197.58) will be allocated as payment for Plaintiff's claims for attorney's fees and costs, made payable to Jorge L Fors, P A

5. All the conditions mentioned in paragraph 4 above have occurred, except Defendant's payment of the settlement funds.

6. Plaintiff has expended time and effort in preparing and filing this motion and respectfully prays for an award of his attorneys fees as a sanction under F.R.Civ.P. 70(a) for having to file this motion.

WHEREFORE, Plaintiff, BARBARO R. DAVILA, respectfully requests this Court to grant the relief requested herein.

**CERTIFICATE OF COMPLIANCE WITH
LOCAL RULE 7.1.A.3 AND F.R.CIV.P. 37(A)(2)**

I HEREBY CERTIFY that in conformance with Local Rule 7.1.A.3, I have conferred with all parties or non-parties who may be affected by the relief sought in the motion in a good faith effort to resolve the issues raised in the motion and have been unable to do so.

By: s/Jose Antonio Llerena
Jose Antonio Llerena, Esq.
FL Bar No. 0027243

I HEREBY CERTIFY that on February 6, 2009, I electronically filed the foregoing

document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached service list in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

By: s/Jose Antonio LLerena
Jose Antonio LLerena, Esq.
FL Bar No. 0027243

SERVICE LIST

Jose Antonio LLerena, Esq.
josellerenaesq@bellsouth.net
FL Bar No. 0027243
Jorge L. Fors, P.A.
1108 Ponce de Leon Blvd.
Coral Gables, Fl. 33134
(305) 448-5977 telephone
(305) 446-1989 fax
Counsel for Plaintiff, Barbaro R. Davila

Anthony M. Georges-Pierre, Esq.
FL Bar No. 0533637
agp@rgpattorneys.com
Mathew Weber, Esq.
FL Bar No. 0679445
mw@rgpattorneys.com
New World Tower
100 N. Biscayne Blvd.
Suite 2800
Miami, Florida 33132
(305) 416-5000 telephone
(305) 416-5005
Counsel for Defendant, Aware Digital, Inc.

Exhibit A Page 1 of 13

Jose Antonio Llerena

From: Jose Antonio Llerena [josellerenaesq@bellsouth.net]
Sent: Thursday, January 15, 2009 2:11 PM
To: 'agp@rgpattorneys.com'; 'Sam'
Cc: Jorge L Fors (Jorge L. Fors)
Subject: RE: Davila v. Aware Digital - Settlement Agreement

Counsel,

I am in receipt of the faxed copy of the fully executed settlement agreement. I will proceed to file the stipulation. Please advise as to when we will receive the settlement drafts. Thank you.

Jose Antonio Llerena, Esq.
Jorge L. Fors, P.A.
1108 Ponce de Leon Boulevard
Coral Gables, Florida 33134
T: 305-448-5977
F: 305-446-1898

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From: Jose Antonio Llerena [mailto:josellerenaesq@bellsouth.net]
Sent: Wednesday, January 14, 2009 9:18 AM
To: 'agp@rgpattorneys.com'; 'Sam'
Cc: Jorge L Fors (Jorge L. Fors)
Subject: RE: Davila v. Aware Digital - Settlement Agreement

Counsel,

On January 7, 2009 we sent you via mail the executed settlement agreement and release. The deadline for filing the stipulation of settlement is January 16, 2009. To date, we have not received the fully executed settlement agreement nor the settlements drafts. I would like to avoid the necessity of filing another motion for extension of time. Please advise when we can expect the aforementioned documents. Thank you.

Jose Antonio Llerena, Esq.
Jorge L. Fors, P.A.
1108 Ponce de Leon Boulevard
Coral Gables, Florida 33134
T: 305-448-5977
F: 305-446-1898

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2/6/2009

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From: Anthony M. Georges-Pierre, Esq. [mailto:rgpattorneys@gmail.com] **On Behalf Of** Anthony M. Georges-Pierre

Sent: Friday, January 02, 2009 11:28 AM

To: Jose Antonio Llerena; Sam

Cc: AG-P; Samantha Hamilton

Subject: Re: Davila v. Aware Digital - Settlement Agreement

No objection.

Anthony M. Georges-Pierre, Esq.
REMER & GEORGES-PIERRE, PLLC
New World Tower
100 N. Biscayne Blvd., Suite 2800
Miami, FL 33132
Telephone: (305) 416-5000
Facsimile: (305) 416-5005

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From: "Jose Antonio Llerena"

Date: Fri, 2 Jan 2009 11:25:43 -0500

To: 'Samantha Hamilton'<samantha.n.hamilton@gmail.com>

Subject: RE: Davila v. Aware Digital - Settlement Agreement

Counsel please advise if you any opposition to the filing of a motion for extension of time to file the stipulation of settlement and for order of dismissal. I am still awaiting receipt of my client's executed settlement agreement. Thank you.

Jose Antonio Llerena, Esq.
Jorge L. Fors, P.A.
1108 Ponce de Leon Boulevard
Coral Gables, Florida 33134
T: 305-448-5977
F: 305-446-1898

2/6/2009

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From: Jose Antonio Llerena [mailto:josellerenaesq@bellsouth.net]
Sent: Tuesday, December 23, 2008 1:53 PM
To: 'Samantha Hamilton'
Cc: 'agp@rgpattorneys.com'; 'sh'
Subject: RE: Davila v. Aware Digital - Settlement Agreement

Ms. Hamilton,

The agreement is fine. I will forward to my client for execution. Thank you.

Jose Antonio Llerena, Esq.
Jorge L. Fors, P.A.
1108 Ponce de Leon Boulevard
Coral Gables, Florida 33134
T: 305-448-5977
F: 305-446-1898

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From: Samantha Hamilton [mailto:samantha.n.hamilton@gmail.com]
Sent: Tuesday, December 23, 2008 11:32 AM
To: josellerenaesq@bellsouth.net
Cc: agp@rgpattorneys.com; sh
Subject: Davila v. Aware Digital - Settlement Agreement

Dear Mr. Llerena:

Please excuse the delay in my getting the revised agreement to you as my flight was delayed and I did not have a chance to review your changes until this morning.

Accordingly, please find the attached document which reflects your deletions and additions as I received them. I have attached the agreement as a "read only" word document as the scanner at my current location doesn't want to cooperate at the moment. Accordingly, should any additional changes need to be made, please advise me of such.

However, if the agreement is acceptable, please have Mr. Davila execute the agreement and return such to our offices so that the Defendant may do the same.

I will be out of the office until December 29th 2008 but will thereafter be able to address any additional issues. Thank you for your attention to this matter and have a nice holiday.

Best,

2/6/2009

Exhibit A Page 4 of 13

Samantha N. Hamilton, Esq.

** Please direct all future correspondence to sh@rgpattorneys.com**

Exhibit A Page 5 of 13

Jose Antonio Llerena

From: Jose Antonio Llerena [josellerenaesq@bellsouth.net]
Sent: Friday, January 16, 2009 11:24 AM
To: 'agp@rgpattorneys.com'; 'Sam'
Cc: Jorge L Fors (Jorge L. Fors)
Subject: Davila v. Aware Digital - Settlement Agreement

The court has entered an order approving the settlement agreement and an order of dismissal. Please advise as to when we will receive the settlement drafts. Thank you.

Jose Antonio Llerena, Esq.
Jorge L. Fors, P.A.
1108 Ponce de Leon Boulevard
Coral Gables, Florida 33134
T: 305-448-5977
F: 305-446-1898

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Jose Antonio Llerena

From: Jose Antonio Llerena [josellerenaesq@bellsouth.net]
Sent: Thursday, January 29, 2009 4:41 PM
To: 'Jose Antonio Llerena'; 'agp@rgpattorneys.com'; 'Sam'
Cc: Jorge L Fors (Jorge L. Fors)
Subject: RE: Davila v. Aware Digital - Settlement Agreement
Importance: High

To date we have not received the settlement drafts. Please advise.

Jose Antonio Llerena, Esq.
Jorge L. Fors, P.A.
1108 Ponce de Leon Boulevard
Coral Gables, Florida 33134
T: 305-448-5977
F: 305-446-1898

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From: Jose Antonio Llerena [mailto:josellerenaesq@bellsouth.net]
Sent: Friday, January 16, 2009 11:24 AM
To: 'agp@rgpattorneys.com'; 'Sam'
Cc: Jorge L Fors (Jorge L. Fors)
Subject: Davila v. Aware Digital - Settlement Agreement

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Jose Antonio Llerena, Esq.
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Jose Antonio Llerena

From: Jose Antonio Llerena [josellerenaesq@bellsouth.net]
Sent: Monday, February 02, 2009 9:46 AM
To: 'agp@rgpattorneys.com'; 'Sam'
Cc: Jorge L Fors (Jorge L. Fors)
Subject: RE: Davila v. Aware Digital - Settlement Agreement
Importance: High

Counsel,

Your client is leaving me with little alternative but to file a motion to compel compliance with the settlement agreement. If the settlement drafts are not received by 5:00 pm today, I will file the motion and seek all fees from your client. Thank you.

Jose Antonio Llerena, Esq.
Jorge L. Fors, P.A.
1108 Ponce de Leon Boulevard
Coral Gables, Florida 33134
T: 305-448-5977
F: 305-446-1898

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From: Jose Antonio Llerena [mailto:josellerenaesq@bellsouth.net]
Sent: Thursday, January 29, 2009 4:41 PM
To: 'Jose Antonio Llerena'; 'agp@rgpattorneys.com'; 'Sam'
Cc: Jorge L Fors (Jorge L. Fors)
Subject: RE: Davila v. Aware Digital - Settlement Agreement
Importance: High

To date we have not received the settlement drafts. Please advise.

Jose Antonio Llerena, Esq.
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From: Jose Antonio Llerena [mailto:josellerenaesq@bellsouth.net]

2/6/2009

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Sent: Friday, January 16, 2009 11:24 AM
To: 'agp@rgpattorneys.com'; 'Sam'
Cc: Jorge L Fors (Jorge L. Fors)
Subject: Davila v. Aware Digital - Settlement Agreement

The court has entered an order approving the settlement agreement and an order of dismissal. Please advise as to when we will receive the settlement drafts. Thank you.

Jose Antonio Llerena, Esq.
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Jose Antonio Llerena

From: Anthony M. Georges-Pierre [agp@rgpattorneys.com]
Sent: Monday, February 02, 2009 1:05 PM
To: 'Jose Antonio Llerena'
Subject: Davila vs. Aware Digital, Inc.; USDC Case No.: 08-21600-CIV-Ungaro

Dear Counselor:

With regard to the above referenced matter, allow this to confirm our telephone conversation on this date. During said conversation, per my client's request, I attempted to satisfy settlement using a company credit card. You advised that your firm does not accept credit cards. As such, you have agreed to receive payment no later than Wednesday, February 4, 2009.

I have been advised by my clients that the checks will be sent to you today. If you do not receive the checks this Wednesday by 4 p.m., please call me and I will have the matter rectified without need for unnecessary court intervention.

Cordially,

Anthony M. Georges-Pierre, Esq.
REMER & GEORGES-PIERRE, PLLC
New World Tower
100 N. Biscayne Blvd., Suite 2800
Miami, FL 33132
Telephone: (305) 416-5000
Facsimile: (305) 416-5005

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Jose Antonio Llerena

From: Anthony M. Georges-Pierre [agp@rgpattorneys.com]
Sent: Thursday, January 29, 2009 5:04 PM
To: 'Jose Antonio Llerena'; 'Sam'
Cc: 'Jorge L Fors (Jorge L. Fors)'
Subject: RE: Davila v. Aware Digital - Settlement Agreement

I will contact my client to determine the status. Thank you.

Anthony M. Georges-Pierre, Esq.
REMER & GEORGES-PIERRE, PLLC
New World Tower
100 N. Biscayne Blvd., Suite 2800
Miami, FL 33132
Telephone: (305) 416-5000
Facsimile: (305) 416-5005

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From: Jose Antonio Llerena [mailto:josellerenaesq@bellsouth.net]
Sent: Thursday, January 29, 2009 4:41 PM
To: 'Jose Antonio Llerena'; agp@rgpattorneys.com; 'Sam'
Cc: Jorge L Fors (Jorge L. Fors)
Subject: RE: Davila v. Aware Digital - Settlement Agreement
Importance: High

To date we have not received the settlement drafts. Please advise.

Jose Antonio Llerena, Esq.
Jorge L. Fors, P.A.
1108 Ponce de Leon Boulevard
Coral Gables, Florida 33134
T: 305-448-5977
F: 305-446-1898

2/6/2009

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Sent: Friday, January 16, 2009 11:24 AM
To: 'agp@rgpattorneys.com'; 'Sam'
Cc: Jorge L Fors (Jorge L. Fors)
Subject: Davila v. Aware Digital - Settlement Agreement

The court has entered an order approving the settlement agreement and an order of dismissal. Please advise as to when we will receive the settlement drafts. Thank you.

Jose Antonio Llerena, Esq.
Jorge L. Fors, P.A.
1108 Ponce de Leon Boulevard
Coral Gables, Florida 33134
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Jose Antonio Llerena

From: Anthony M. Georges-Pierre, Esq. [rgpattorneys@gmail.com] on behalf of Anthony M. Georges-Pierre [agp@rgpattorneys.com]
Sent: Friday, January 16, 2009 12:44 PM
To: Jose Antonio Llerena
Subject: Re: Davila v. Aware Digital - Settlement Agreement

I will follow up with my client. Thank you.

Anthony M. Georges-Pierre, Esq.
REMER & GEORGES-PIERRE, PLLC
New World Tower
100 N. Biscayne Blvd., Suite 2800
Miami, FL 33132
Telephone: (305) 416-5000
Facsimile: (305) 416-5005

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From: "Jose Antonio Llerena"
Date: Fri, 16 Jan 2009 11:24:25 -0500
To: <agp@rgpattorneys.com>; 'Sam'<samantha.n.hamilton@gmail.com>
Subject: Davila v. Aware Digital - Settlement Agreement

The court has entered an order approving the settlement agreement and an order of dismissal. Please advise as to when we will receive the settlement drafts. Thank you.

Jose Antonio Llerena, Esq.
Jorge L. Fors, P.A.
1108 Ponce de Leon Boulevard

2/6/2009

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