

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION**

SECURITIES AND EXCHANGE	:	
COMMISSION,	:	
Plaintiff,	:	
v.	:	
WILLIAM E. MAPP, III,	:	Civ. Action No. 4:16-cv-00246
WARREN K. PAXTON, JR.,	:	
CALEB J. WHITE, and	:	
SERVERGY, INC.,	:	
Respondents.	:	
	:	

**REVISED RULE 26(f) CONFERENCE REPORT**

Plaintiff Securities and Exchange Commission (“Commission”) and Respondents William E. Mapp, III and Warren K. Paxton, Jr., pursuant to Federal Rule of Civil Procedure 26 (“Rule 26”) and this Court’s Order Governing Proceedings (“OGP”), dated July 1, 2016, respectfully submit this Revised Rule 26(f) Conference Report.

**I. Brief Factual and Legal Synopsis of the Case**

The Commission alleges that Mr. Mapp engaged in fraud in the offer and sale of securities, in violation of Section 17(a) of the Securities Act of 1933, 15 U.S.C. § 77q(a) (First Claim); fraud in connection with the purchase or sale of securities, in violation of Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5 (Second Claim); and the unregistered offer and sale of securities, in violation of Section 5 of the Securities Act of 1933, 15 U.S.C. § 77e (Third Claim). The claims all stem

from the alleged offer and sale of securities of Servery, Inc. Mr. Mapp has filed an answer to the Commission's complaint denying that he violated the law.

The Commission also alleges that Mr. Paxton engaged in fraud in the offer and sale of securities, in violation of Section 17(a) of the Securities Act of 1933, 15 U.S.C. § 77q(a) (First Claim); engaged in fraud in connection with the purchase or sale of securities, in violation of Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5 (Second Claim); improperly touted securities, in violation of Section 17(b) of the Securities Act of 1933, 15 U.S.C. § 77q(b) (Fourth Claim); and operated as an unregistered broker, in violation of Section 15(a) of the Securities Exchange Act of 1934, 15 U.S.C. § 78o(a) (Fifth Claim).

Mr. Paxton has filed a motion to dismiss the Commission's claims pursuant to Federal Rules of Civil Procedure 9(b) and 12(b)(6) for failure to state a claim on which relief can be granted. The Commission filed a brief in opposition to Mr. Paxton's motion on July 5, 2016. Mr. Paxton filed a reply brief in support of his motion on July 15, 2016.

## **II. Jurisdictional Basis for the Suit**

The Court has jurisdiction over this action pursuant to Sections 20 and 22(a) of the Securities Act, 15 U.S.C. §§ 77t, 77v(d), and Sections 21(d) and 27(a) of the Securities Exchange Act, 15 U.S.C. §§ 78u, 78aa(a). Venue is proper in this district under Section 22(a) of the Securities Act and Section 27(a) of the Securities Exchange Act, 15 U.S.C. §§ 77v(a), 78aa(a).

## **III. Party Names and Additional Parties**

The party names as currently listed in the case caption are correct. The parties do not anticipate adding any other parties.

**IV. Related Pending Cases**

Currently pending cases related to this action include the following:

- *State of Texas v. Warren Kenneth Paxton, Jr.*, 416th Judicial District Court of Collin County, Texas, Trial Court Cause Nos. 416-81913-2015, 416-82148-2015, 416-82149-2015. Certain issues arising from this matter have been appealed to the Court of Appeals for the Fifth District of Texas at Dallas (Nos. 05-16-0004-CR, 05-16-0005-CR, 05-16-0006-CR).
- *Mark R. Breslin, et al. v. Servergy, Inc., et al.*, 101st Judicial District Court of Dallas County, Texas, Cause No. DC-16-01483. Lawsuit brought by a group of Alabama shareholders alleging, *inter alia*, violations of Alabama and Texas securities statutes by Servergy and certain officer and employees during Servergy's private placement stock offering in 2013.

**V. Initial Mandatory Disclosures**

The parties made their initial mandatory disclosures under Rule 26(a)(1) on July 15, 2016, and August 1, 2016. Mr. Paxton has requested that the Commission correct what he believes is a deficiency in the Commission's disclosures.

Under the OGP, the Commission was obligated to produce to Messrs. Mapp and Paxton by "not later than" August 1, "[a] copy of all documents, electronically stored information, witness statements, and tangible things in the possession, custody, or control of the [Commission] that are relevant to the claim or defense of any party." OGP at 4 (emphasis added). The Commission did not produce copies of any documents on August 1. The Commission has notified counsel that documents responsive to the initial disclosures and Mr.

Paxton's First Request for Production have been sent via overnight delivery on the day of the filing of this Report.

Mr. Paxton made his production to the Commission on August 1, as required by the OGP, on a password protected CD. The Commission agreed that Mr. Paxton need not re-produce the documents that he provided to the Commission pursuant to subpoena during the Commission's investigation. The Commission further agreed that Mr. Paxton need not produce to the Commission the investigative file from the Texas state criminal investigation of Mr. Paxton, as the Commission was seeking a copy of that file directly from the state authorities. Mr. Paxton's transmission of his production on August 1 omitted the password for the CD. The password was promptly provided to the Commission when requested.

Mr. Mapp has provided no documents to the Commission, as the Commission agreed that Mr. Mapp need not re-produce the many other documents that he provided to the Commission pursuant to subpoena during the Commission's investigation. Mr. Mapp provided a hard drive to the Commission for his copy of the Commission's production after August 1. Any other documents on which Mr. Mapp intends to rely are in the possession, custody, or control of Servergy, Inc.

**VI. Proposed Scheduling Order**

The Commission requests a scheduling order consistent with the Court's proposed deadlines in Appendix 1 of the OGP. A copy of the Commission's Proposed Scheduling Order is attached as Exhibit A.

A copy of Mr. Paxton's Proposed Scheduling Order is attached as Exhibit B.<sup>1</sup> Mr. Paxton states that a longer discovery period and a later trial date are needed for the following reasons: First, a large number of depositions will be required as a result of the Commission's initial disclosures, which identify 65 individuals with discoverable information. Messrs. Mapp and Paxton anticipate, based on the Commission's representations about these individuals, that they will need to conduct 46 depositions in addition to two additional depositions needed by the Commission. Second, the Commission claims that every Servery investor with whom Mr. Paxton communicated was a victim of fraud, despite the fact that only two investors are identified in the Complaint<sup>2</sup> and the Commission did not take testimony from any Servery investors during its investigation.

Mr. Paxton's counsel raised these issues with the Commission's counsel during a telephonic conference on August 3, 2016, in an effort to reach an agreeable discovery and trial schedule. The Commission's counsel stated that it is prepared to conduct the depositions during the time set forth by the Court's recommended dates.

In addition, Mr. Paxton is currently under indictment in state court for charges that appear to overlap in substantial part with the allegations here. Mr. Paxton's criminal defense attorneys anticipate that any trial of the state criminal matter will occur in the spring of 2017.

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<sup>1</sup> Mr. Paxton's proposed order incorporates approximately 60 days between the deadlines for dispositive motions and the final pretrial conference report, as he believes that this will be sufficient time for the parties to prepare and present their arguments to the Court. In the event that the Court prefers a longer time period between dispositive motions and the final pretrial conference report, Mr. Paxton will be prepared to address alternative scheduling arrangements.

<sup>2</sup> Mr. Paxton does not concede that, given the pleading requirements of Federal Rule of Civil Procedure 9(b), the Commission is permitted to base its fraud claims on investors other than those identified with particularity in the Complaint.

Mr. Paxton respectfully submits that, as a matter of fairness, the trial of his criminal matter should occur prior to the trial of this matter.

Given the Commission's failure to comply with discovery deadlines and the extensive number of depositions required as a result of its initial disclosures, as well as the anticipated trial in the related state court matter, Mr. Paxton requests that fact discovery in this matter remain open at least through May 26, 2017.

Mr. Mapp agrees with and joins Mr. Paxton's scheduling request.

## **VII. Discovery Procedures**

### *A. Discovery Topics*

The Commission anticipates seeking discovery on the following topics:

- Mr. Mapp's statements about Servergy's business, including its relationships and product characteristics and capabilities;
- Servergy's business, including its relationships and product characteristics and capabilities;
- Mr. Mapp's fundraising efforts for Servergy and other companies;
- Mr. Paxton's fundraising efforts for Servergy and other companies;
- Any defenses raised by Messrs. Mapp or Paxton; and
- The topics identified by Messrs. Mapp and Paxton.

Mr. Mapp anticipates seeking discovery on the following topics:

- Servergy's fundraising and stock offerings;
- Statements made to investors;
- All presentation materials created or used by Servergy;
- Materiality of alleged omissions and alleged misrepresentations to investors;

- Alleged intent to defraud, manipulate, or deceive investors and alleged knowledge of material misstatements or omissions;
- Advice of counsel given to Mr. Mapp and/or Servergy;
- Third party orders and pre-orders;
- Servergy's business relationships;
- External testing on Servergy's server's capabilities;
- Capabilities of the CTS-1000;
- Creation and management of the joint venture;
- Communications regarding securities registration requirements;
- Communications regarding sales or potential sales or pre-orders;
- All investment records for Servergy; and
- The topics identified by the Commission and Mr. Paxton.

Mr. Paxton anticipates seeking discovery on the following topics:

- Relevant knowledge of individuals on which the Commission plans to base its claims;
- Statements Mr. Paxton made to investors, if any;
- Materiality of alleged omissions to investors;
- Nature of the relationship between Mr. Paxton and other investors in Servergy;
- The nature of the alleged compensation arrangement between Mr. Paxton and Servergy;
- The form and breadth of dissemination of any communications with investors by Mr. Paxton;
- Whether Mr. Paxton was engaged in the business of effecting securities transactions for the account of others;
- Whether Mr. Paxton induced anyone to purchase securities; and

- The topics identified by the Commission and Mr. Mapp.

B. Electronically Stored Information

The parties do not anticipate any issue with the disclosure of electronically stored information (“ESI”) in a form and format they all can use.

C. Privilege

The parties have agreed that, unless a party specifically requests discovery of such, a party, in responding to a discovery request, is not required to prepare a privilege log with respect to communications dated on or after April 11, 2016.

D. Changes to Discovery Limitations

Mr. Paxton believes that leave to serve additional interrogatories beyond the number permitted by Federal Rule of Civil Procedure 33(a)(1) may narrow the number of depositions that Mr. Paxton needs to conduct.

The Commission notes that Mr. Paxton failed to raise this issue during the supplemental Rule 26(f) conference, and the Commission has not had an opportunity to consider this request.

E. Protective Orders

The parties do not anticipate asking the Court to enter any protective orders pursuant to Rule 26(c).

**VIII. Progress Toward Settlement**

The Commission has proposed that the parties agree to mediate and agree upon a mediator. Mr. Mapp does not object to mediation to the extent the Commission comes to the mediation with authority to complete and bind the Commission to a settlement. Mr. Paxton does not believe that this case can be resolved through settlement. No offers or demands have been made by any of the parties.



**IX. Persons to Be Deposed**

The Commission anticipates deposing the following persons:

- John Brochu
- Henry Exall, IV
- Joel Hochberg
- William “Bill” Mapp, III
- David R. Mayeux
- Stephen Noonan
- Roberto Pasos or another designated representative of Elliott Laboratories, LLC
- Angela Paxton
- Warren K. Paxton, Jr.
- Mark Scruggs
- Ben Williams

Mr. Paxton notes that, during the parties’ supplemental Rule 26(f) conference, counsel for the Commission confirmed that it plans to argue that Mr. Paxton defrauded each investor listed in its initial disclosures with whom Mr. Paxton communicated concerning Servery. As a result, Mr. Paxton anticipates deposing the following persons<sup>3</sup>:

- John Brochu
- Gene Carr
- Jonathan Cole
- Byron Cook
- Kay Cook
- Chris Cowman
- Tim Curren
- Steve Davis
- Brad Dean
- David Goettsche
- Teri Goettsche
- David Gorman
- Bob Griggs
- Joel Hochberg
- Wade Cramer
- William “Bill” Mapp, III
- Samantha Martin

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<sup>3</sup> See *supra* note 2.

- Stacy McNeal
- Brandon Pogue
- Mark Scruggs
- Bill Sandford
- Brandon Waghorne
- John Waghorne
- Jacob Watters
- Ben Williams

In addition to the persons that Mr. Paxton plans to depose, Mr. Mapp anticipates deposing the following persons:

- A designated representative from Avnet Electronics
- A designated representative from IBM
- John Abbott
- Cody Acree
- Chris Aidan or another representative from Freescale who met with Mr. Mapp
- Brent Barton
- Philip Brown
- Kyle Chase or another designated representative of Koerr, Inc.
- Nicole Duncan
- Henry Exall, IV
- Michael Holder
- Robert Jones
- David R. Mayeux
- Stephen Noonan
- Roberto Pasos or another designated representative of Elliott Labs, LLC
- Vihar Rai
- Ted Schweinfurth
- Lance Smith
- Townsend “Jack” Smith
- Caleb White
- Martin Woodall

The Commission has no objection to this number of depositions by Messrs. Mapp and Paxton, but reserves its rights concerning the taking of depositions under the Federal Rules of Civil Procedure.

**X. Estimated Duration of Trial**

The Commission has requested a trial by jury. Messrs. Mapp and Paxton also request a trial by jury. The Commission estimates that its case-in-chief in this matter will last two weeks.

Messrs. Mapp and Paxton state that, until the Commission discloses its witnesses and the Commission and Mr. Mapp determine whether they will present expert witnesses, they lack sufficient information to estimate the amount of trial time needed to respond to the Commission's case-in-chief.

**XI. Counsel Appearing for the Parties**

The Commission will be represented by Matthew Gulde, Timothy Evans, Jessica Magee, and Samantha Martin. Mr. Mapp will be represented by Jason Lewis and David Klaudt. Mr. Paxton will be represented by Matthew Martens, Jaclyn Moyer, William Mateja, and J. Mitch Little.

Dated: August 5, 2016

Respectfully submitted,

/s/ Matthew T. Martens  
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Commission*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA  
SHERMAN DIVISION**

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SECURITIES AND EXCHANGE :  
COMMISSION, :  
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Plaintiff, :  
 :  
v. :  
 :  
WILLIAM E. MAPP, III, : Civ. Action No. 4:16-cv-00246  
WARREN K. PAXTON, JR., :  
CALEB J. WHITE, and :  
SERVERGY, INC., :  
 :  
Respondents. :  
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**CERTIFICATE OF SERVICE**

I hereby certify that, on the date set forth below, the Rule 26(f) Conference Report was electronically filed with the Clerk of the Court through the CM/ECF system, which will send notices of electronic filing to all counsel of record:

Matthew J. Gulde Timothy L. Evans Jessica B. Magee Samantha S. Martin U.S. Securities and Exchange Commission 801 Cherry Street, Unit 18 Fort Worth, TX 76102 Email: guldem@sec.gov <i>Counsel for Plaintiff SEC</i>	Jason S. Lewis David W. Klautt Greenberg Traurig, LLP 2200 Ross Avenue Suite 5200 Dallas, TX 75201 Email: lewisjs@gtlaw.com <i>Counsel for Respondent William E. Mapp, III</i>
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Date: August 5, 2016

/s/ Matthew T. Martens

PROPOSED SCHEDULING ORDER  
DEADLINES

The following actions shall be completed by the date indicated.<sup>1</sup>

August 29, 2016	Deadline for motions to transfer
October 3, 2016	Deadline to add parties
Defendants will not agree to mediate.	Mediation must occur by this date. Deadline by which the parties shall notify the Court of the name, address, and telephone number of the agreed-upon mediator, or request that the Court select a mediator, if they are unable to agree on one.
October 31, 2016	Plaintiff's disclosure of expert testimony pursuant to Fed. R. Civ. P. 26(a)(2) and Local Rule CV-26(b)
November 14, 2016	Deadline for Plaintiff to file amended pleadings (A motion for leave to amend is required.)
November 28, 2016	Defendant's disclosure of expert testimony pursuant to Fed. R. Civ. P. 26(a)(2) and Local Rule CV-26(b)
November 28, 2016	Deadline for Defendant's final amended pleadings (A motion for leave to amend is required.)
6 weeks after disclosure of an expert is made	Deadline to object to any other party's expert witnesses. Objection shall be made as a motion to strike or limit expert testimony and shall be accompanied by a copy of the expert's report in order to provide the court with all the information necessary to make a ruling on any objection
November 28, 2016	Deadline for motions to dismiss, motions for summary judgment, or other dispositive motions.
February 6, 2017	All discovery shall be commenced in time to be completed by this date.
April 20, 2017	Notice of intent to offer certified records
April 20, 2017	Counsel and unrepresented parties are each responsible for contacting opposing counsel and unrepresented parties to determine how they will prepare the Joint Final Pretrial Order ( <i>See</i> Local Rule CV-16(b) and Joint Proposed Jury Instructions and Verdict Form (or Proposed Findings of Fact and Conclusions of Law in non-jury cases).

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<sup>1</sup> If a deadline falls on a Saturday, Sunday, or a legal holiday as defined in Fed. R. Civ. P. 6, the effective date is the first federal court business day following the deadline imposed.

April 27, 2017	Video Deposition Designation due. Each party who proposes to offer a deposition by video shall serve on all other parties a disclosure identifying the line and page numbers to be offered. All other parties will have seven calendar days to serve a response with any objections and requesting cross examination line and page numbers to be included. Counsel must consult on any objections and only those which can not be resolved shall be presented to the court. The party who filed the initial Video Deposition Designation is responsible for preparation of the final edited video in accordance with all parties designations and the court's rulings on objections.
May 2, 2017	Motions in limine due File Joint Final Pretrial Order (See <a href="http://www.txed.uscourts.gov">www.txed.uscourts.gov</a> ).
May 18, 2017	Response to motions in limine due <sup>2</sup>  File objections to witnesses, deposition extracts, and exhibits, listed in pre-trial order. <sup>3</sup> (This does not extend deadline to object to expert witnesses.)  File Proposed Jury Instructions/Form of Verdict (or Proposed Findings of Fact and Conclusions of Law
Date will be set by Court. Usually within 10 days prior to final pretrial conf.	If numerous objections are filed the court may set a hearing to consider all pending motions and objections.
June 1, 2017 (previously set by Court)	Final Pretrial Conference at 9:00 a.m. at the Paul Brown United States Courthouse located at 101 East Pecan Street in Sherman, Texas.
To Be Determined	9:30 a.m. Jury selection and trial (or bench trial) at the Paul Brown United States Courthouse located at 101 East Pecan Street in Sherman, Texas. A specific trial date will be selected at the Final Pretrial Conference.

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<sup>2</sup> This is not an invitation or requirement to file written responses. Most motions in limine can be decided without a written response. But, if there is particularly difficult or novel issue, the Court needs some time to review the matter. To save time and space respond only to items objected to. All others will be considered to be agreed. Opposing counsel **shall confer** in an attempt to resolve any dispute over the motions in limine within five calendar days of the filing of any response. The parties shall notify the court of all the issues which are resolved.

<sup>3</sup> Within five calendar days after the filing of any objections, opposing counsel **shall confer** to determine whether objections can be resolved without a court ruling. The parties shall notify the court of all issues which are resolved. The court needs a copy of the exhibit or the pertinent deposition pages to rule on the objection.



**PAXTON PROPOSED SCHEDULING ORDER**

August 22, 2016	Rule 16 management conference
August 29, 2016	Deadline for motions to transfer
October 3, 2016	Deadline to add parties
November 21, 2016	Plaintiff's disclosure of expert testimony pursuant to Fed. R. Civ. P. 26(a)(2) and Local Rule CV-26(b)
November 14, 2016	Deadline for Plaintiff to file amended pleadings
December 19, 2016	Defendant's disclosure of expert testimony pursuant to Fed. R. Civ. P. 26(a)(2) and Local Rule CV-26(b)
May 26, 2017	Completion of discovery
June 2, 2017	Deadline for motions to dismiss, motions for summary judgment, or other dispositive motions
July 21, 2017	Notice of intent to offer certified records
July 21, 2017	Counsel and unrepresented parties responsible for contacting opposing counsel and unrepresented parties to determine how they will prepare the joint final pretrial order
July 28, 2017	Video deposition designations due
August 2, 2017	Motions in limine due / File joint final pretrial order
August 18, 2017	Response to motions in limine; file objections to witnesses, deposition extracts, and exhibits, listed in pretrial order
September 1, 2017	Final pretrial conference