

AMENDED
EXHIBIT “D”

From: "Parker, Crystal" <cparker@jw.com>
Subject: FW: Production of privileged documents
Date: October 24, 2008 4:25:42 PM CDT
To: <jh@jamesholmeslaw.com>

Below is the agreement. Please sign it and return it to us, and I will send you the documents.

Thanks!

Crystal J. Parker
Jackson Walker L.L.P.
713-752-4217

From: Parker, Crystal
Sent: Monday, October 20, 2008 6:29 PM
To: 'James Holmes'
Cc: Babcock, Chip; 'gimlawoffice@gmail.com'; Adair, Kathy; Senneff, Angie
Subject: Production of privileged documents

Jamey,

We will agree to produce the documents we have discussed (listed below) with the following agreement. We have made a few changes to the version you sent us.

Eric Albritton agrees to withdraw his Motion to De-Designate Confidential documents with prejudice and agrees not to move to de-designate (1) any documents that were the subject of Plaintiff's Motion Challenging Designation of Certain Documents as Confidential or to Modify the Protective Order ("the Motion") and (2) any documents that are the subject of this agreement. In exchange, Cisco agrees to produce the following documents within three business days with the redactions indicated below. Eric Albritton expressly agrees that all of the following documents will be treated as privileged and are being produced as Highly Confidential documents pursuant to the Protective Order entered in this

case because of the unique nature of this case.

Documents to be produced (numbers referenced are from Cisco's privilege log):

37-41 Marta Beckwith email forwarding Michael Smith article re: ESN litigation;

43 Marta Beckwith email informing Victoria Maroulis that Rick Frenkel was the Trolltracker (REDACTED);

44 Marta Beckwith email forwarding Michael Smith article re: ESN litigation;

87 Marta Beckwith email informing Bhavsar & Showalter that Rick Frenkel was the Trolltracker (REDACTED);

89 Marta Beckwith email informing Showalter and others at Baker Botts that Rick Frenkel was the Trolltracker (REDACTED);

94 Marta Beckwith email to "gchambers@mckoolsmith.com re: discussions of changes in EDTX local rules;

109-18, 122-25 Email chain between Yen and Chandler re: timing of events with respect to October 17, 2008 Trolltracker postings;

138-40 Frenkel email re: patent statistics;

141-44, 146-49 Yen email to Frenkel re: timing of events with respect to October 17, 2008 Trolltracker postings;

154-56 Tanielian email re" patent litigation statistics;

255 Marta Beckwith email to "ip-team" re: proposed amendments to EDTX local rules;

264-65 Yen email re: rumors regarding ESN filing;

287 Yen email to Noh forwarding copies of ESN complaints;

324 Yen email to Noh attaching copy of amended ESN complaint;

126 Chandler email re: potential conversation with local counsel regarding filing of ESN lawsuit;

134-37 Comments in response to legal strategy re: timing of the filing of ESN litigation;

169 Pankratz email attaching both online versions of the ESN complaint;

204 Zahner email attaching papers served on ESN and notices from court;

227-28 Renfree email attaching ESN's amended complaint;

231-33 Ritter email re: trying to get in touch by phone to discuss response to ESN Motion;

254 Yen email re: selection of counsel

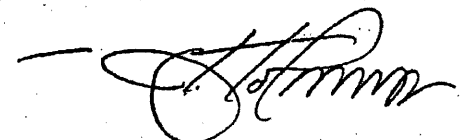
256 Yen email re: calling potential counsel;

261 Pankratz email attaching exhibits to ESM complaint;

276-77 Showalter email concerning contents of complaint and subject matter jurisdiction;

327-31 Frenkel email re: transfer of ESN case to Texas.

103-05, 167-68, 192-94, 212, 234-37, 250-51, 257-60, 269-72 & 278-81.

Agreed — 

From: James Holmes [mailto:jh@jamesholmeslaw.com]
Sent: Friday, October 24, 2008 4:59 PM
To: Babcock, Chip
Cc: glmlawoffice@gmail.com; Parker, Crystal
Subject: Re: Agreement for Deposition Testimony in Albritton v Cisco etal

My client and I agree. See you Monday.

James Holmes



THE LAW OFFICE OF JAMES HOLMES

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10/29/2008

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On Oct 24, 2008, at 4:01 PM, Babcock, Chip wrote:

Jamey/George,

The parties to the above referenced suit agree that any answer given at a deposition will not waive the attorney/client or attorney work product privileges and that the parties may designate any answer given at a deposition as confidential under the protective order which allows protection of privileged information. This does not preclude the invocation of a privilege at any deposition nor does it prohibit any party from moving to compel the answer to any question which has not been answered at the deposition.

If this represents our agreement please say so by return email.

Thanks,
Chip Babcock

Parker, Crystal

From: James Holmes [jh@jamesholmeslaw.com]
Sent: Friday, July 18, 2008 5:11 PM
To: Babcock, Chip, Parker, Crystal
Subject: Albritton response

Chip/Crystal,

In the last paragraph of your Response you indicate that if Cisco, Albritton, ESN and Ward could reach an agreement on the "scope of waiver," you would agree to the de-designation of all documents. As you know, my client (with the consent of ESN) has already reached an agreement with you on scope of the waiver (i.e. neither side will use production of documents to argue a broader waiver). It appears to me that you are saying that you will agree to the de-designation of all documents if Ward enters the same agreement on scope of the waiver.

Please confirm this offer or inform me where I misunderstand your position.

Thanks.

James Holmes



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Parker, Crystal

From: James Holmes [jh@jamesholmeslaw.com]
Sent: Tuesday, July 22, 2008 4:25 PM
To: Babcock, Chip, Parker, Crystal
Subject: Cisco/Albritton

Chip/Crystal,

When can I expect to see the additional documents you have mentioned to me and to the Court? Also, I am still awaiting a response from you regarding my earlier email attempting to clarify your offer to designate all documents as soon as we (and Johnny) reached an agreement on the "scope of the waiver." As I noted before, my client and ESN have already reached that agreement with you. Do we need only to reach out to Johnny and his counsel?

Please let me hear from you.

James Holmes



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Parker, Crystal

From: James Holmes [jh@jamesholmeslaw.com]
Sent: Tuesday, October 07, 2008 11:36 AM
To: gimlawoffice@gmail.com
Cc: Babcock, Chip; Parker, Crystal; Nicole Peavy
Subject: Re: Depositions
Follow Up Flag: Follow up
Due By: Saturday, October 11, 2008 11:00 AM
Flag Status: Red

That is my understanding of the waiver agreement. I know that we reached that agreement on documents, but I think we should all be clear that it includes depositions as well. If I need to prepare a more formal written agreement, please let me know.

With regard to the reputation witnesses, I should have the formal supplement ready today or tomorrow. I am waiting on client approval. As far as depositions are concerned, I am available the week of November 10, but I will have no control over these witnesses. We'll have to speak with each one regarding their respective availability.

I am also preparing to notice the Baker Botts depositions for October 28, 29 or 30. I think I can do them in a single day if we get started early (like 8 or 9). Which day would you all prefer?

James Holmes



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On Oct 7, 2008, at 11:15 AM, glmlawoffice@gmail.com wrote:

Jamey: I think I understand? Waiver of the privilege as to a specific question or document does not act as a waiver to other claimed privileges.

Also, can we schedule the depositions of your reputational witnesses (Sam Baxter, Otis Carroll, Scott Stevens and "a few others") for the week of Nov 3 or 10. I don't think you have supplemented.

Thanks, George
Sent via BlackBerry by AT&T

-----Original Message-----

From: James Holmes <jh@jamesholmeslaw.com>

Date: Tue, 7 Oct 2008 09:35:12

To: Chip Babcock <cbabcock@jw.com>; <glmlawoffice@gmail.com>

Subject: Depositions

Gentlemen,

Are we proceeding with the depositions under the same scope of the waiver agreement? My understanding is that both sides will be free to either invoke or waive the privilege in response to questions and that any decision to waive privilege will not be the basis for any argument of a broader subject matter waiver.

Are we all on the same page?

James Holmes

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