

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

United States District Court
Northern District of California

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

E-PASS TECHNOLOGIES, INC.,
Plaintiff,
v.
MOSES & SINGER, LLP, et al.,
Defendants.

Case No. 09-5967 EMC (JSC)

ORDER GRANTING PLAINTIFF’S
MOTION TO COMPEL (Dkt. No. 167)

Now pending before the Court is the parties’ joint discovery letter regarding Plaintiff’s request for attorney compensation agreements between Defendant Moses & Singer, LLP and Defendant Stephen N. Weiss, as well as additional compensation information. (Dkt. No. 167). After carefully considering the parties’ written arguments, and having had the benefit of oral argument on July 2, 2012, including argument from counsel for Defendant Stephen Weiss, the Court GRANTS Plaintiff’s motion to compel as set forth below.

Plaintiff has established a compelling need for the compensation agreements. The primary theory of Plaintiff’s claims is that Defendants’ financial incentive to pursue litigation rather than licensing agreements caused Defendants to advise Plaintiff to pursue frivolous patent litigation. Plaintiff also alleges that Defendant Weiss lied about his specific financial

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

incentive to induce Plaintiff to rely on his advice. (Dkt. No. 141 ¶ 57.) Thus, the documents sought are directly relevant to this specific case.

Plaintiff's need for the documents outweighs any privacy interest Defendant Weiss has in the documents, especially since the documents will be produced subject to a protective order. Defendant Weiss's somewhat vague testimony about his compensation does not eliminate Plaintiff's need, and does not answer the "threshold" question posed by Plaintiff.

The Court also finds that Plaintiff has a compelling need for the compensation information that would be in the "Elite Contract Distribution Reports." In lieu of producing the reports, Defendant Moses & Singer shall provide the yearly compensation information for Mr. Weiss contained in the Reports in response to a supplemental interrogatory which Plaintiff shall serve by Tuesday, July 3, 2012.

Accordingly, on or before July 11, 2012, Defendant Moses & Singer shall produce all employment/partnership agreements with Defendant Weiss that governed during the relevant time frame. Defendant may redact any private information that is unrelated to any compensation that Defendant Weiss may have received as a result of his representation of E-Pass. By that same date Defendant shall respond to Plaintiff's supplemental interrogatory. All of this discovery shall be produced subject to the protective order governing this case.

This Order disposes of Document No. 167.

IT IS SO ORDERED.

Dated: July 2, 2012



JACQUELINE SCOTT CORLEY
UNITED STATES MAGISTRATE JUDGE