

EXHIBIT E

From: Avalos, Julio
Sent: Thursday, November 11, 2010 10:38 AM
To: 'Brian Hancock'
Cc: Chatterjee, I. Neel; Gray, Thomas
Subject: RE: Stipulated Protective Order (Redlined Draft)
Attachments: HTI LLC Protective Order Opinion.pdf

Brian,

I think we're just about there on the protective order. However, I wanted to get your thoughts on Section 8(e) regarding source code inspection logs.

As currently drafted, the provision reads:

(e) The Receiving Party shall maintain a record of any individual who has inspected any portion of the source code in electronic or paper form. The Receiving Party shall maintain all paper copies of any printed portions of the source code in a secured, locked area. The Receiving Party shall not create any electronic or other images of the paper copies and shall not convert any of the information contained in the paper copies into any electronic format. The Receiving Party shall only make additional paper copies if such additional copies are (1) necessary to prepare court filings, pleadings, or other papers (including a testifying expert's expert report), (2) necessary for deposition, or (3) otherwise necessary for the preparation of its case. Any paper copies used during a deposition shall be retrieved by the Producing Party at the end of each day and must not be given to or left with a court reporter or any other individual.

Though the Receiving Party is required to "maintain a record of any individual who has inspected" source code, the Order currently says nothing regarding what rights, if any, the Producing Party has to review that record/log. Indeed, the Order currently says nothing whatsoever about what may or may not be done with those logs or what purpose they're supposed to serve. Given the sensitivity of source code likely to be targeted in this litigation, this omission presents a problem.

I've just come across an October 20, 2010 Southern District of California opinion highlighting the risks associated with such an omission. I've attached the case here, *HTI IP LLC, et al. v. Webtech Wireless, Inc., et al.*, 2010 U.S. Dist. LEXIS 111441 (S.D. Cal. Oct. 20, 2010).

The producing party asked for access to the receiving party's logs. The Court held that under the language of the protective order, the receiving party was under no obligation to make the logs available for inspection to the other side: "[T]he plain language of ... [the disputed provision] only requires Plaintiffs to maintain their own log of files that are printed out or photocopied from the source code. The parties negotiated the terms of this detailed protective order, and if they had intended that a log or copies of printouts be provided to the producing party ... they would have included the specifics of that procedure in the protective order."

In order to avoid unnecessary ambiguity later on, we suggest that 8(e) be amended to expressly require that source code "inspection logs" be made available upon request to the Producing Party. If you agree, we'll go ahead and draft up some proposed language for you to review.

Thanks,