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UNITED STATES DISTRICT COURT
Northern District of California
San Francisco Division

ADOBE SYSTEMS INCORPORATED,
Plaintiff,

No. C 10-3575 SC

v.

ORDER RE: ATTENDANCE

REZA DAVACHI, et al.,
Defendants.

Date: August 15, 2011
Mediator: Zela Claiborne

Before the court are two inter-related issues: 1) defendants' request to compel plaintiff Adobe Systems Incorporated to make available for the August 15, 2011 mediation before Zela Claiborne a representative with final settlement authority who is knowledgeable about the facts in question in this case, and 2) defendants' objection to the presence at the mediation of Mr. Scott Bain – in-house Chief Litigation Counsel for the Software and Information Industry Association (“SIIA”), a third party watch dog group – as plaintiff’s designated representative.

Defendants assert that Mr. Bain is not an employee of plaintiff and does not meet the attendance standard set forth in ADR L.R. 6-10(a)(1) because he does not, in fact, have full settlement authority in this matter. Defendants are correct that under the litigation assignment agreement, Mr. Bain does not have full authority so does not meet the attendance standard set forth in ADR L.R. 6-10(a)(1).

On July 1, 2011, Magistrate Judge Beeler issued an Order Regarding May 18, 2011 Joint Discovery Letter (Doc. 42), in which she ruled that Mr. Bain could not have access to confidential discovery documents. Judge Beeler’s order carefully analyzed the Federal Circuit definition of “competitive decision-making,” and this court finds her analysis persuasive. Plaintiff’s assertion that

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mediation confidentiality will protect defendants' confidential materials is not persuasive. However, plaintiff also asserts that, because of its litigation assignment and its relationship with SIIA, it cannot settle this case without Mr. Bain's involvement. The court concludes that Mr. Bain may not be privy to any of defendants' confidential or sensitive materials, which may be produced at the mediation as the parties attempt to reach a settlement, but that he may participate in the mediation in a manner that fully complies with the letter and the spirit of Judge Beeler's July 1st Order.


IT IS THEREFORE ORDERED that plaintiff Adobe Systems Incorporated shall produce an employee, officer or director, who is employed by plaintiff, who possess full and final settlement authority, and who is knowledgeable about the facts in question to attend the mediation (and any subsequent mediations) to serve as plaintiff's representative; and

IT IS FURTHER ORDERED that Scott Bain, previously designated by Plaintiffs as its representative, as well as any other representative from SIIA, may only have a carefully limited participation at the mediation set for August 15, 2011 (or any subsequent mediations), and that the participation of Mr. Bain or any other representative from SIIA must fully comply with Judge Beeler's July 1st Order.

IT IS SO ORDERED.

Aug 11, 2011
Dated _____

By:


Elizabeth D. Laporte
United States Magistrate Judge