

United States District Court
For the Northern District of California

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

AMEC ENVIRONMENT & INFRASTRUCTURE, INC.,)	Case No. 12-cv-01735-SC
)	
Plaintiff,)	<u>ORDER</u>
)	
v.)	
)	
INTEGRAL CONSULTING, INC. et al.,)	
)	
Defendants.)	
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On May 6, 2014, Judge Nathanael Cousins -- who is managing discovery in this case -- issued an order on several discovery disputes. ECF No. 91 ("Discovery Order"). In that order, Judge Cousins denied Plaintiff AMEC Environment & Infrastructure, Inc.'s ("AMEC") objection to the search terms that Defendant Integral Consulting, Inc. ("Integral") used in its document production. Judge Cousins also denied AMEC's request for an order that Integral use different search criteria to produce documents. Judge Cousins denied the request because AMEC raised the issue too late in the

1 discovery process. Id. at 3-4.

2 AMEC has objected to Judge Cousins's order, arguing that AMEC
3 failed to raise the issue earlier because of a good-faith attempt
4 to resolve this case through mediation and informal discovery.
5 According to AMEC, the only reason the issue was not raised earlier
6 was because AMEC had hoped that formal discovery might not be
7 necessary at all. ECF No. 97 ("AMEC Obj'n"), at 3-4. However, the
8 parties did not brief the timing issue, so Judge Cousins may not
9 have considered AMEC's explanation when he ruled.

10 The Court hoped that the parties would be able to agree on the
11 correct search terms to use without the necessity of ruling on the
12 objection. To that end, at a status conference on May 30, the
13 Court ordered AMEC and Integral to meet and confer regarding search
14 terms. See ECF No. 101. Since that date, the parties have
15 submitted a series of letters to the Court. ECF Nos. 106 ("AMEC
16 July 17 Letter"), 107 ("Integral July 18 Letter"), 108 ("AMEC July
17 21 Letter"). From those letters, it is clear that the parties have
18 been unable to resolve their dispute regarding search terms.

19 AMEC asserts that "[o]n May 30, 2014, the Court expressly
20 overruled Judge Cousins's prior order." AMEC July 21 Letter. That
21 is not the case; the Court did not rule on AMEC's objection at the
22 May 30 conference. The Court merely expressed its (apparently
23 vain) hope that the parties could meet and confer and resolve this
24 issue without judicial intervention.

25 That said, it is possible that AMEC's argument is meritorious.
26 The Court would not wish to punish AMEC for engaging in a good
27 faith attempt to resolve the case through mediation and informal
28 discovery. If AMEC's explanation is accurate, Judge Cousins may

1 have inadvertently penalized AMEC for its mediation efforts because
2 he ruled on this issue before AMEC had an opportunity to explain.
3 The Court therefore DIRECTS AMEC to re-raise its search term
4 objection before Judge Cousins, so that Judge Cousins may, if he
5 finds it appropriate, reconsider his ruling on the search term
6 objection in light of AMEC's explanation for its timing.

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8 IT IS SO ORDERED.

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10 Dated: July 31, 2014

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UNITED STATES DISTRICT JUDGE

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