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**** E-filed April 9, 2010 ****

NOT FOR CITATION
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

CRYOTECH INTERNATIONAL, INC., a
Delaware Corporation, fka VBS
INDUSTRIES INCORPORATED,

No. C08-02921 HRL

Plaintiff,

**ORDER DENYING PLAINTIFF’S
MOTION TO EXCLUDE THE
EXPERT REPORT OF O. EARL
ELLIOTT**

v.

TECHNIFAB PRODUCTS, INC., an Indiana
Corporation; and DOES 1–50 inclusive,

[Re: Docket No. 156]

Defendant.

_____ /

Plaintiff Cryotech International, Inc. (“Cryotech”) and defendant Technifab Products, Inc. (“Technifab”) are competing companies in the cryogenic industry. They signed a contract where Technifab agreed to exclusively produce certain products that Cryotech agreed to exclusively purchase and sell. Cryotech later sued defendant for allegedly using Cryotech’s confidential information to sell products directly to Cryotech’s customers in violation of the agreement.

Technifab then countersued plaintiff for allegedly outsourcing production of products for which Technifab was to be the sole source and for failing to use best efforts to sell Technifab’s products.

Plaintiff now moves to exclude the report of defendant’s accounting expert, O. Earl Elliott, on grounds that he relied on unverified financial statements that defendant did not produce during fact discovery. Technifab opposes the motion. Upon consideration of the motion papers and the arguments presented at the hearing, the court DENIES plaintiff’s motion.


United States District Court
For the Northern District of California

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intended to use an accounting expert to calculate its damages well in advance, and nothing prevented Cryotech from doing the same. Accordingly, the court DENIES plaintiff's motion.¹

IT IS SO ORDERED.

Dated: April 9, 2010



HOWARD P. LLOYD
UNITED STATES MAGISTRATE JUDGE

¹ Pursuant to this court's case management order, Cryotech also submitted to the court a *Daubert* letter challenging Elliott's expert qualifications. (Docket No. 169.) Plaintiff's primary arguments in its letter mirror its arguments in the instant motion. The court does not find any of plaintiff's other arguments in its *Daubert* letter persuasive and, as a result, no separate hearing is necessary.

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