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**\*\* E-filed June 22, 2010 \*\***

NOT FOR CITATION  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

MULTIVEN, INC., a Delaware corporation,  
Plaintiff,  
v.  
CISCO SYSTEMS, INC., a California  
corporation,  
Defendant.

No. C08-05391 JW (HRL)

**ORDER GRANTING IN PART AND  
DENYING IN PART CISCO'S  
MOTION TO COMPEL  
PRODUCTION OF DOCUMENTS**

**[Re: Docket No. 196]**

\_\_\_\_\_  
AND RELATED COUNTERCLAIMS  
\_\_\_\_\_ /

**BACKGROUND**

Multiven, Inc. ("Multiven"), a provider of service and maintenance support for router and networking systems, sued defendant Cisco Systems, Inc., a leading provider of Internet Protocol-based networking technologies, alleging violations of the Sherman Antitrust Act as well as related state claims. Cisco Systems, Inc., along with related-entity Cisco Technology, Inc. (collectively, "Cisco"), then counterclaimed against Multiven as well as Pingsta, Inc. ("Pingsta") and Peter Alfred-Adekeye ("Adekeye"), a former Cisco employee and current Chief Executive Officer of Multiven and Pingsta (collectively, "Counterdefendants"). Cisco's counterclaims allege copyright infringement, violation of the Computer Fraud and Abuse Act, false advertising in violation of the Lanham Act, plus similar state claims. Adekeye and his wife, Deka Yussuf ("Yussuf"), are officers

1 of both Multiven and Pingsta and are British citizens currently residing in Switzerland. Their  
2 previous U.S. work visas were revoked by the U.S. Citizen and Immigration Service (“USCIS”),  
3 and they are currently appealing that decision.

4 Cisco served deposition notices and subpoenas in January 2010 for (1) Multiven’s custodian  
5 of records; (2) Multiven’s Federal Rule of Civil Procedure (“FRCP”) 30(b)(6) deponent; (3)  
6 Adekeye; (4) Yussuf; (5) Pingsta’s custodian of records; and (6) Pingsta’s FRCP 30(b)(6) deponent.  
7 These subpoenas requested substantially the same documents as those requested by Cisco’s two  
8 earlier sets of Requests for Production of Documents served months before and for which  
9 documents had been, and are continuing to be, reviewed and produced to Cisco on a rolling basis in  
10 accordance with an apparent agreement to do so (although Cisco denies the existence of this  
11 agreement). (Mot. at 6; Opp’n. at 2-3.)

12 In addition to the deposition notices and subpoenas, Cisco later served a set of Requests for  
13 Production of Documents on Adekeye. (Mot. at 14.) Request No. 1 seeks documents that contain  
14 information about or refer to Adekeye’s now-revoked visa petition, including but not limited to  
15 documents related to the appeal of the revocation. (Declaration of Patrick M. Ryan, Docket No.  
16 197, Ex. M.) Adekeye objected to this request and refused to produce any of these documents.  
17 (Mot. at 14-15.)

18 About two weeks after being served with them, counsel for Multiven-as-Plaintiff (“Plaintiff  
19 Multiven”) returned the deposition notices and subpoenas on the ground that it was not authorized to  
20 accept service of them, while Counterdefendants (and arguably Plaintiff Multiven) served objections  
21 to the deposition notices and subpoenas and filed a motion to quash and for a protective order. (*Id.*  
22 at 8; Docket No. 129.) The Court’s granted in part the motion to quash, and all six of these  
23 depositions were eventually scheduled to be held in Vancouver, Canada during May 18-21. (Docket  
24 No. 168; Mot. at 5.)

25 In April, still far from receiving all of the documents requested and with the depositions  
26 about a month away, Cisco filed the instant motion to compel Plaintiff Multiven and  
27 Counterdefendants to produce the documents requested by the subpoenas and to compel Adekeye to  
28 produce the requested immigration documents in advance of the depositions. (Docket No. 196.) It



1 were not finished, they will be finished in due course). As such, Cisco’s motion to compel the  
2 production of documents before the depositions is now moot.<sup>2</sup>

3 B. The Production of Adekeye’s Immigration Documents

4 Adekeye has largely refused to produce requested documents relating to his immigration  
5 status. Cisco argues that these documents are relevant because they “may relate to important issues  
6 in this case such as whether Multiven is a sham business created to provide Mr. Adekeye with his  
7 work visa and as a tool to extort a payoff from Cisco.” (Mot. at 2.) If so, Cisco contends, Plaintiff  
8 Multiven may not have standing to as a competitor to bring an antitrust claim against Cisco. (*Id.* at  
9 15.)

10 Cisco’s sneaking suspicion is based on the USCIS’s revocation of Adekeye’s and Yussuf’s  
11 visas. During the depositions in Canada, Yussuf authenticated drafts of documents related to  
12 Adekeye’s and Yussuf’s appeal of the revocation of their visas. Cisco’s argues that these  
13 documents support its contention that Plaintiff Multiven lacks standing to bring an antitrust claim.  
14 (*See* Declaration of Patrick M. Ryan, Docket No. 222, Ex. D-2 & D-3.)

15 Plaintiff Multiven and Counterdefendants argue that the immigration documents are not  
16 relevant and, even if they are, production of them would violate Adekeye’s privacy rights. (Opp’n  
17 at 10-12.) They state that federal courts have held that where the disclosure of the requested  
18 information may cause injury to a party, the party seeking discovery must demonstrate that its need  
19 for the information outweighs the injuries that may be caused by the disclosure. (*Id.* at 10-11 (citing  
20 *Flores v. Albertson, Inc.*, 2002 U.S. Dist. LEXIS 6171 (C.D. Cal. Apr. 9, 2002).) They argue that  
21 Cisco has not made such a demonstration and that Cisco should look for “sham corporation”  
22 information in the documents produced by Multiven and Pingsta. (*Id.* at 11.)

23 This Court is persuaded that Adekeye should produce at least some of these documents.  
24 Indeed, during the depositions counsel for Counterdefendants already apparently agreed to produce  
25 immigration documents related the “denial of [Mr. Adekeye’s] visa.” (Declaration of Patrick M.  
26 Ryan, Docket No. 222, Ex. I at 66:14-19.) Further, upon review, the Court agrees that the few  
27 documents that were produced and used during the depositions arguably could support Cisco’s

28 <sup>2</sup> However, the Court would possibly consider revisiting the adequacy of the production by Plaintiff  
Multiven and Counterdefendants at a later date.

1 potential lack of standing defense. As such, documents that relate or refer to the revocation of  
2 Adekeye's visa or any appeal of such revocation are relevant to Cisco's potential defense. *See*  
3 FRCP 26(b)(1) ("Parties may obtain discovery regarding any nonprivileged matter that is relevant to  
4 any party's claim or defense . . ."). The Court also believes that Cisco's need for the information  
5 outweighs any potential injury to Adekeye as he has failed to articulate how he would be injured by  
6 disclosure. Without more, simply asserting a privacy right does not outweigh a party's legitimate  
7 right to discover relevant facts concerning its defenses. *See Cook v. Yellow Freight System, Inc.*,  
8 132 F.R.D. 548, 551 (E.D. Cal. 1990) (noting that, "by its very nature, litigation has a tendency to  
9 make public the sort of information that individuals otherwise would prefer to keep private").

10 **CONCLUSION**

11 Based on the foregoing, Cisco's motion to compel is GRANTED as to Adekeye's  
12 immigration documents and DENIED as to the production of the documents requested by its  
13 subpoenas prior to the depositions. Adekeye shall produce to Cisco **within 14 days of this Order**  
14 all documents that relate or refer to the revocation of his visa or any appeal of such revocation.

15 **IT IS SO ORDERED.**

16 Dated: June 22, 2010

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19 HOWARD R. LLOYD  
20 UNITED STATES MAGISTRATE JUDGE  
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17 **Counsel are responsible for distributing copies of this document to co-counsel who have not  
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