

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Magistrate Judge Craig B. Shaffer**

Civil Action No.: 08-cv-01897-PAB-CBS
Date: January 27, 2010

FTR - Reporter Deck - Courtroom A402
Courtroom Deputy: Linda Kahoe

OTO SOFTWARE, INC.,

Peter R. Bornstein

Plaintiff,

v.

HIGHWALL TECHNOLOGIES, LLC,

No appearance

RICH SWIER,

No appearance

MOBILESECURE, INC.,

John 'Jack' Markham Tanner

Defendants.

COURTROOM MINUTES/MINUTE ORDER

HEARING: MOTION HEARING

Court in session: 1:36 p.m.

Court calls case. Appearances of counsel. No appearance for Highwall Technologies. No appearance for Defendant Swier.

The court notes for the record that counsel has not entered an appearance for Highwall Technologies, and that Mr. Swier pro se.

Discussion regarding Plaintiff's Motion for Summary Judgment Against Highwall Technologies, LLC and Rich Swier, and for Sanctions, doc #[58], filed 11/20/2009.

Plaintiff's Amended Motion for Summary Judgment Against Highwall Technologies, LLC and Rich Swier, and for Sanctions, doc #[70], filed 12/29/2009.

Mr. Bornstein states that Plaintiff's Amended Motion for Summary Judgment, doc #[70] is a corrected version of doc #[58].

ORDERED: Plaintiff's Motion for Summary Judgment Against Highwall Technologies, LLC and Rich Swier, and for Sanctions, doc #[58], is **DENIED AS MOOT**. The court will take judicial notice of the Response filed in that motion, and will treat doc #[70] as the operative motion.

Discussion and arguments regarding Plaintiff's Motion to Amend Scheduling Order to Allow Designation of Fed.R.Civ.P. 26(a)(2)(A) Witness, doc #[66], filed 12/22/2009.

The court proposes that Mr. Rogers submit a written report. MobileSecure may obtain a rebuttal expert. The court suggests to supplement the briefing on summary judgment, then hold in abeyance any depositions until the dispositive motions are decided. If Mr. Tanner takes the deposition of Mr. Rogers, the court will require OTO to pay for the cost of the deposition.

ORDERED: Plaintiff's Motion to Amend Scheduling Order to Allow Designation of Fed.R.Civ.P. 26(a)(2)(A) Witness, doc #[66], is **GRANTED**. OTO Software is required to provide to Defense counsel, a signed report from Mr. Rogers that complies in all respects with Rule 26(a)(2)(b) by no later than **5:00 p.m. on FEBRUARY 8, 2010**.

The court requests that Mr. Tanner evaluate the report and confer with his client as to whether or not a deposition of Mr. Rogers is essential.

ORDERED: A further Telephonic Status Conference is set for **FEBRUARY 11, 2010 at 10:45 a.m.** *Counsel shall coordinate a conference call among themselves prior to contacting the court at 303.844.2117 at the scheduled time.*

Discussion regarding Plaintiff's Motion for Sanctions for Admitted Destruction of Evidence, doc #[54], filed 11/6/2009. The court will request that Judge Brimmer refer this motion.

HEARING CONCLUDED.

Court in recess: 2:24 p.m.
Total time in court: 00:48

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