

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
**Magistrate Judge Kathleen M. Tafoya**

Civil Action No. 10-cv-02868-MSK-KMT

L-3 COMMUNICATIONS CORPORATION, and  
L-3 SERVICES, INC.,

Plaintiffs,

v.

JAXON ENGINEERING & MAINTENANCE, INC.,  
JONI ANN WHITE,  
RANDALL K. WHITE,  
SCOTT WHITE,  
SUSAN RETTIG,  
CHARLES RETTIG,  
JAMES YOUNGMAN,  
JERRY LUBELL,  
KELLY RICE,  
JOHN MCCLURE, and  
JOHN DOES 1-25, said names being fictitious as such names are unknown at this time,

Defendants.

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**ORDER**

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This matter is before the court on “Defendants’ Emergency Motion to Stay Order Dated April 12, 2013” (Doc. No. 605, filed Apr. 15, 2013 [Mot. Stay]) and “Defendants’ Motion for Forthwith Consideration of the Motion to Stay Order Dated April 12, 2013” (Doc. No. 606, filed Apr. 15, 2013 [Mot. Forthwith Consideration]). Defendants’ Motion for Forthwith

Consideration is GRANTED and, for the following reasons, Defendants' Motion to Stay is GRANTED in part and DENIED in part.

Defendants move, pursuant to D.C.COLO.LCivR 30.2B, to stay this court's April 12, 2013 Order. (Doc. No. 602.) Based on the filing of Special Master William A. Martinez's Report, Findings of Fact, Conclusions of Law, and Order of Special Master (Doc. No. 601 [hereinafter "Report and Order"]), the April 12, 2013 Order directs FTI Consulting, an outside vendor hired by Plaintiffs, to (1) remove documents deemed privileged by the Special Master from the mirror imaged hard drives of certain defendants' home and office computers, and (2) produce those redacted hard drive images to Plaintiff. Defendants seek to stay the effect of the April 12, 2013 Order because Defendants have not yet had the opportunity to file objections pursuant to Federal Rule of Civil Procedure 53(f) to the Special Master's Report and Order. Defendants also seek to stay review and production of the hard drives to Plaintiffs pending ruling on "Defendants' Emergency Motion to Confirm the Scope of ECF No. 416 Regarding Hard Drive Privilege Claims." (Doc. No. 582 [Emergency Mot. to Confirm].)

The court finds that a stay of the April 12, 2013 Order is warranted to allow the parties an opportunity to object or otherwise respond to the Special Master's Report and Order. Rule 53(f) requires that parties have notice and opportunity to respond to a special master's order, report, or recommendations. *See* Fed. R. Civ. P. 53(f)(1). Indeed, "[a] party may file objections to—or a motion to adopt or modify—the master's order, report or recommendation, no later than 21 days after a copy is served, unless the court sets a different time." Fed. R. Civ. P. 53(f)(2). Because it was issued contemporaneously with the Special Master's Report and Order, the court did not

allow the parties an opportunity to object or otherwise be heard on the Special Master's Report and Order. As such, the court finds it appropriate to stay the effect of the April 12, 2013 Order until the parties' objections, if any, to the Special Master's Report and Order are resolved.

However, the court declines to also stay the effect of the April 12, 2013 Order pending Chief Judge Marcia S. Krieger's ruling on Defendants' Motion to Confirm. The court finds that Chief Judge Krieger's Order (Doc. No. 416, filed Nov. 19, 2012) relating to the proper scope of the review of Defendants' hard drives was clear and unequivocal. As such, the court finds that Defendants have failed to establish that their Motion to Confirm is likely to be successful. *Cf. Faconnable USA Corp. v. Doe*, Case No. 11-cv-00941-CMA-BNB, 2011 WL 2173736, at \*1 (D. Colo. June 2, 2011) (in determining whether to stay a magistrate judge's discovery order, the court should consider, *inter alia*, the likelihood that the moving party will succeed on its appeal to the district judge).

Therefore, it is

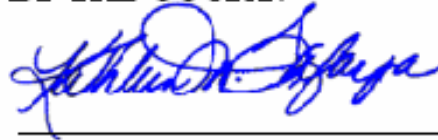
ORDERED that "Defendants' Motion for Forthwith Consideration of the Motion to Stay Order Dated April 12, 2013" (Doc. No. 606) is GRANTED and "Defendants' Emergency Motion to Stay Order Dated April 12, 2013" (Doc. No. 605) is GRANTED in part and DENIED in part. The effect of the court's April 12, 2013 Order (Doc. No. 602) is STAYED pending ruling on the parties' objections, if any, to the Special Master's Report and Order.

It is further

ORDERED that the parties may file Rule 53(f)(2) objections, if any, to the Special Master's Report and Order no later than May 3, 2013. The parties may file responses to those objections, if any, no later than May 17, 2013.

Dated this 18th day of April, 2013.

BY THE COURT:



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Kathleen M. Tafoya  
United States Magistrate Judge