

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

Civil Action No: 10-cv-02868-MSK-KMT
Courtroom Deputy: Sabrina Grimm

Date: February 12, 2014
FTR: Courtroom C-201

Parties:

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.

Counsel:

Steven Levitt
Benjamin Chew
Karen Wiess
Nigel Wilkinson

Lora Brzezynski
Jennette Roberts
Charles Swanson
Daniel Johnson
Kathleen Custer

COURTROOM MINUTES

MOTIONS HEARING

9:33 a.m. Court in session.

Court calls case. Appearances of counsel.

Discussion regarding subpoena issued to Anthony's Manufacturing Service, Inc.

ORDERED: Plaintiffs' Motion to Compel Documents Responsive to Subpoena Issued to Antony's Manufacturing Services, Inc. [782] is TAKEN UNDER ADVISEMENT. A Show Cause hearing is set for February 26, 2014 at 3:30 p.m. in Courtroom C-201 before Magistrate Judge Kathleen M. Tafoya. A separate written order will issue.

Discussion regarding Plaintiffs' potential witness, Brett Harrison. Mr. Johnson states objections as to allowing Mr. Harrison to testify at today's hearing.

9:51 a.m. Defendant, John McClure, sworn.
Direct examination of Mr. McClure by Mr. Levitt.

10:56 a.m. Court in recess.
11:08 a.m. Court in session.

11:09 a.m. Cross examination of Mr. McClure by Ms. Brzezynski.
11:13 a.m. Redirect examination of Mr. McClure by Mr. Levitt.
11:17 a.m. Recross examination of Mr. McClure by Ms. Brzezynski.
11:18 a.m. Further examination of Mr. McClure by Mr. Levitt.

Plaintiffs' request to submit a post hearing brief by Mr. Levitt.

ORDERED: Plaintiffs' request to submit a post hearing brief is DENIED.

Discussion and argument regarding reformatting of external hard drive, alleged deletion of documents by Mr. McClure, preservation, and backing up files and/or emails on the external hard drive.

Defendants demonstrative exhibit D1 is tendered to the Court.
Defendants demonstrative exhibit D1 is REJECTED.

Court's comments.

12:02 p.m. Court in recess.
1:59 p.m. Court in session.

Continued rebuttal argument by Mr. Levitt.

ORDERED: Plaintiffs' Motion for Sanctions for Defendants' Spoliation and for Other Relief [783] is DENIED, for reasons stated on record.

Discussion and argument regarding Jaxon's payroll records, Jaxon's profit and loss statements, reopening Joni White's deposition, and Plaintiffs' requests for production.

ORDERED: Plaintiffs' Motion to Compel and to Reopen Defendant Joni White's Deposition [791] is GRANTED IN PART AND DENIED IN PART. Defendants are directed to produce the payroll and accounting records, as discussed. Plaintiffs are permitted 4 additional hours to depose the Rule 30(b)(6) witness, if necessary, on a limited scope of topics, as discussed. The motion is denied as to the production of the tax returns and reopening Joni White's deposition.

**3:29 p.m. Court in recess.
3:42 p.m. Court in session.**

Court states its understanding of the issues with respect to Defendants' Motion to Compel [806].

Discussion and argument regarding contracts, test plans, and test reports pertaining to PCI testing, Defendants invalidity defense, assignor estoppel argument, email from Ms. Quintero to Ms. Rettig, Plaintiffs' pending Motion for Partial Summary Judgment [897], and NDAs or confidentiality agreements.

Court notes Charles Crain has exited the courtroom. Mr. Chew tenders an AEO designated document to the Court and wishes to re-designate the document. Ms. Custer requests time to analyze the documents and consider the request.

ORDERED: Defendants' response with respect to the AEO document designation, as referenced during today's hearing, is due to Plaintiffs on or before February 19, 2014.

ORDERED: Defendants' Motion to Compel [806] is GRANTED IN PART AND DENIED IN PART. Plaintiffs are directed to produce contracts, applicable NDAs, if any, test plans, and test reports, as stated on record, for Boeing, Sandia, and AT&T during the 2003-2005 time period as set forth more particularly on the record. Plaintiffs are also directed to produce the NDAs, as testified to by Mr. Crain, those three projects and also for Hensel Phelps, ATEC, and Harris during the subject time periods and pertaining to the projects for which Defendants received documents from third parties. All documents shall be produced to Defendants on or before March 12, 2014 or the absence of the documents will be explained with a full chronology of the steps taken to find the documents. Further, if any document destruction with respect to this order has taken place subsequent to the filing of this lawsuit, the Plaintiffs will so inform the Defendants.

The motion is denied as to the production of the Quintero/Rettig email. However, if they so choose, Defendants may compensate Plaintiffs in the amount of \$8,550.00 to search for the email; if paid the Plaintiffs will search

for and produce the one email and will not be entitled to claim any additional costs as part of the production.

ORDERED: Defendants' Motion to Strike Deposition Errata Entries [809] is GRANTED IN PART AND DENIED IN PART, as stated more particularly as to each questioned entry on record.

Discussion regarding designation of documents.

5:10 p.m. Court in recess.

Hearing concluded.

Total in-court time 05:15

*To obtain a transcript of this proceeding, please contact Avery Woods Reporting at (303) 825-6119.