

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

Civil Action: 12-cv-01699-RBJ-CBS
Date: February 26, 2014

FTR - Reporter Deck-Courtroom A402
Courtroom Deputy: Courtni Covington

Parties:

A PDX PRO CO. INC.,

Plaintiff,

Counsel:

Richard A. Oertli
William C. Groh, III
Wes P. Wollenweber

v.

DISH NETWORK SERVICE, LLC,

Defendant.

Darren E. Nadel
Alyson A. Smith
Michelle L. Gomez

COURTROOM MINUTES/MINUTE ORDER

HEARING: MOTION HEARING

Court in session: 3:37 p.m.

Court calls case. Appearances of counsel. Representatives for Plaintiff, Michael Paxton and Brooke Paxton, are present by telephone.

The court notes it has reviewed the parties' pleadings filed since the February 24, 2014 hearing.

Discussion between the court and counsel for Plaintiff regarding **Motion for Clarification and In Camera Review** [Doc. No. 173].

Discussion between the court and counsel regarding various spreadsheets produced by PDX that purport to identify the transactions that form the basis for Plaintiff's damage claims in this case. The court notes that while PDX's purported damages have been substantially reduced through successive spreadsheets, the underlying data supporting those damage claims has not changed since the spreadsheets provided on July 15, 2013, notwithstanding the orders imposed by Judge Jackson and this court. Under the circumstances, the court finds that Plaintiff and/or its counsel violated court orders, and appropriate sanctions are required.

Discussion between the court and Defense counsel regarding clarification of the court's proposed sanctions, and Defendant's specific request for adverse jury instructions. The court expresses its view that Judge Jackson should make the final determination on what instructions are appropriate in light of any ruling at trial and the evidence presented to the jury.

The court makes findings of fact and conclusions of law. For the reasons stated on the record and the foregoing violations, it is

ORDERED: *Motion for Clarification and In Camera Review* [Doc. No. 173, filed 2/25/2014] is **DENIED** in light of counsel's and the court's discussion on the record today.

ORDERED: *Defendant's Motion for Sanctions for Disobedience of Prior Court Orders* [Doc. No. 123, filed 12/16/2013] is **GRANTED**.

The court is **RECOMMENDING** that Judge R. Brooke Jackson preclude Plaintiff and its witnesses from asserting at trial any transaction that is not reflected on Plaintiff's February 25, 2014 spreadsheet, and that the damages evidence at trial should be limited to the 3,541 transactions listed on that spreadsheet. The court further **RECOMMENDS** that in supporting its damage claims Plaintiff and its witnesses be barred from referring to or offering in evidence any document not specifically referenced on the February 25, 2014 spreadsheet, and further that Plaintiff and its witnesses be precluded from arguing or insinuating to the jury that Plaintiff's inability or failure to produce additional documentary evidence in support of its damage claims is attributable to any fault, action or inaction by Defendant.

The court notes in recommending those sanctions, it does not intend to preclude Defendant from requesting adverse inference instructions or preclude Plaintiff from objecting to any instructions proposed by Defendant.

The court informs the parties that its recommendation as to **evidentiary sanctions** is being made from the bench, that no written order will follow as those particular sanctions, and therefore the time period for filing an objection should be calculated from today's date.

ORDERED: Defendant shall submit a bill of costs **within seven business days of today's date**. Defendant shall have **fourteen calendar days** from service of the bill of costs to file a response.

The court advises it will issue a separate written recommendation regarding **monetary sanctions** once a bill of costs and response has been received. The time period for filing objections as to that written recommendation will run from the filing of the written recommendation.

HEARING CONCLUDED.

Court in recess: 5:56 p.m.

Total time in court: 02:19

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