

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

DEMAN DATA SYSTEMS,
LLC, ET AL.,

Plaintiffs,

v.

Case No. 8:12-cv-2580-T-24 EAJ

MARC S. SCHELSEL, ET AL.,

Defendants.

MARC S. SCHELSEL, ET AL.,

Counter-Plaintiffs,

v.

DEMAN DATA SYSTEMS,
LLC, ET AL.,

Counter-Defendants.

ORDER

This cause comes before the Court on Plaintiffs' Motion in Limine (Doc. No 595) regarding unproduced source code. Defendants oppose the motion. (Doc. No. 625). The Court addressed this motion during the January 14, 2015 pretrial conference. As explained below, the motion is denied.

I. Background

This case involves the breakdown of a business relationship. The following twelve claims remain among the parties: (1) violation of the Computer Fraud and Abuse Act, (2) misappropriation of trade secrets, (3) enforcement of the Restrictive Covenants Agreement, (4)

civil theft, (5) tortious interference by Defendants, (6) civil conspiracy, (7) breach of paragraph 9 of the Employment Agreement (8) failure to repay promissory notes, (9) breach of loyalty, (10) breach of the Operating Agreement, (11) unpaid wages, and (12) tortious interference by DDS and FSS.

II. Motion in Limine

Plaintiffs move to exclude evidence of, and references to, the use of source code in version 1.1.0.118 of Defendants' software application by any other unproduced versions of Defendants' application. Plaintiffs base this argument on their contention that other source code versions were requested but not produced by Defendants, and as a result, Defendants cannot rely on anything beyond what they produced.

The Court is not aware of the specific discovery requests that were made, and as such, the Court cannot conclude that Defendants failed to produce something that they were required to produce. As such, the Court denies Plaintiffs' request to exclude evidence of, and references to, the use of source code in version 1.1.0.118 of Defendants' software application by any other unproduced versions of Defendants' application.

Plaintiffs also ask the Court to prohibit Todd Bennett from testifying at trial that some of the source code in version 1.1.0.118 is used by other versions of Defendants' software application. Plaintiffs argue that Todd Bennett was not disclosed as an expert in this case, and Todd Bennett's testimony regarding Defendants' source code would be expert testimony. The Court is not persuaded by this argument, as Todd Bennett's testimony would seem to be more akin to that of a treating physician—he is testifying to historic facts regarding how he created Defendants' source code. However, the Court will allow Plaintiffs to raise an objection at trial to

Todd Bennett's specific trial testimony and to explain why such specific testimony is, in Plaintiffs' view, an expert opinion.

III. Conclusion

Accordingly, it is ORDERED AND ADJUDGED that Plaintiffs' Motion in Limine (Doc. No 595) regarding unproduced source code is **DENIED**.

DONE AND ORDERED at Tampa, Florida, this 15th day of January, 2015.


SUSAN C. BUCKLEW
United States District Judge

Copies to:
Counsel of Record