

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

CASE NO.: 1:11-cv-21321-JAL

ETKIN & COMPANY, INCORPORATED,
a Delaware Corporation,

Plaintiff,

vs.

SBD, LLC, a Florida Limited Liability Company,

Defendant.

ORDER

This Cause came before the Court on November 29, 2011 on a Discovery Hearing relating to the Sufficiency of Plaintiff's Answers to Interrogatories and the Deposition Dates of a Rule 30(b)(6) Deposition of the Defendant and Depositions of Arthur Agatston and Sari Agatston and the Court, having hearing argument of the Parties and making oral rulings at the time of the Hearing, with the parties thereafter agreeing to the form of the written Order comprising the Court's ruling, hereby enters the following Order:

1. The Plaintiff shall amend its Interrogatory Answers to Interrogatory Nos. 5, 6 and 7 to provide the names and addresses of all businesses/customers which were generally referenced in his original answers to Interrogatories for such businesses/customers in which it has had a business relationship with for the past 10 years. Said Amendment shall be served on or before December 15, 2011. Defendant, its counsel, and anyone acting in conjunction with or on behalf of Defendant shall not contact any of the identified individuals or entities, directly or indirectly, without the Plaintiff's prior written consent or Court Order. Prior to contacting any

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such businesses or customers of ECI for deposition (other than depositions of Starbucks' individuals disclosed in the Parties' respective Answers to Interrogatories), Defendant's Counsel shall first contact Counsel for Plaintiff to advise of Defendant's desire to contact and/or schedule such persons for depositions. In the event that Plaintiff has any objection, Counsel for Plaintiff shall call Chambers within one week to schedule a Hearing on the request for the discovery or any objection will be deemed waived.

2. The Depositions of the Rule 30(b)(6) Deposition of the Defendant and the Depositions of Arthur Agatston and Sari Agatston shall not occur on December 7 and 8, 2011 as previously ordered. [D.E. 58]. By Tuesday, December 6, 2011, the Parties shall agree upon dates for the taking of these depositions, as well as the deposition of William Etkin. Unless agreement for alternative dates is reached, the depositions shall occur as follows:

- a. January 17, 2012 - Rule 30(b)(6) Deposition of SBD LLC;
- b. January 18, 2012 - Dr. Arthur Agatston
- c. January 19, 2012 - Sari Agatston
- d. January 20, 2012 - William Etkin

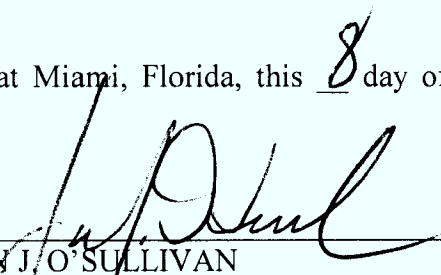
3. In connection with argument concerning the sufficiency of Defendant's document production regarding ESI, which was not noticed for hearing, the Court orders the Parties' Counsel and their respective electronic discovery experts to meet on November 30, 2011 to discuss the issues regarding the document production of the Defendant, SBD in an effort to resolve the disputes without further judicial intervention.

4. The Defendant shall categorize the "hard copy paper" portion of its document production to correspond to the Plaintiff's Requests for Production, unless it is able to provide affidavit(s) from the custodian(s) of the records produced adequately demonstrating that such production (or applicable portions thereof) was made as such records were kept in the usual course of business and, if so, that portion of the document production shall be excused from the categorization requirement pursuant to Rule 34(b)(2)(E)(i) of the Federal Rules of Civil

Procedure. The Parties have agreed that the "hard copy paper" production made prior to November 28, 2011, has been identified as SBD14284-15307, SBD61047-68304, SBD81702-91959 and SBD 139288-140040 and the requirement of Categorization is limited thereto. The Categorization shall be provided to Plaintiff's Counsel on or before December 31, 2011.

5. In the Conference described in Paragraph 3 above, Defendant agreed to produce Native File Format for all ESI that was not properly redacted or designated as privileged and was previously produced as TIFF images, and linking the Native File Format to the previously produced TIFF Images of the ESI. Defendant shall produce same on or before December 31, 2011.

DONE AND ORDERED, in Chambers, at Miami, Florida, this 8 day of December, 2011.



JOHN J. O'SULLIVAN
UNITED STATES MAGISTRATE JUDGE

Copies furnished to:
United States District Judge Lenard
All Counsel of Record