

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
EVANSVILLE DIVISION

<b>XTEC, Incorporated, a Florida corporation,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>3:12-mc-11-RLY-WGH</b>
	)	
<b>CARDSMART TECHNOLOGIES, Incorporated,</b>	)	
<b>a New Jersey corporation, and DAVID FISHER,</b>	)	
<b>an Individual,</b>	)	
	)	
<b>Defendant.</b>	)	

ORDER ON LARRY HEMBREE'S  
MOTION FOR PROTECTIVE ORDER

**This matter is before the Honorable William G. Hussmann, Jr., United State Magistrate Judge, on a Motion for Protective Order filed by non-party Larry Hembree on September 13, 2012. (Docket No. 1). Plaintiff's Response opposing the motion was filed on September 27, 2012; a Cross-Motion to Compel was filed by Plaintiff in that same document. (Docket No. 8). Non-Party Larry Hembree's Reply in Support of Motion for Protective Order and Response in Opposition to Motion to Compel was filed on October 3, 2012. (Docket No. 15). Defendants' Reply in Response to Plaintiff's Opposition to Larry Hembree's Motion for a Protective Order and Cross-Motion to Compel was filed on October 4, 2012. (Docket No. 17). The Declaration of G. Glennon Troublefield was filed on October 4, 2012. (Docket No. 18). Plaintiff's Reply to**

**Larry Hembree's Response in Opposition to Motion to Compel and Response to Defendants' Reply was filed on October 5, 2012. (Docket No. 19).**

**The Magistrate Judge, being duly advised, now GRANTS, in part, and DENIES, in part, the Motion for Protective Order and GRANTS, in part, and DENIES, in part, the Cross-Motion to Compel, as follows:**

**1. The Magistrate Judge concludes that non-party Larry Hembree has not waived his objections to the Subpoena that was originally served upon him.**

**2. Mr. Hembree's claim of undue burden has not been described with the particularity necessary to sustain in all respects his claim that it is unduly burdensome to produce all the documents sought.**

**3. The Magistrate Judge has reviewed the categories listed in the Subpoena and concludes that those categories of documents all relate to relevant facts in the underlying lawsuit.**

**4. As a non-party, Mr. Hembree should reasonably be expected to search computer data systems and spend three business days of eight hours each in an attempt to locate and retrieve the documents sought. The primary focus of this search should be for documents in existence between the year 2009 and the current date, though other dates may be relevant.**

**5. In the event the retrieval of the items by Mr. Hembree should take more than three business days of eight hours each, payment of reasonable expenses for retrieval of those items shall be made by the Plaintiff, XTEC, Incorporated, for the time spent which exceeds three business days. Counsel**

**is also directed to discuss any out-of-pocket costs necessary to retrieve the items. The Magistrate Judge will determine at a later date the appropriate amount of expenses (out-of-pocket costs and labor cost) that were incurred by Mr. Hembree, which must be paid or repaid by XTEC in the underlying case.**

**6. Mr. Hembree does not have standing to raise a state secrets objection to items produced from the Navy or other governmental contractors. If, however, he produces written documentation that may arguably be a claim of privilege from the Navy or governmental contractors, than those items which he withholds from production must be listed on a privilege log, and the Magistrate Judge will review those items by *in camera* review.**

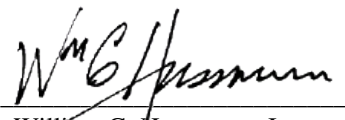
**7. Mr. Hembree shall complete his search within fifteen (15) days of the date of this Order, unless by agreement of counsel otherwise. The materials shall be produced to XTEC by not later than twenty (20) days from the date of this Order.**

**8. Mr. Hembree shall appear for his deposition not later than thirty (30) days from the date of this Order.**

**The hearing set for October 9, 2012, at 5:00 p.m. (CDT), is hereby VACATED, as unnecessary.**

**SO ORDERED.**

**Dated: October 9, 2012**

  
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William G. Hussmann, Jr.  
United States Magistrate Judge  
Southern District of Indiana

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