

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

MARK D. PETIT,  
et al.

Plaintiffs,

vs.

DIEBOLD INC.,

Defendant.

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CIVIL ACTION NO. 09-cv-12107

DISTRICT JUDGE ARTHUR J. TARNOW

MAGISTRATE JUDGE MONA K. MAJZOUB

**ORDER FOR PENDUM LLC TO SHOW CAUSE FOR FAILURE TO OBEY  
SUBPOENA AND ORDER FOR PARTIES TO FILE JOINT STATEMENT OF  
RESOLVED AND UNRESOLVED ISSUES (DOCKET NO. 9)**

Before the Court is Defendant Diebold Incorporated's Motion For Issuance Of An Order Requiring EFMARK Service, EFMARK Premium Armored and Pendum LLC To Appear Before This Court To Show Cause Why An Order For Contempt Should Not Be Entered And Setting Date For Contempt Hearing filed on November 30, 2009. (Docket no. 9). No Response was filed. On December 18, 2009 the Court entered the parties' Stipulation And Order To Extend Deadline For Third-Party Subpoena Recipient, Pendum LLC, To File Response To Motion. (Docket no. 14). Attorney David A. Tonini's name was signed with his consent on the stipulated order on behalf of Pendum LLC. (Docket no. 14). The Stipulation And Order extended the deadline for third-party Responses to December 22, 2009. (Docket no. 14). No timely Response was filed with this Court. This matter was referred to the undersigned for hearing and determination pursuant to 28 U.S.C. § 636(b)(1)(A). (Docket no.10).

Defendant served a subpoena duces tecum on non-party Pendum LLC<sup>1</sup> in care of its resident agent The Corporation Company, 30600 Telegraph Road, Suite 2345, Bingham Farms, Michigan 48025 on July 20, 2009 directing appearance with documents identified in “Exhibit A- Duces Tecum Attachment” on August 12, 2009 at 10:00 a.m. at the offices of Plunkett Cooney, 38505 Woodward Avenue, Suite 2000, Bloomfield Hills, Michigan 48304. (Docket no. 9-5). Defendant argues that Pendum produced documents responsive to only three of the nine paragraphs of documents identified on the Duces Tecum Attachment. (Docket no. 23).

Pendum did not move to quash or otherwise modify the subpoena. Defendant therefore asks the Court to Order Pendum to show cause why the Court should not enforce the subpoena and hold Pendum in contempt for failing to obey the subpoena. Fed. R. Civ. P. 45(e). Rule 45(e), Fed. R. Civ. P., provides that the “issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena.” Pendum will therefore be ordered to appear and show cause why it should not be held in contempt of court for its failure to produce documents as directed.

**IT IS THEREFORE ORDERED** that **Pendum LLC appear on Wednesday, January 20, 2010 at 1:30 p.m.**, in Room 642 of the Theodore Levin United States Courthouse, 231 W. Lafayette Blvd., Detroit, Michigan and show cause why it should not be held in contempt of court for its failure to produce documents in full on August 12, 2009.

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<sup>1</sup>Pendum LLC is named on the face of the subpoena and on the exhibit Pendum LLC is identified as including “merged entities EFMARK Premium Armored and/or EFMARK Service/Pendum LLC and all former related entities and sister corporations.” (Docket no. 9-5).

**IT IS FURTHER ORDERED** that the parties will file with the Court **on or before Friday, January 15, 2010**, a concise statement identifying the issues raised in Defendant's Motion (docket no. 9) which have been resolved and the issues which remain unresolved to date.

Pursuant to Fed. R. Civ. P. 72(a), the parties have a period of fourteen days from the date of this Order within which to file any written appeal to the District Judge as may be permissible under 28 U.S.C. 636(b)(1).

Dated: January 12, 2010

s/ Mona K. Majzoub  
MONA K. MAJZOUB  
UNITED STATES MAGISTRATE JUDGE

**PROOF OF SERVICE**

I hereby certify that a copy of this Order to Show Cause was served upon Pendum LLC's Resident Agent and Attorney of Record, as shown below, and Counsel of Record on this date:

Pendum LLC  
c/o The Corporation Company, Resident Agent  
30600 Telegraph Road, Suite 2345  
Bingham Farms, Michigan 48025

David A. Tonini  
Holme Roberts & Owen, LLP  
1700 Lincoln, Suite 4100  
Denver, Colorado 80203

Dated: January 12, 2010

s/Lisa C. Bartlett  
Case Manager