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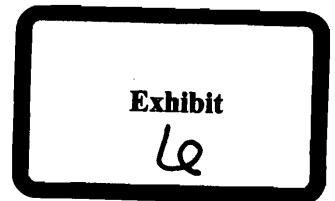
July 1, 2009

David J. Maland
U.S. District Clerk
United States District Court
Eastern District of Texas
211 W. Ferguson St.
Tyler, Texas 75702

Thomas E. Gibson, AUSA
Bob Wells, AUSA
Administrative Office of the
United States Courts
Washington, DC 20544

Re: *Albritton v. Cisco. et al*

Dear Messrs. Maland, Gibson and Wells:



As you know, the undersigned represent the Defendants in the above referenced case, which is a defamation action where the Plaintiff alleges that he has been libeled by a number of internet articles. I am sure you are familiar with the articles, but I will be happy to provide you copies if you request.

Trial in this lawsuit is to occur on September 14, 2008. Given certain of the clerks'¹ involvement in the changing of the date on the Court's records and their knowledge relating to important issues in this case, the Clerks' testimony is essential. Both Plaintiff and Defendants have subpoenaed these clerks to testify at the trial of this matter when it was previously set.

Defendants prepared subpoenas for the clerks' appearance at trial, and those subpoenas were served on you, with your agreement, on June 24, 2009. That same day, David Maland requested that Defendants provide topics for the testimony of the clerks. Although we do not agree that there are any applicable regulations requiring us to do so, as a courtesy we are providing topics on which we expect the Clerks to testify. Given that you previously stated that

¹ This includes Shelly Moore, Cynthia Paar, Rhonda Lafitte, David Provines, Peggy Thompson, Faye Thompson, Rachel Wilson and David Maland (the "Clerks").

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you were declining to comply with the subpoenas, we ask that you respond to this letter by July 15 so that any issues that need to be addressed to the Court can be briefed and resolved prior to trial.

Based on the contested issues in the Pretrial Order, we expect the testimony may cover the following topics: (1) all the matters testified to in the Clerks' depositions; (2) all communications between the Clerks and The Texas Lawyer or any other person regarding the events at issue in the Lawsuit; (3) the facts underlying the Clerk's changing of the docket to reflect a filing date of October 16, 2007; (4) trends in filing that may relate to Albritton's alleged damages²; (5) whether or not Amie Mathis uploaded the Complaint in the *ESN v. Cisco* lawsuit, cause no. 5:07-cv-00156-DF-CMC in the Eastern District of Texas (the "ESN Lawsuit") on October 15, 2007; (6) whether the header or banner stamped on pleadings on the ECF system were placed on the system by the Court's ECF software at the time of the filing of the ESN Lawsuit; (7) whether the docket entry placed on the Court's ECF system was generated by the Court's ECF software at the time of the filing of the ESN Lawsuit; (8) whether the ECF system has been altered with respect to its calculation of the filing date that is placed on the court's dockets or pleadings since the time of the filing of the ESN Lawsuit; (9) whether the ECF contained a computer glitch that caused it to indicate that the ESN Lawsuit was filed on October 15, 2007; (10) all communication the Clerks have had with any of ESN's counsel regarding the filing of the ESN Lawsuit, including Eric Albritton and John Ward, Jr. or anyone representing them, such as Nick Patton and Patricia Peden; (11) whether or not the Notice of Electronic filing is available on the ECF system to ordinary users who do not receive electronic notice of pleadings through the ECF system; (12) questions regarding the transaction log and other documents produced by the Clerks regarding the filing of the ESN Lawsuit; (13) whether or not the Eastern District of Texas' website or the ECF website contain a warning that attorneys should not trust the Court's official docket or the headers stamped on pleadings on the ECF system; (14) the programming of the ECF system with respect to filing dates, including what Ms. Paar referred to as a "dictionary" of events in her deposition; (15) whether an ordinary user of the ECF system could alter the header or banner stamped on pleadings or the court's official docket on the ECF system at the time of filing of the ESN lawsuit; (16) whether anyone but the clerks could alter the header or banner stamped on pleadings or the court's official docket on the ECF system at the time of filing of the ESN Lawsuit; (17) whether clerks are permitted to make case dispositive decisions concerning lawsuits; (18) whether the date originally stamped on the header or banner stamped on the complaint in the ESN Lawsuit stated that it was "Filed" on 10/15/2007; (19) whether the court's official docket originally stated that the complaint in the ESN Lawsuit was "Filed" on 10/15/2007; (20) whether the Civil Cover Sheet as filed in the ESN Lawsuit originally bore a header or banner stamped "Filed 10/15/2007" when viewed on the court's ECF system; (21) whether or not the Notice of Electronic Filing was electronically delivered to Cisco upon the filing of the complaint in the ESN Lawsuit; (22) whether there was a public explanation of why the docket in the ESN Lawsuit was altered on or about October of 2007, and if one was ever made, when and to whom it was made; (23) whether the Court's

² David Maland testified in his deposition that he has knowledge of filing trends.

transaction record is available to ordinary ECF users; (23) if the Clerks have read the articles at issue in the subject lawsuit since their depositions, and if so whether the articles accused the Clerks of a crime or unethical conduct; (24) the circumstances surrounding Eric Albritton's appointment to the Local Rules Committee; (25) the Clerk's knowledge regarding judges' opinion on Eric Albritton; (26) the circumstances surrounding the Local Rules Committee's decision to change the Local Rules concerning where Court should be held when all of the judges in a district recuse and its reasons for proposing the withdrawal that rule change; (27) whether Notices of Electronic Filing since October 15, 2007 continuing to the time of trial in this and other cases have different "Filed" and "Entered" dates.

These facts are all within the unique knowledge of the Clerks.

Moreover, the time commitment for this testimony would not be burdensome. Judge Schell has ordered that trial will take place at the Federal Courthouse in Tyler, Texas, where many of the Clerks work. Each of the witnesses would only be required to be present for their own testimony, which would most likely last less than two hours, and therefore the subpoena is not unduly burdensome. In addition, because some additional information has come to light regarding the filings since the Clerk's initial depositions, the prior depositions do not suffice for trial, and the Defendants are entitled to live testimony regarding issues relating to their lawsuit. Indeed the Federal Rules Require live testimony because there is no Federal Rule of Evidence or Procedure or other rule adopted by the Supreme Court that would prevent the Clerks from appearing live. FED. R. CIV. P. 43. Mr. Maland was more than happy to provide information to the Plaintiff's lawyers, the Chief Judge of the Eastern District, the trial judge in the underlying litigation, and importantly, the press regarding this matter. Obviously, Mr. Maland felt that this was of great interest to the judiciary and the public, and we agree in this regard, particularly because the article concerns the integrity and management of the Court's filing system and the Clerks who made the changes to the docket continue to resist discovery on this matter.

Mr. Maland and the Clerks have been named by both sides as witnesses in the case. Indeed the Plaintiff testified at some length as to the importance of these witnesses. The Plaintiff continues to assert that the statements at issue in the lawsuit are untrue, and the Clerks are essential witnesses concerning the truth of the statements as well as other issues listed above.

We ask you to consider this matter carefully and that you do not oppose the subpoenas. Moreover, as you know, it is your burden to seek relief from the Court in the event Mr. Maland continues to "decline" the subpoenas, and the Clerks will be in contempt of court if they refuse to comply. We would be glad to discuss this matter with you, but we need to resolve this matter quickly so that, if the Court is required to address the issue, he has sufficient time to do so before trial on September 14, 2009. Please let us know by July 15, 2007 whether you will oppose the subpoenas. Again, we appreciate your willingness to accept service of the subpoenas on the Clerk's behalf.

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Very truly yours,

Charles L. Babcock/cjr

Charles L. Babcock

and

George L. McWilliams/cjr

George L. McWilliams

cc: Nicholas H. Patton
James A. Holmes
Patricia L. Peden
