

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

**EADS NORTH AMERICA DEFENSE
TEXT AND SERVICES, INC.,**

Plaintiff ,

v.

**X TECHNOLOGIES, INC. and
TERRY SMITH,**

Defendants.

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CIVIL ACTION NO.

SA-07-CV-0224 FB (NN)

ORDER DENYING EX PARTE EMERGENCY MOTION (DOCKET ENTRY 3)

The matter before the Court is plaintiff’s ex parte emergency motion for expedited discovery for temporary injunction hearing and entry of protective order (docket entry 3).

By its motion plaintiff asks that the time for responding to requests for production be shortened to 5 days from the date of receipt of the request, that the parties be permitted to serve deposition notices which require testimony of parties upon 5 days notice, and that the Court enter a protective order which essentially tracks the standard order used in the Western District of Texas. The motion was filed with the Complaint and motion for preliminary injunction on this date.

The motion fails for several reasons. It fails to contain any authority for the unusual relief it seeks. It also fails to include a certificate of conference with defendants or their counsel as would generally be required of any discovery related motion under the Local Rules. It fails to explain why ex parte consideration is appropriate.

Finally, the request for ex parte relief is unnecessary in that Federal Rule of Civil Procedure

26(d) provides that a party may not seek discovery from any source until after the Rule 26(f) conference. Plaintiff has not asked for relief from the rule. Nor has plaintiff argued that Rule 26(d) is inapplicable in this case. The parties are encouraged to discuss the relief requested through this motion at the Rule 26(f) conference.

For the reasons stated above the emergency motion is ORDERED DENIED.

SIGNED on March 19, 2007.



NANCY STEIN NOWAK
UNITED STATES MAGISTRATE JUDGE