

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION**

I/P ENGINE, INC.

Plaintiff,

v.

AOL INC., *et al.*,

Defendants.

Civil Action No. 2:11-cv-512

**DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION FOR REVIEW OF JUDGE
LEONARD'S RULING ON PLAINTIFF I/P ENGINE, INC.'S THIRD MOTION FOR
DISCOVERY SANCTIONS REGARDING UNTIMELY DISCOVERY RESPONSES.**

After receiving 44 pages of briefing (with 2 declarations and over one hundred pages in 16 exhibits) on Plaintiff's "Third" motion for sanctions regarding source code (D.N. 283, 521, 522, 651), Magistrate Judge Leonard conducted a hearing on October 9, 2012 on Plaintiff's "Second" and "Third" motions for sanctions. Almost an hour of that hearing was spent hearing argument about Plaintiff's "Third" motion for sanctions, and approximately two-thirds of that time was devoted to Plaintiff's argument. After giving both parties a fair and full opportunity to be heard, Judge Leonard gave his ruling from the bench, denying Plaintiff's motion and stating his reasons for doing so. (D.N. 702.) Judge Leonard's ruling was memorialized in his written order later that same day. (D.N. 697.) Plaintiff's request to overturn Judge Leonard's ruling, made after careful consideration of the issues, should be denied.

First, Plaintiff does not address the standard to set aside Judge Leonard's denial of Plaintiff's Third Motion. A district judge to whom a case is assigned may overturn the factual findings and legal conclusions of a magistrate judge on non-dispositive pretrial matters only where the findings are clearly erroneous or the conclusions are contrary to law. 28 U.S.C.

§ 636(b)(1)(A); *see also* Fed. R. Civ. P. 72(a). Although the “contrary to law” standard ordinarily suggests a plenary review of legal determinations, the decisions of a magistrate judge concerning discovery disputes and scheduling should be afforded “great deference.” *In re Outsidewall Tire Litig.*, Nos. 1:09-cv-1217, 1:09-cv-1218, 2010 WL 1849035, at *3 (E.D. Va. May 4, 2010); 12 CHARLES ALLEN WRIGHT, ARTHUR R. MILLER & RICHARD L. MARCUS, *Federal Practice & Procedure* § 3069 (2d ed. 1997) (observing that altering a magistrate judge’s nondispositive orders is “extremely difficult to justify.”). Plaintiff provides no reason to depart from the deference to which Judge Leonard’s ruling is entitled.

Plaintiff argues that Judge Leonard’s Order provides no details of his reasoning for denying the motion. (D.N. 700.) But Plaintiff ignores the reasoning given by Judge Leonard at the October 9 hearing:

This is the kind of argument, discussion that should have gone on in August and the beginning of September. To come into court now and go back and forth about who said what and who shot John is, I think, inappropriate, so the Court is going to deny the motion for sanctions. Based on the circumstances of the request, and the request certainly was very broad, an objection was made and the objection, the Court finds, was not withdrawn. In the answer that was provided – in the supplemental answer that was provided, the objection was maintained by the defendant. The Court is going to find that the response was timely made.

(D.N. 702, 82:7-18.) Plaintiff does not attempt to address Judge Leonard’s reasoning. Nor does Plaintiff address any of the arguments Defendants made in their Opposition.

Instead, Plaintiff argues: "Based on his comments at the hearing, however, it appears Judge Leonard was treating I/P Engine’s motion to strike untimely discovery responses as a motion to compel, because he asked questions about the parties’ meet and confer before the original September 4 responses were served by Defendants." (D.N. 700, 1.) But Plaintiff’s motion sought discovery sanctions. Thus, it was entirely appropriate for Judge Leonard to inquire about a meet and confer.

Plaintiff further argues that "I/P Engine's motion does not relate to the sufficiency of the September 4 interrogatory responses." (D.N. 700, 1.) Yet, Plaintiff complained in its motion for sanctions that it had requested source code by its interrogatory, and alleged that Google should have produced it or identified it in that response. (*See, e.g.*, D.N. 282, 2, 6, 9.)

While Plaintiff argues that Defendants' supplementation violated the Court's Scheduling Order, Judge Leonard explicitly found that Defendants' responses were timely, as detailed above. (D.N. 702, 82.) Notably, Plaintiff does not challenge or address Judge Leonard's reasoning on this issue.

As Plaintiff has shown no basis to overturn Judge Leonard's October 9 Order under the applicable standard, Plaintiff's motion should be denied.

DATED: October 15, 2012

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CERTIFICATE OF SERVICE

I hereby certify that on October 15, 2012, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following:

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