

Exhibit A

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Subject: RE: QSI production
From: "Kevin Russell" <klr@chernofflaw.com>
Date: Fri, Sep 11, 2009 10:46 am
To: "David McGowan" <david.dmcgowan@gmail.com>
Cc: "Scott Jerger" <scott@fieldjerger.com>, <victoria@vkhall-law.com>

All:

A CD has been dropped off at Field Jerger's office.

Have a good weekend.

Kevin

From: David McGowan [<mailto:david.dmcgowan@gmail.com>]
Sent: Friday, September 11, 2009 9:34 AM
To: Kevin Russell
Cc: Scott Jerger; victoria@vkhall-law.com
Subject: Re: QSI production

Dear Kevin--

Thank you for your message. We accept your terms. Please drop the CD off with Scott today and I will coordinate further steps with him.

I should mention that I received a voice mail message from Judge Larson's chambers indicating that they thought Judge White should be signing the order. As you note, he did not, so we will have to sort that out. I wanted to let you know that, but it does not change our agreement to your proposal. If we do not get it sorted out by the end of the month we will follow the procedures specified in your e-mail.

I do want to make clear that we believe QSI needs at some point to comply fully with the terms of the subpoena. If for some reason we wind up following the procedures specified in your point (2) we will also continue to seek an agreeable order from a judge, as you mention.

My thanks for your assistance in maintaining our discovery schedule, and my best wishes for your weekend.

DM

On Thu, Sep 10, 2009 at 3:01 PM, Kevin Russell <klr@chernofflaw.com> wrote:

Dear David and Scott:

You are correct, the existing protective order between the parties in the underlying case is not appropriate

for QSI. I have not reviewed the differences between the existing protective order of the parties and the proposed protective order with QSI.

Likewise I fail to see why an outline of the differences (see below) between two different protective orders has any relevance.

I briefly reviewed the court record and it appears that Judge White recently denied your request to sign the protective order. I am unaware of the reason why Judge White denied the request, but sufficient to say, there is no guarantee that the court will ever enter the protective order for QSI in this case.

That being said, I am trying to be of assistance in providing the documents that you requested in some agreeable manner so that the confidentiality of the materials and related testimony are protected as been the parties, and as it relates to third parties which are not a party to the contract.

I will provide the remaining materials to the parties before the scheduled deposition on the following terms:

- (1) The parties stipulate to treat QSI's materials under the signed protective order with QSI.
- (2) If a Judge does not sign the QSI protective order by September 30, 2009 then all such materials will be returned; and all copies (or otherwise) of the materials in the parties (including attorneys) possession will be destroyed; and all related deposition testimony will be stricken from the record, and all such materials and testimony may not be used in any manner whatsoever until such a time that an agreeable protective order is signed by a Judge.

I am unavailable this weekend and most of Friday due to other commitments, but will try to drop off the materials at the office of Field Jerger on Friday if the above terms are agreeable. At that point you can coordinate with the offices of Field Jerger in some manner for distributing the materials.

I am trying to be helpful, though in light of Judge White denying to sign the protective order (without comment) you need to understand that it is necessary to ensure that there is some limited protections in place for QSI's materials.

Best

Kevin Russell

From: David McGowan [mailto:david.dmccgowan@gmail.com]
Sent: Thursday, September 10, 2009 2:11 PM
To: Kevin Russell; Scott Jerger; Victoria Hall
Subject: QSI production

Dear Kevin--

You have in the past indicated that QSI does not find acceptable the protective order the court has entered in this case, which allows QSI as a third party to designate material as "Attorney's Eyes Only." You have stated QSI will not complete its production in response to the subpoena served on it on June 5, 2009 until the court signs your variation on that order, which all parties have signed and which is under submission now.

Because the depositions of QSI witnesses are scheduled for early next week, I write to memorialize the differences between the two orders. Insofar as I can tell, they differ in the following respects:

1. You have deleted the word "extremely" in Section 2.4 of the existing order so QSI may designate merely "sensitive" rather than "extremely sensitive" information.
2. You have deleted two paragraphs in Section 5 of the existing order. These prohibited mass, indiscriminate designations and required designating parties to remove designations if they learn those designations are inappropriate.
3. You have deleted the word "timely" in paragraph 5.3 of the existing order, so that you need not make a timely correction of a failure to designate.
4. The existing order allows disclosure to persons working under the supervision of outside counsel who sign an acknowledgment of the terms of the order, whereas your order allows disclosure only to "employees." (Mr. Jerger and I agreed to this change to allow disclosure to student research assistants who sign the acknowledgment, who are not technically my employees.)

We have agreed to these changes by signing your variation on the order, and we remain happy to stipulate that we will treat QSI's production under those terms.

You have made your position clear, I think, and I do not write to argue about it. Given the stage we have reached, however, I think it useful to make clear the differences you rely on in taking the position you have articulated. If I have missed any changes QSI cares about, please let me know.

Very truly yours,

DM

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