

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH

KIM PETER TILLMAN,

Plaintiff,

Case No.: 15-81782-CIV-
MARRA/MATTHEWMAN

v.

ADVANCED PUBLIC SAFETY, INC. and
TRIMBLE, INC.,

Defendant.

**REPLY TO PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANT'S
SUPPLEMENTAL BRIEF REGARDING ATTORNEYS' FEES**

Defendant, **ADVANCED PUBLIC SAFETY**, by and through its undersigned attorney, hereby files its Reply to Plaintiff's Response in Opposition to Defendants' Supplemental Brief Regarding Attorneys' Fees, and states as follows:

1. Plaintiff's accusation that APS' Supplemental Briefing was an attempt to evade the Court's Order is not only offensive, but wholly without merit.

2. At the time this litigation was filed, APS was a wholly owned subsidiary of Defendant, Trimble, Inc. Thus, Trimble undertook the defense of both entities and the cost of that defense. In July 2016, when APS was sold to Aptean, a totally unrelated company, Trimble retained the obligation to defend and front the cost of defense for APS.

3. Contrary to Plaintiff's assertions, APS Supplemental Briefing is not overly inclusive, nor does it seek to recover "essentially *all*" of the fees incurred. APS' Supplemental Briefing seeks fees specifically arising from work performed on behalf of APS which was required to defend Plaintiff's claims arising out of the 2004 Representative Agreement. In fact, the request for fees was limited in duration up through the granting of summary judgment in July 2017.

4. Plaintiff's argument that somehow APS' briefing seeks to recover fees for Trimble is spurious. If Trimble was not a party to the 2004 Representative Agreement, then any fees sought attendant thereto could not be related to Trimble. Plaintiff claims that because the invoices were addressed to Trimble, somehow APS is trying to recover fees for Trimble's benefit. That is a ridiculous argument. The fact that Trimble, paid the fees, does not change that the fees incurred were incurred on behalf of APS in defense of Plaintiff's claims regarding the 2004 Representative Agreement.

5. Plaintiff's objections regarding fees related to the search of the virtual server are unfounded. The original search included terms related to commissions and bonuses. [See exh. A] Furthermore, the revised search terms had a broad search for "Peter Tillman." [See exh. B] Plaintiff and his counsel were aware that the virtual server included files from several custodians, including the former Controller for APS. Thus, a search of Peter Tillman would likewise involve searches related to his compensation, commissions, and bonuses related to the Representative Agreements. Trimble necessarily had to conduct the searches as the virtual server was in their possession, custody, and control. It's physical location and who did the search is not the barometer for whether or not those fees were incurred in defense of the breach of contract claim against APS arising out of the 2004 Representative Agreement.

6. Fees related to Sean Garrison are clearly relevant as one of Plaintiff's arguments under his breach of contract claim for why he believed he should have been paid pursuant to the 2004 Representative Agreement is that Mr. Garrison received similar payments. Therefore, it was necessary to explore that line of questioning with Mr. Garrison to defend against those arguments.

7. Plaintiff is disingenuously trying to evade the Court's ruling on APS' entitlement to

fees by trying to hide behind “who paid the bill.” Plaintiff has not cited one case to support such a novel argument. APS is entitled to the fees it incurred in defending itself against Plaintiff’s claims regarding the 2004 Representative Agreement.

8. Jeffrey Rubenstein was not hired as an expert regarding the 2004 Representative Agreement. However, during his deposition, Plaintiff’s counsel elicited information regarding Plaintiff’s compensation, which was straight commission, related to that agreement. Therefore, APS would seek 15% of its fees relating to Jeff Rubenstein.

9. Regarding the entries that include Jacqueline Bartlett along with William Martin on pages 29-31 of Plaintiff’s Ex. 1, APS would request 50% of the fees as William Martin was an integral witness regarding Plaintiff’s compensation, including the 2004 Representative Agreement.

10. APS did not seek fees related to Hal Marshall’s testimony at trial. However, it has sought fees relating to discussions with Mr. Marshall which did include discussions about Plaintiff’s compensation, including commissions related to his 2004 Representative Agreement.

11. Plaintiff’s objections, regarding the following entries are well taken:

- a. 7/21/16 – Draft/revise Trimble’s responses to plaintiff’s first set of interrogatories, and
- b. 1/3/17 – Review and analysis of plaintiff’s second set of interrogatories to Trimble.
- c. Fees relating to the deposition of Michael Sparks.
- d. Fees relating to Lori Ciccone.
- e. Travel time.

12. Other than these agreed to deductions, APS requests that this Court overrule any other

generalized objections contained in Plaintiff's response.

13. In addition to the foregoing arguments, APS stands on its Supplemental Briefing and denies any other basis for Plaintiff's opposition to its Supplemental Briefing.

13. Plaintiff requests that this Court reduce APS's claim for fees from \$252,271.50 to \$5,730.00 and then only award APS 50% of that amount giving some "windfall" to APS. As evidenced by the attached Engagement Letter, APS, like Trimble, were obligated to pay attorneys' fees incurred in the defense of this lawsuit. [See exh. C]

14. Moreover, Plaintiff has not met its burden of providing this Court with sufficient specificity to allow the court to determine what Plaintiff's is arguing is unreasonable or unnecessary. Plaintiff's key coding on APS invoices, random reduction of over 90% of the billing, and the additional request for a 50% reduction, without more, is insufficient. When responding to motions for attorney's fees, opponents are required to lodge specific objections to any requests. *See Am. Civil Liberties Union v. Barnes*, 168 F.3d 423, 427 (11th Cir. 1999) (stating that objections from fee opponents must be to be specific and "reasonably precise"); *Norman v. Housing Auth. of Montgomery*, 836 F.2d 1292, 1301 (11th Cir. 1999) ("[a]s the district court must be reasonably precise in excluding hours thought to be unreasonable or unnecessary, so should the objections from fee opponents.")

WHEREFORE, Defendant, Advanced Public Safety, Inc., respectfully request that this Court grant its request for attorneys' fees set forth in its Supplemental Briefing, less the agreed deductions set forth in this Reply.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via E-Mail this 21st day of May 2018, to the following: Anthony J. Nelson, Esquire and Roger

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