

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

TELEDYNE INSTRUMENTS, INC.,

Plaintiff,

v.

Case No. 6:12-cv-00854-JA-TBS

JAMES L. CAIRNS, Individually and
as “Trustee’s Agent of the Trust” of the
STILLWATER TRUST; the STILLWATER
TRUST; KATHRYN F. KRAUSE, Trustee of
the STILLWATER TRUST; and
ABYSSAL SYSTEMS, INC.,

Defendants.

_____ /

**PLAINTIFF TELEDYNE INSTRUMENTS, INC.’S MOTION TO COMPEL
PRODUCTION OF FORENSIC IMAGES AND DEVICES AND A PRODUCTION LOG
IN ACCORDANCE WITH RULE 34**

Plaintiff Teledyne Instruments, Inc. files this motion to compel the production of forensic images and certain electronic devices for inspection and to compel Defendants to produce a production log in accordance with Rule 34 that ties the documents produced to the request to which they are responsive.

I. Defendants Should Be Compelled to Produce a Forensic Image of Devices, and the Devices Themselves, that Teledyne Believes Contained Its Property, Including Confidential Information

Late in the evening of Friday, June 21, 2013, at approximately 8:10 p.m. Eastern time, Teledyne’s counsel received from opposing counsel an 86-page chart containing metadata information for thousands of electronic files — although the letter accompanying the chart, which was delivered via e-mail, did not explain in any way what the chart was intended to communicate. *See* June 21, 2013 e-mail & June 21, 2013 letter from K. Keenan to W. DeForest, Ex. A;

and Defendants' chart CAA00014446 - CAA00014532, found as Ex. B. The chart, which purportedly represents a subset of electronic media files in Dr. Cairns' possession, turned out to contain metadata from native files previously produced by Defendants, which in many cases was different from and in other cases was not even included with the native files originally produced by Defendants. Teledyne believes this data is evidence, when understood and explained by its electronic data expert, that shows Dr. Cairns had possession of Teledyne's property, including Confidential Information, when he was not authorized to do so.

Because Defendants' metadata chart raised serious issues about Defendants' handling of Teledyne's property, Teledyne sought forensic images in Defendants' possession of the devices, as well as the devices themselves. *See* Teledyne's Requests for Production dated July 26, 2013 nos. 1-2 and Defendants' Responses, attached as Ex. C. Request for production no. 1 asks for a forensically sound duplicate of any device identified or of any electronic copies made. Defendants' response states that they "have produced or will produce a forensically sound duplicate of the electronic *files* listed in CAA00014446 – CAA00014532 and all system metadata associated with such files currently in Defendants' possession." (Emphasis added.) But this is not responsive to what Teledyne is seeking and misconceives the analysis that Teledyne wishes to undertake. Teledyne is asking for and is entitled to forensically sound images of the devices in question, not merely the files produced in the litigation. Those images are essential to an informative analysis of what Defendants may have done with Teledyne's property and when they had possession of it. Defendants' refusal to comply ignores the technical nature of a forensic analysis of electronic media and improperly prevents Teledyne from having full access to the relevant information in this case. There is no burden to Defendants to simply make an electronic copy of the electronic file used to produce Defendants' chart. Further, Defendants' own response to

Teledyne's Interrogatory no. 13 admits that they have forensic images already in their possession: "Forensic images and logical images were taken of all computer(s), hard drive(s), thumb drive(s), and any other device(s) identified in CAA00014446 – CAA00014532." (Interrogatory no. 13 and Response attached as Ex. D.)

Similarly, Defendants' response to request for production no. 2, which seeks the original devices for forensic inspection and copying, has the same problem of treating production of a "forensically sound duplicate of the electronic files" as equivalent to production of the device itself. It is not. The native files Defendants have produced are not forensically sound duplicates of the *devices* in question, and Defendants should be compelled to produce those devices for inspection and copying as Teledyne has requested.

The reason this electronic discovery is necessary is because Defendants themselves produced the metadata chart that, in the view of Teledyne's expert Daniel L. Regard, reflects unreliable and/or erroneous information about the files in question. *See* Report of Daniel L. Regard attached as Ex. E. Therefore the devices themselves are necessary for Teledyne to understand what Defendants have, in fact, been doing with what Teledyne believes to be its property. There is no reasonable argument that such production would unduly burden Defendants, as Teledyne has agreed to take on the expense of making the necessary forensic images and copying, if only Defendants would make the devices available. By refusing to comply, Defendants are hampering the proper aim of discovery to allow all the relevant facts to be explored before trial.

II. Defendants Should Be Compelled to Produce a Production Log in Accordance with Rule 34 — Organizing the Documents Produced "to Correspond to the Categories in the Request"

Despite repeated requests from Teledyne dating back at least to May 14, 2013, Defendants have failed to produce a production log identifying which documents produced are respon-

sive to which requests for production or interrogatories. *See* May 14, 2013 letter from W. DeForest to M. Hartmann (relevant excerpts attached as Ex. F). The so-called “production log” eventually disclosed by Defendants on August 28, 2013 (letter from M. Brandt to W. DeForest attached as Ex. G) does not do so, which makes it difficult or impossible for Teledyne to understand the nature of Defendants’ production. The supposed “production log” includes a categorization and general description of the files and some metadata associated with the files, but does not tie to the requests for production to which the documents respond. *See* Defendants’ Production Log 1-5 attached as Exhibit H.

To aid the proper functioning of discovery, Federal Rule of Civil Procedure 34(b)(2)(E)(i) requires that “[a] party must produce documents as they are kept in the usual course of business or must organize and label them to correspond to the categories in the request.” There is no other alternative: If a party is not producing documents “as they are kept in the usual course of business,” then “[t]hat leaves the producing party with the obligation to ‘organize and label’ the documents to correspond to the document requests.” *In re Sulfuric Acid Antitrust Litig.*, 231 F.R.D. 351, 363 (N.D. Ill. 2005) (ordering producing party to label documents accordingly to document request); *see also City of Wichita v. Aero Holdings, Inc.*, No. 98-1360, 2000 WL 1480499, at *1 (D. Kan. May 23, 2000) (“Considering the volume involved, defendants’ failure to label the documents to correspond with the individual production requests was improper and tantamount to no response at all.”).

In Defendants’ production, nothing (such as file folders or other means of organizing records) indicates that the produced documents are as maintained in the “usual course of business,” and in response to Teledyne’s noting that fact, Defendants have not suggested so. Accordingly, Defendants are required to, by Bates number, identify which documents they have produced are

responsive to each specific request for production. (For each production that Plaintiff has made, Plaintiff has produced a production log for that production.) But the “production log” (just produced by Defendants at 11:45 p.m. on August 28) fails to meet this basic requirement of Rule 34, which hampers Teledyne’s understanding and analysis of just what Defendants have produced. Defendants have produced numerous documents and files in this matter, totaling more than 23,000 pages. Without an identification by Defendants of what documents have been produced in response to which request for production, Plaintiff is left without the information as to which RFP subject the documents are intended to respond. Defendants’ own description of their production log and accompanying summary chart shows that Defendants’ log does not tie the production of their documents to Plaintiff’s specific requests for production. *See* Production Log, Ex. H. Teledyne respectfully requests that the Court order Defendants to compile and issue a production log that is organized to tie the documents produced to the corresponding document request as Rule 34 requires.

III. Conclusion

For the foregoing reasons, Teledyne respectfully requests that the Court grant its motion to compel Defendants to make available for inspection and copying (a) the forensic images utilized to produce the chart found as Ex. E and (b) the devices themselves from which data on the chart was taken in response to Teledyne’s Requests for Production 1 and 2 as explained above; and to produce a production log in accordance with Rule 34.

* * * *

Local Rule 3.01(g) statement: Plaintiff’s counsel states that he has conferred with Defendants’ counsel in a good faith effort to resolve the issues raised by this motion, but they have been unable to agree on a resolution.

s/Walter P. DeForest, III

Walter P. DeForest, III, Esquire
DeForest Koscelnik Yokitis Skinner
& Berardinelli
436 Seventh Ave., 30th Floor
Pittsburgh, P A 15219
Tel: 412-227-3100
Fax: 412-227-3130
Email: deforest@deforestlawfirm.com

F. Bradley Hassell, Esquire
Florida Bar No.: 0260592
Thomas C. Smith, Esquire
Florida Bar No.: 0154652
TCS@Hassell-Legal.com
HASSELL-LEGAL. P.A.
1616 Concierge Boulevard, Suite 100
Daytona Beach, FL 3211 7
Ph: (386) 238-1357/Fax: (386) 258-7406

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 30th day of August, 2013, he served the foregoing document electronically via the Court's CM/ECF system on the following counsel, with confidential exhibits served via U.S. mail:

Robert Alfert, Jr.
Kimberly Doud
Broad and Cassel
Bank of America, Ste. 1400, 390 N. Orange Ave.
Orlando, Florida 32801-4961

H. Michael Hartmann
Wesley O. Mueller
Leydig, Voit & Mayer, Ltd.
Two Prudential Plaza, Ste. 4900
Chicago, IL 60601

s/ Walter P. DeForest, III