

IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE  
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY

UNIVERSAL STRATEGY GROUP, )  
INC., )

Plaintiff, )

VS. )

NO. 16-15-BC

BRIAN DAVID HALSTEAD, )

Defendant. )

---

BRIAN DAVID HALSTEAD, in his )  
individual capacity and derivatively for )  
UNIVERSAL STRATEGY GROUP, )  
INC., )

Counter-Plaintiff, )

VS. )

UNIVERSAL STRATEGY GROUP, )  
INC., and TIMOTHY SLEMP, )

Counter-Defendants. )

CONSOLIDATED WITH

UNIVERSAL STRATEGY GROUP, )  
INC., )

Plaintiff, )

VS. )

NO. 17-136-BC

BRIAN DAVID HALSTEAD, )

Defendant. )

**MEMORANDUM AND ORDER GRANTING DEFENDANT HALSTEAD'S  
MOTION REGARDING ESI SEARCH COSTS BUT  
IMPLEMENTING DIFFERENT RELIEF**

With respect to Defendant Halstead's motion that: (1) the Court order that the \$15,892.50 Defendant Halstead has already spent for LogicForce to run search terms should be credited against the \$10,000 cap set by the Court in its February 8, 2018 order, for running search terms, and (2) that the Court not require Defendant Halstead to run any further search, that relief is denied. The reason for the denial is that the cost the Court projects for Defendant's Counsel to review for privilege the documents yielded by the \$15,892.50 LogicForce search would exceed the \$15,000 the Court had built in and estimated it would take for Counsel to review the documents for privilege.<sup>1</sup> For this reason, while the Court concludes the Defendant's motion has merit, the relief sought by the Defendant shall not be granted.

Instead, it is ORDERED that the Plaintiff, by March 16, 2018, shall pay to Defendant the LogicForce Invoice Number 19829 in the amount of \$15,892.50

The rationale for the above order of payment by Plaintiff is that the \$10,000 cap set by the Court in its February 8, 2018 Order on the cost for the vendor search and production was to cure the failure of the Plaintiff to use standard Boolean search strings and a narrowed, reasonable timeframe in the initial search terms the Plaintiff sent to the

---

<sup>1</sup> The February 8, 2018 Order sets a \$25,000 cap on ESI between the Plaintiff and Defendant as proportionate to the case. The Court arrived at the \$25,000 by (a) capping \$10,000 for the IT vendor to run the search, (b) leaving \$15,000 for each party's Counsel to review the ESI for privilege, prepare a privilege log, and produce the discovery.

Defendant. These deficiencies in the Plaintiff's initial search terms, yielded for: direct, top-level, family, and unique matches a total of 315,134 hits which Defendant's Counsel asserts requires review of about 223,000 document families. This volume of matches required the Court to enter an order on December 15, 2017, for the Plaintiff to revise its search terms. When this order did not solve the problem, the Court next implemented the \$10,000 cap method in its February 15, 2018 Order to force the Plaintiff to a manageable search.

At the time of the issuance of the February 15, 2018 Order, however, the Court was not aware that, in compliance with the Court's October 19, 2017 order, requiring the parties to run one another's proposed search terms and produce "hit lists" reports by January 8, 2018, Mr. Halstead had spent \$15,892.50 running USGI's search terms through January 8, 2018. Mr. Halstead did this to comply with the October 19, order. Additionally, USGI did not obey the October 19, 2017 order, did not run Mr. Halstead's search terms, and did not produce a hit list report. Instead, the Plaintiff waited until the deadline to file a motion requesting relief from the October 19, 2017 order.

As to the Plaintiff's assertion that "While, USGI is not in a position to dispute the bill produced by Halstead's expert, USGI has reviewed the hit list, the method of the search that created it, and had its own expert review the list, and finds it summarily useless because of the methodology under which the search was conducted," there is no expert IT affidavit to support the Plaintiff's claim that it was not the broad and

non-standard format search terms Plaintiff provided that yielded the huge number of matches but the Defendant's IT vendor's methodology which resulted in Defendant incurring the \$15,892.50 cost. Additionally, LogicForce, the Defendant's vendor, is one of the most used vendors in this Court which also undercuts Plaintiff's claim of incompetent methodology.

Accordingly, based upon the Court's finding that it was the Plaintiff who caused the \$15,892.50 to be needlessly incurred, that the yield from the \$15,892.50 search is too unwieldy as to be useful, and that the \$10,000 cap ordered on February 15, 2018, will force the Plaintiff to provide a search that will result in a yield for attorney review for privilege that is proportionate to the case, the Court has not entered the relief sought by the Defendant but has instead entered the above order that the Plaintiff pay to the Defendant, by March 16, 2018, the LogicForce Invoice Number 19829.

It is further ORDERED that both parties shall proceed with the deadlines stated in the February 15, 2018 Memorandum and Order, as follows.

It is ORDERED that Plaintiff, Universal Strategy Group, Inc., shall consult with its ESI vendor and shall prepare search terms to be served no later than **March 2, 2018**, on Defendant Halstead for production of ESI discovery whose search cost will not exceed \$10,000. By **March 9, 2018**, Defendant Halstead shall have consulted with its ESI vendor and shall confirm to Counsel for the Plaintiff that the search cost for the Plaintiff's terms will not exceed \$10,000.00. This same procedure and deadlines shall be implemented by Defendant Halstead of consulting with his ESI vendor to prepare and serve on Plaintiff USGI by **March 2, 2018**, search terms for production of ESI discovery whose search cost will not exceed \$10,000.00, and confirmation communicated by Plaintiff's Counsel by **March 9, 2018**, that the search cost by Plaintiff's ESI vendor will not exceed \$10,000.00.

Thereafter, it is ORDERED that the ESI vendors shall complete the searches, Counsel shall review the search yields for privilege, and shall produce to the other side the ESI discovery by March 23, 2018.

It is also ORDERED that the following provisions of the February 8, 2018 Order remain in effect.

In addition, from the January 31, 2018 hearing and filings for that hearing, the Court finds and concludes that the total cost for **each** side, Plaintiff and Defendant, for: running the other side's ESI search terms and obtaining the results (capped above at \$10,000.00), attorney review of the results for privilege, and production of the ESI, which total cost for all these tasks is proportionate to the case, is \$25,000.00 for each side. This \$25,000.00 finding shall be used by the Court going forward as a gauge and touchstone on any future ESI disputes and in deciding at the conclusion of the case motions for shifting discovery costs to the other side.

It is further ORDERED that a stay is issued with respect to the CounterDefendant Slemm having to run search terms and produce ESI discovery without prejudice to CounterPlaintiff to move to lift the stay after the ESI discovery outlined above has been completed showing that such ESI discovery is not duplicative.

\* \* \*

Lastly, it is ORDERED that for clarity and certainty, by February 14, 2018, Counsel for the Plaintiff and Defendant shall file the lists, they compiled and exchanged in emails, of the devices to be searched. It is ORDERED that Plaintiff's motion filed January 12, 2018, regarding production of SIM cards is denied.

It is further ORDERED that pursuant to Rule 54.02, the following provision in the February 8, 2018 Order shall be altered. Presently the February 8, 2018 Order provides,

It is additionally ORDERED that any motions for cost shifting on ESI discovery shall be filed at the conclusion of the lawsuit after liability, damages and remedies have been decided. This includes holding in abeyance until the conclusion of the lawsuit any motions of USGI concerning the fear of excessive costs to prepare a mirror image of USGI's

server. In response to that fear, at this time the measure the Court is taking is the dollar limitation on search terms.

The alteration is that, as ordered above, the Court has made a determination on cost shifting by concluding that the Plaintiff shall bear the total cost for the LogicForce search of \$15,892.50 because the Plaintiff's search terms were not specifically tailored, even though the Plaintiff had the ability and incentive to provide a standard Boolean search. This is the only cost shifting that shall occur at this time. All other matters related to cost shifting on ESI discovery shall be filed at the conclusion of the lawsuit after liability, damages and remedies have been decided. This includes holding in abeyance until the conclusion of the lawsuit any motions of USGI concerning the fear of excessive costs to prepare a mirror image of USGI's server. In response to that fear, at this time the measure the Court is taking is the dollar limitation on search terms.

/s/ Ellen Hobbs Lyle

ELLEN HOBBS LYLE  
CHANCELLOR  
BUSINESS COURT DOCKET  
PILOT PROJECT

cc by U.S. Mail, email, or efilng as applicable to:

Bryan K. Williams  
J. Alex Little  
W. Justin Adams  
John R. Jacobson  
D. Andrew Curtis