

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

UNIVERSAL STRATEGY GROUP,)
INC.,)

Plaintiff,)

VS.)

BRIAN DAVID HALSTEAD,)

Defendant.)

NF
NO. 16-15-BC

CLENN & HASTEN
DAVIDSON CO. CHANCERY CT
D.C. & M.

2016 MAY 16 AM 9:11

FILED

**MEMORANDUM AND ORDER: (1) GRANTING PLAINTIFF'S
MOTION TO COMPEL WITH MODIFICATION FROM SUBPOENA TO
RULE 34 REQUEST; (2) DENYING DEFENDANT'S MOTION TO QUASH;
(3) RULE 42.02 ORDER TO PRIORITIZE HEARING ON POSSESSION**

After studying the motions, briefs and exhibits of Counsel, the pleadings, the law of recovery of personal property (Tenn. Code Ann. §§ 29-30-101 *et seq.*) and the Tennessee Rules of Civil Procedure on discovery, attorney/client privilege and work product, the Court denies the Defendant's motion to quash and grants the Plaintiff's motion to compel with the modification from a Rule 45 subpoena to a Rule 34 request for production on a party opponent as follows.

It is ORDERED that Defendant shall arrange for its custodial agent, Logic Force Consulting, LLC, to make available, at a time convenient to Plaintiff and its Counsel, the Devices listed as items 1, 2 and 3 in the attachment to the March 9, 2016 subpoena *duces*

tecum served on Logic Force, for inspection, testing and the other functions listed under Tennessee Civil Procedure Rule 34 with respect to tangible property.

It is further ORDERED that the same arrangement shall be made as to the information, data and electronically stored information (the "Data") on the Devices to inspect, copy, list or sample.

It is additionally ORDERED that if any of the Rule 34 discovery ordered above involves Plaintiff materially altering its condition, Plaintiff shall file with the Court, by May 19 at noon, the conditions under which it seeks to perform such actions to obtain an order for the same, and/or to submit to the Court a proposed protective order as suggested on page 6 of its April 27, 2016 *Reply*.

With respect to items 4, 5 and 6 on the attachment to the subpoena, the Court considers these to be requests for production on the Defendant. The Court further concludes some are not privileged and others may be. Accordingly, the Court divides the communications requested in items 4, 5 and 6 into two groups. It is ORDERED that as to the communications, requested in items 4, 5 and 6 of the subpoena pertaining to Logic Force taking custody and preserving the Devices and Data, those communications are not privileged and shall be produced by May 27, 2016. However, as to any communications seeking for Logic Force to analyze, test or other expert services, related to the issues in the complaint of wrongdoing by the Defendant, such communications shall not be produced at this time.

In addition to ruling on the discovery dispute contained in the parties' motions, the Court, pursuant to Tennessee Civil Procedure Rule 16, issues the following case management.

It is ORDERED that pursuant to Rule 42.02, the Court orders a separate trial on items (c) and (h) of the request for relief, pages 8 and 9, of the January 6, 2016 *Complaint and Request for Injunctive Relief Seeking Possession of the Devices*. At the upcoming hearing on May 20, 2016, on Plaintiff's motion to dismiss the Defendant's counterclaim, Counsel shall notify the Court of their availability to try items (c) and (h) of the requested relief of the *Complaint* on:


June 22 and 23
June 27 and 28
July 5 and 6

The requested relief in items (d), (e) and (f) relating to dissemination of Plaintiff's information, and items (g), (i) and (k) may require more discovery and shall be tried at a later date.

The facts, law and reasoning on which the foregoing orders are based are, first, that the Court finds that the record establishes that Logic Force is the agent of the Defendant to have custody and preserve the Devices and Data. Accordingly, the Court concludes that the most appropriate procedural vehicle is service of the discovery on the Defendant under

Tennessee Civil Procedure Rule 34, instead of a subpoena, because Logic Force is not precisely a nonparty as contemplated by Rule 45.

It appears that the Defendant may also have retained Logic Force as its expert to analyze and test the Devices and Data pertinent to the issues of the alleged wrongdoing of the Defendant in addition to Logic Force's role as custodian. With the February 22, 2016 agreed temporary restraining order in effect, however, such expert testing and analysis cannot proceed. Due to the potential role of Logic Force as a consulting or trial expert, the Court has denied production of communications of the Defendant and Logic Force with respect to expert work concerning Defendant's alleged wrongdoing. Nevertheless, the Court has granted Plaintiff's motion to compel with respect to the communications between the Defendant and Logic Force on custody and preservation because that custodial role of Logic Force does not involve expertise and relates to and is calculated to lead to the discovery of admissible evidence on Plaintiff's claims of chain of custody and spoliation.



ELLEN HOBBS LYLE
CHANCELLOR
TENNESSEE BUSINESS COURT
PILOT PROJECT

cc: Bryan K. Williams
J. Alex Little
Susan Neal Dickerson



MAILED + faxed
5-16-16