

Subpoenaed Parties had been found by other courts to have abused the judicial process. On November 28, 2017, the court set a hearing on this motion.

On November 29, 2017, the court entered an agreed order that compelled the Subpoenaed Parties to "produce to [Plaintiff], without any objection, including without limitation any objection based on privilege, common interest privilege, work product, or any other objection, all documents requested in the subpoenas at issue (Doc. Nos. 1-1, 1-2, 1-3, 1-4) by 12:00 p.m. (Central) on December 3, 2017." The order also expressly noted that the court retained jurisdiction to enforce the order.

On December 4, 2017, Plaintiff filed the present motion based on the Subpoenaed Parties' failure to comply with Judge Lake's November 29, 2017 order. The court attempted to immediately set a hearing on this matter, but due to objections by DeRosa-Grund based on his unavailability, the matter was not heard until December 11, 2017. During the lapse of time, Plaintiff filed additional evidence of DeRosa-Grund's violation of Judge Lake's order on December 8, 2017. That filing showed that the Subpoenaed Parties have withheld numerous relevant documents from production and confirmed Plaintiff's suspicions that DeRosa-Grund was controlling the litigation in the Eastern District of Virginia. One DeRosa-Grund email instructed the plaintiff in that litigation, Brittle, not to share certain documents with his own attorney. Brittle

outlined DeRosa-Grund's obstructive litigation tactics in a declaration attached to Plaintiff's Notice of Additional Evidence of Contempt.

In response, the Subpoenaed Parties argue that they produced many documents to Plaintiff via Dropbox prior to the December 11, 2017, and were overwhelmed by the production requests. The Subpoenaed Parties offered to provide a third-party forensics expert with access to information in all of the email accounts and to image the computers belonging to the Subpoenaed Parties. DeRosa-Grund blamed his lack of compliance with Judge Lake's order on internet-access issues but failed explain why he declined to accept Plaintiff's counsel's suggestion that he simply download the requested material onto a thumb drive.

Plaintiff has requested that the court find the Subpoenaed Parties in contempt of court. There is no question that the Subpoenaed Parties have violated Judge Lake's order without adequate excuse. However, because of the offers made by the Subpoenaed Parties to resolve the issues without a finding of contempt, the court makes the following orders to clarify production of materials previously ordered by the court and to ensure, in light of the recent filing showing material omissions in production by the Subpoenaed Parties, that all relevant materials are produced and that the court's prior order is not subverted.

It is **ORDERED** that, effective immediately, the Subpoenaed

Parties must cease any and all deletion or disposal of electronically information or hard copy materials requested in the subpoenas in issue, including, without limitation, any and all data stored on personal computers, mobile devices, tablets, touchscreens (e.g., text messages, messaging on social media applications, notes and other user-generated content), in email accounts (e.g., email, calendar entries, notes, drafts), on computers (e.g., text files, spreadsheets, or other user-generated content), on third-party storage services (e.g., Dropbox, iCloud) portable storage devices (e.g., USB drives), on personal servers or other local storage media, or any other material requested in the subpoenas at issue.

It is further **ORDERED** that on December 11, 2017, between the hours of 2:00 p.m. and 3:00 p.m., Tony DeRose-Grund allow the forensics firm hired by Plaintiff to take possession of any: digital media device in the possession, custody or control of one or more of the Subpoenaed Parties, including but not limited to computers (e.g., Surface Pro, laptops and desktops, whether currently in use or not), mobile devices (e.g., cell phones, including without limitation the cell phone with the number 281-806-9423, tablets (e.g., iPads, touchscreens, Surface Pro), file servers, hard drives (internal or external) portable media (e.g., USB memory sticks), compact disks, floppy disks, tapes, and any other personal electronic devices ("Devices"). The forensics examiner shall image all Devices as soon as practicable and the

Devices shall be available for pickup by the Subpoenaed Parties on a rolling basis as soon as the image of that Device is completed. If the Subpoenaed Parties opt not to pick up the Devices on a rolling basis, the forensics examiner shall return the Devices when all the Devices have been imaged.

It is further **ORDERED** that the Subpoenaed Parties immediately provide to the forensics examiner any user names, passwords, or other information necessary to access any email accounts, email servers, cloud services, or any other data transmission, receipt, or storage service, whether web-based or not (including without limitation Dropbox) on which the Subpoenaed Parties have sent or received any email or stored or transmitted or received any data, or saved any documents, including but not limited to, discovery requests or responses, exhibits, attachments, spreadsheets, emails, files, PDFs, notes and/or drafts ("Email/Server/Cloud/Web"). To the extent that the Subpoenaed Parties' assistance may be required for the forensic examiner to gain access to any data on the Email/Server/Cloud/Web, the Subpoenaed Parties shall immediately provide such assistance upon being informed of the need for assistance by the forensic examiner. The forensic examiner shall forensically preserve all data obtained from the Email/Server/Cloud/Web.

It is further **ORDERED** that by close of business December 11, 2017, Plaintiff shall provide a list of search terms to the

Subpoenaed Parties in order to identify responsive documents to the subpoenas at issue. Objections to the proposed search terms shall be addressed at a hearing set before the Court on December 12, 2017. The Subpoenaed Parties may object that the search terms are outside the scope of the original subpoenas, but no other objection may be raised to the scope of the search, with one exception. The Subpoenaed Parties may assert an attorney-client privilege with respect to communications with Johnie Patterson that occurred after December 4, 2017, filing a detailed privilege log to support the claim of privilege with respect to each email.

Once the search terms have been approved by the court, the forensics examiner shall search the Devices and the Email/Server/Cloud/Web using the search terms. The forensics examiner shall also examine the Devices and Email/Server/Cloud/Web for evidence of file-wiping or evidence-erasing programs, techniques or activities.

It is further **ORDERED** that the forensics examiner shall provide to Plaintiff and the Subpoenaed Parties with a report of the results of the search and whether there was evidence of file-wiping or evidence-erasing software, techniques or activities. The report shall only list (1) the filename or email subject line of each file for which there was a hit for a search term within the file or email, (2) text message dates and recipients and sender for which there was a hit for a search term within the text, (3) in the

case of a responsive file, the file location, (4) any instance of unallocated space as to which there was a hit for a search term; and (5) any findings regarding indications of file-wiping or evidence-erasing programs, techniques, or activities.

It is further **ORDERED** that the forensic examiner shall provide to the Subpoenaed Parties the report and the responsive documents. Plaintiff will notify the court's case manager of the number of documents that are responsive to the search terms.

It is further **ORDERED** that within a period to be set by the court, the Subpoenaed Parties may file objections with the court that any particular document is outside the scope of the subpoenas at issue. No objection other than "outside the scope of the subpoenas" will be permitted, with the sole exception of a claim of attorney-client privilege for documents or email communications occurring after December 4, 2017 between the Subpoenaed Parties and Johnie Patterson. A privilege log will be prepared for any document within this exception. The court will rule on those objections at a hearing to be set.

It is further **ORDERED** that the forensics examiner provide to Plaintiff and the Subpoenaed Parties an affidavit detailing the steps taken in the forensic imaging and search of the Devices and Email/Server/Cloud/Web. The report will also include whether the examiner found evidence of file-wiping or evidence-erasing programs, techniques or activities.

It is further **ORDERED** that the forensics examiner retain the forensic imaging of the Devices and Email/Server/Cloud/Web until further order of the court.

It is further **ORDERED** that Plaintiff shall pay for all fees and costs of hiring the forensics examiner. However, if the forensic examination yields additional documents that should have been produced in conformity with the subpoenas but were not produced in response to the Agreed Order, or if the forensics examination yields evidence of the Subpoenaed Parties' improper deletion of electronic documents or emails, or any other associated improper conduct, the court, upon motion from Plaintiff, may shift the cost of the forensics examination to the Subpoenaed Parties.

It is further **ORDERED** that Plaintiff may submit a request for attorneys fees associated with the preparation and litigation of the Motion.

SIGNED this 13th day of December, 2017.



U.S. MAGISTRATE JUDGE