

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
NO. 10 CVS 8327

OUT OF THE BOX DEVELOPERS, LLC
d/b/a OTB CONSULTING,

Plaintiff,

v.

LOGICBIT CORP., FRANCISCO A. RIVERA,
DOAN LAW, LLP, and THE DOAN LAW FIRM,
LLP,

Defendants.

ORDER

THIS MATTER is before the court on Plaintiff's Motion for Discovery Sanctions and for Contempt ("Motion") against LogicBit Corp. and Francisco A. Rivera. The Motion, in part, asks for immediate action to ameliorate postings on the internet, including those expected to be received by the commercial arena with which Plaintiff Out of the Box Developers, LLC d/b/a OTB Consulting ("Out of the Box") and Defendants LogicBit Corporation ("LogicBit") and Francisco Rivera ("Rivera") compete. The Motion also asks for the imposition of sanctions and/or a finding of contempt.

The basis of the Motion is the posting of information by Rivera and/or LogicBit which Plaintiff contends, with supporting evidence, could have been known to LogicBit and Rivera only through materials produced in discovery. Among the documents offered in support of the Motion is an internet posting in which Rivera

acknowledges that the information upon which he based his statements was taken from the discovery materials in this action.

The court held a hearing on the Motion on October 3, 2013 at which counsel for all Parties appeared. The court held the hearing on short notice because of Plaintiff's assertions, supported by affidavit, that the internet postings were having an immediate impact in the commercial marketplace.

Having considered the documents filed in this case, and the arguments of counsel at the hearing, the court makes the following Findings of Fact:

1. On June 1, 2012, the court entered a Protective Order pursuant to Rule 26(c) with the consent of the Parties.
2. Under the terms of that Protective Order, any "Discovery Materials" produced in the case could be used only "for the prosecution or defense of this action," and not "for any business or competitive purpose or any other purpose whatsoever." As defined in the Protective Order, the term "Discovery Materials" includes all "documents, responses to interrogatories and responses to requests for admissions, depositions transcripts, and any other information, document(s) or object(s) which have been or will be produced or received by any party during pretrial proceedings in this action pursuant to the North Carolina Rules of Civil Procedure, as well as any and all copies, abstracts, digests, notes, and summaries thereof."
3. Beginning on or about October 1, 2013, Rivera and/or LogicBit took several actions which violate the Protective Order, in that he or they posted

information related to or derived from materials produced by Plaintiff in discovery which was the subject of the Protective Order. This use was in direct violation of the Protective Order, in part because the use was not for the prosecution of claims in this action and was for business and competitive purposes specifically prohibited by the Protective Order. Rivera and/or LogicBit used this material obtained in discovery as the basis for multiple postings on the internet in different locations, forms, and forums. In part, Rivera and/or LogicBit used an e-mail produced in discovery as a basis to further contend that Plaintiff failed to secure the confidentiality of client data.

4. While Defendants may contend that statements they made were true, Plaintiff Out of the Box Developers d/b/a OTB Consulting denies that it ever disclosed its client's data publicly on the internet, and asserts that Mr. Rivera's allegations are false. The significant point is that, regardless of the truth or falsity of the statements, making them violated an order of this court.

5. The court has, by an earlier Order, cautioned Defendants that further violations of its orders would be at the risk of severe sanctions.

6. Neither Rivera nor LogicBit have made any showing or offered any rebuttal evidence denying making the internet posts regarding Plaintiff's breach of client confidentiality or indicating that the posts were supported by a factual basis other than the e-mail produced by Plaintiff in discovery in this action.

7. By making improper use of the materials obtained in discovery, Rivera and/or LogicBit violated the Protective Order.

8. Plaintiff has adequately demonstrated that it has suffered and is at risk of continuing to suffer immediate and irreparable harm that cannot be adequately remedied by money damages.

9. It is necessary and appropriate to take immediate action in response to the unauthorized use of discovery materials in violation of the court's Order.

CONCLUSIONS OF LAW

1. Rivera and LogicBit have violated the Protective Order.
2. The court has inherent authority to enter this Order to prevent further violation of its Order and to ameliorate harm caused by violations to date.

Therefore, for good cause shown, it is hereby ORDERED:

A. Defendants LogicBit Corp. and Francisco A. Rivera shall immediately remove each and every instance in which they disclosed to anyone in any way any allegation based on any material governed by the Protective Order entered in this case, other than disclosures to counsel, experts, or others authorized by the Protective Order.

B. Defendants LogicBit Corp. and Francisco A. Rivera shall make best efforts to disclose in writing no later than 5:00 p.m. on Friday, October 4, 2013 to counsel for Plaintiff each and every instance that they disclosed, to anyone in any way, the Discovery Materials or made allegations or statements based solely on such Discovery Materials, other than disclosures made to counsel, experts or others authorized by the Protective Order.

C. Plaintiff is hereby authorized to conduct additional discovery in this case limited to Defendants' decisions or plans to use and the actual use of the Discovery Materials in violation of the Protective Order and the decisions and actions preceding the use of the Discovery Materials in violation of the Protective Order. Specifically, Plaintiff may:

- a. Serve document requests on any of the Defendants or on any third parties seeking documents relating to Defendants' use of any Discovery Materials in violation of the Protective Order and the decision and actions preceding the use of any Discovery Materials in violation of the Protective Order. Any Defendant or third party served with a document request must respond within 15 days of service of the request, which may be by electronic mail served on Defendants' counsel.
- b. Take up to three additional depositions, lasting up to three hours each, relating to Defendants' use of Discovery Materials in violation of the Protective Order and the decisions and actions preceding the use of the Discovery Materials in violation of the Protective Order. Leave of court must be given for any additional depositions or for a longer amount of time for any particular deposition.

D. The additional discovery ordered must be completed no later than November 15, 2013.

E. The court defers ruling on sanctions until a later date. Plaintiff shall on or before December 2, 2013 to file its brief and any supporting material in support of its request for sanctions. Defendants shall reply no later than December 23, 2013. Plaintiff shall reply no later than January 10, 2014.

IT IS SO ORDERED this the 4th day of October, 2013.

/s/ James L. Gale
James L. Gale
Special Superior Court Judge
for Complex Business Cases