

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

CIVIL MINUTES-GENERAL

Case No.: CV 18-1234-GW (PLAx)

Date: June 1, 2020

Title: SkyHawke Technologies, LLC v. DECA International Corp., et al.

PRESENT: THE HONORABLE PAUL L. ABRAMS
UNITED STATES MAGISTRATE JUDGE

Christianna Howard
Deputy Clerk

N/A
Court Reporter / Recorder

N/A
Tape No.

ATTORNEYS PRESENT FOR PLAINTIFF:
NONE

ATTORNEYS PRESENT FOR DEFENDANTS:
NONE

PROCEEDINGS: (IN CHAMBERS) Plaintiff's Motion to Compel Inspection of Source Code in a Safe Manner (ECF No. 367)

On May 1, 2020, plaintiff and defendants filed a Joint Stipulation addressing plaintiff's Motion to Compel Inspection of Source Code in a Safe Manner. (ECF No. 367). On May 13, 2020, plaintiff filed a Supplemental Memorandum. (ECF No. 372). On May 26, 2020, pursuant to the Court's Order, defendants filed a Supplemental Brief. (ECF Nos. 373, 374). The hearing scheduled in this matter was previously ordered off calendar.

As discussed in the Court's recent Order (see ECF No. 373), plaintiff on March 2, 2020, conducted an initial review of defendants' source code at the office of defendants' counsel, Lathrop GPM, in Century City, where a "clean room" was set up containing a secured computer. (ECF No. 367-1 at 4, 11). Subsequently, restrictions took effect in response to the COVID-19 pandemic that prevented further access to the clean room. Plaintiff filed the instant Motion seeking an order compelling defendants to produce the source code in an alternate manner, such as: (1) through remote access to the locked down machine; (2) through a restricted laptop that could be sent to plaintiff; or (3) by setting up an alternate clean room in a different location. (Id. at 7-9). Defendants in the Joint Stipulation rejected each of plaintiff's proposals as not providing adequate security and safeguards; they offered no workable solutions other than suggesting that plaintiff wait to view the source code until a later time when restrictions are lifted. (Id. at 14-15).

Based on the above, and noting that the obligation to allow inspection of the source code falls on defendants, the Court ordered defendants to file supplemental briefing that detailed one or more alternative proposals for inspecting the source code. (ECF No. 373). Defendants complied, and in the Supplemental Brief assert that, as a result of the commencement of the phased reopening of Los Angeles County, defendants' counsel may now allow plaintiff access to the clean room in defendants' counsel's office. To protect the health and safety of the building's occupants, however, such access would be subject to certain conditions, including: only one representative of plaintiff (e.g., one lawyer or one expert) would be allowed into defendants' counsel's office at a time; plaintiff would be required to provide defendants three business days' notice of the date(s) for the inspection; the individual entering the office to conduct the inspection would be required to provide contact information, wear a face mask, take his or her temperature, and answer questions about his or her health (e.g.,

whether the individual had a fever, sore throat, etc.); only one person would be allowed into the clean room to comply with social distancing guidelines; and defendants' counsel would monitor the inspection by remote camera. (ECF No. 374 at 2-4).

After a careful review of the parties' filings, the Court finds that defendants' proposal to allow inspection of the source code with the above conditions is reasonable under the circumstances and, to the extent possible, ensures the health and safety of the individuals participating in the source code review. Defendants' proposed solution is also largely consistent with plaintiff's own proposal of having an alternate clean room set up in a different location, as the parties would be required to adhere to social distancing requirements regardless of the locale. Thus, it appears that certain safety precautions, such as limiting access to the clean room to only one person at a time, would apply even if an alternate clean room was utilized. Moreover, while the Protective Order lays out the requirements for inspecting the source code, there is no provision addressing how many individuals are to be allowed inside the clean room at the same time. (See ECF No. 53 at 14-15). Accordingly, it does not appear that defendants' proposed conditions are in conflict with the terms of the Protective Order. For these reasons, the Court **grants** plaintiff's Motion to Compel to the extent that defendants are ordered to allow plaintiff access to the clean room in accordance with the conditions set forth in defendants' Supplemental Brief (ECF No. 374). The Court envisions that different representatives of plaintiff will be allowed access to the clean room at different times and/or on different days to ensure that plaintiff has the opportunity to conduct an adequate inspection of the source code.

Plaintiff in the Joint Stipulation also asserts that certain source code files contain developer comments in Korean text, and because defendants have refused to translate the text, the Court should order defendants to provide a printout copy of the foreign language files so plaintiff may obtain a translation. (ECF No. 367-1 at 10; ECF No. 367-19 at 3). Defendants counter that plaintiff's "wholesale demand" that the developer comments be printed and produced is a violation of the Protective Order, and in any event, as there are more than 10,000 files within the source code, the number of developer comments that defendants would need to extract is unduly burdensome. (ECF No. 367-1 at 19). Defendants suggest that plaintiff should "first identify the specific coding language portions that are relevant, so that any appropriate corresponding programming comments can be identified," and then portions of the source code may be printed in accordance with the Protective Order. (ECF No. 367-1 at 19).

The Protective Order provides that the inspecting party may request paper copies of "limited portions of source code" that are reasonably necessary for preparing for depositions or trial, or for preparing documents such as court filings and expert reports, but "shall not request paper copies for the purposes of reviewing the source code[.]" (ECF No. 53 at 14-15). Defendants are thus required to allow inspection of the source code in the clean room, but are not required to produce additional materials other than "limited portions of source code" that plaintiff requests. Accordingly, as plaintiff seeks an order compelling defendants to produce printouts of the Korean language files to allow plaintiff to translate and review the developer comments, the Motion to Compel is **denied** as such an order would contravene the terms of the Protective Order. The Protective Order does provide, however, that "highly confidential" material, such as source code, may be disclosed to certain legal support personnel, such as individuals who provide professional foreign language translation services. (ECF No. 53 at 7-9, 14). Thus, it would not contravene the terms of the Protective Order to have such a translator participate in the source code inspection.

Lastly, plaintiff complains that the secured computer provided by defendants in the clean room was "severely restricted" such that it was not possible for plaintiff to conduct any kind of file search. Plaintiff contends that the lack of search capability violated the Protective Order and prevented an adequate initial review of the source

code.¹ (ECF No. 367-1 at 4, 9-10). The Protective Order states in unequivocal terms that any source code “shall be made available for inspection, *in a format allowing it to be reasonably reviewed and searched . . .*” (ECF No. 53 at 14) (emphasis added). Accordingly, the Motion to Compel is also **granted** to the extent that defendants’ computer in the clean room must present the source code in a format that allows plaintiff the capability to conduct reasonable searches.

Based on the foregoing, **IT IS ORDERED THAT:**

1. Plaintiff’s Motion to Compel is **granted in part and denied in part** to the extent described above.

2. Beginning no later than seven (7) calendar days from the date of this Order, defendants must allow plaintiff’s representative(s) access to the clean room in defendants’ counsel’s office in accordance with the conditions set forth in the Supplemental Brief (ECF No. 374).

It is so ordered.

cc: Counsel of Record

Initials of Deputy Clerk _____ ch _____

¹ Defendants do not address this issue in the Joint Stipulation or Supplemental Brief.