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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

J. D. Quattlebaum, Special Referee

Appellate Case No. 2012-213453

2012-CP-23-0314

Jeff Yelton, ...Appellant,

v.

ScanSource, Inc., ...Respondent.

Record on Appeal

Volume 2 of 3

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State of South Carolina	)	IN THE COURT OF COMMON PLEAS
	)	
County of Greenville	)	2012-CP-23-0314
	)	
Jeff Yelton,	)	
	)	
Plaintiff,	)	Plaintiff's Opposition to Defendant's
v.	)	Request for Preliminary Injunctive
	)	Relief
ScanSource, Inc.,	)	
	)	
Defendant.	)	
	)	

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2012 SEP 17 P 3:11

I. Background and Introduction

Defendant filed the instant Motion on January 24, 2012 – nearly eight months ago.[1] A full hearing was held before the Honorable D. Garrison Hill on January 27, 2012. At the hearing, Plaintiff readily agreed on the record to not contact ScanSource employees for the purpose of obtaining confidential information. (Hearing tr. of 1/27/12 at 22-23 (Exh. 1)). Plaintiff also did not oppose returning any information belonging ScanSource; he simply stated his belief that he had already done so. (Id. at 25-26).[2] Plaintiff further agreed that

[1] Defendant's Motion initially sought five forms of relief: (1) prohibiting Plaintiff from "soliciting or encouraging any person employed by ScanSource to provide him with Confidential Information or Trade Secrets; (2) prohibiting Plaintiff from "directly or indirectly soliciting or encouraging any customer or supplier of ScanSource to provide him with Confidential Information or Trade Secrets; (3) "[r]equiring Plaintiff to return any and all property and/or information rightfully belonging to, or wrongfully taken from ScanSource . . . .; (4) "[r]equiring Plaintiff to submit to a computer examination and inspection of all his computer systems and data . . . .'" and (5) "[o]rdering any other further relief as the Court may deem just and equitable. Def Motion at 22-23.

[2] To the best of our knowledge, if there was any mistaken belief in this regard, it was rectified before the TRO actually was entered when the Undersigned made all information available the day after the hearing. To the extent this belief is mistaken, Plaintiff already has offered further assurances to promptly disclose anything else located that would be covered by the TRO, which is all he can do at this point.

forensic computer examinations were acceptable once a protocol was in place. (Id. at 26-28).[3]

Judge Hill ultimately substantively ordered only two things:

(1) the return of information within a time period set by the Special Referee; and

(2) that Plaintiff not contact ScanSource employees for the purpose of soliciting confidential information.

(Order of 2/8/12 at 2).[4]

Since the outset of this case, Plaintiff has sought – and Defendant has failed to provide – any evidence that Plaintiff has harmed, or intends to harm, any interests of Defendant. After two hearings on Plaintiff's Motion to Compel responses to simple contention interrogatories, Defendant tacitly conceded there is none. At his subsequent deposition, Scott Benbenek, Defendant's worldwide president of operations, plainly admitted as much.

Yet, Defendant – for a third time –[5] continues to expend everyone's time and resources to argue that somehow it can prove irreparable harm, even where, by its own

---

[3] Plaintiff opposed the second request for relief because it was merely an attempt to stop Plaintiff from working in the industry and because any information divulged by a third party that it obtained from ScanSource was, by definition, not a trade secret. (Hearing Tr. of 1/27/12 at 23-25 (Exh. 1)). At the hearing, Defendant never specified the need for any additional relief regarding its fifth request. Prior to the TRO hearing, Plaintiff submitted additional materials, which are incorporated here.

[4] Although the Undersigned expressed reservations with a vague, policy-based definition of "Confidential Information" (Hearing tr. of 1/27/12 at 39-40 (Exh. 1)), Plaintiff sought to obviate the need to take any exception by simply making everything available. Plaintiff's concern has proven to be well founded. Defendant in this case has taken an expansive view of what it can deem "confidential," which, as the Undersigned noted at the hearing, is merely baiting the trap for more wasteful fights down the road on contempt allegations.

[5] Defendant unsuccessfully sought some of the relief apparently also sought here at the TRO stage, and has sought injunctive relief as well through its contempt motion.

admissions, no harm whatsoever can be proven, or even reasonably envisioned. All Defendant offers is unsubstantiated speculation, and the law is clear that injunctive relief may not rest on such an argument.

II. Legal Standard

"The remedy of injunction is a drastic one and should be cautiously applied only when legal rights are unlawfully invaded or legal duties are willfully or wantonly neglected." Lefurgy v. Long Cove Club Owners, 313 S.C. 555, 558, 443 S.E.2d 577, 578 (Ct. App. 1994); Denman v. City of Columbia, 387 S.C. 131, 140-41, 691 S.E.2d 465, 470 (2010)("'An injunction is a drastic remedy issued by the court in its discretion to prevent irreparable harm suffered by the [moving party.]'") (quoting Scratch Golf Co. v. Dunes W. Residential Golf Props., Inc., 361 S.C. 117, 121, 603 S.E.2d 905, 907 (2004)); Rawlinson Rd. Homeowners Ass'n, Inc. v. Jackson, 395 S.C. 25, 35, 716 S.E.2d 337, 343 (Ct. App. 2011).

For such a drastic remedy to be provided, the moving party must establish that

(1) it would suffer irreparable harm if the injunction is not granted:

(2) it will likely succeed on the merits of the litigation; and

(3) there is an inadequate remedy at law.

Scratch Golf Co. v. Dunes W. Residential Golf Properties, Inc., 361 S.C. 117, 121, 603 S.E.2d 905, 907-08 (2004) (citations omitted); Compton v. South Carolina Dept. of Corr., 392 S.C. 361, 366, 709 S.E.2d 639, 642 (2011); Poynter Invs., Inc. v. Century Builders of Piedmont, Inc., 387 S.C. 583, 586-87, 694 S.E.2d 15, 17 (2010); see id. at 586, 694 S.E.2d at 17 (determining that balancing the equities is no longer a requirement for a preliminary injunction).

III. Scope of Request for Preliminary Injunction

The Undersigned has expressed sincere concern about the lack of notice as to what, if anything, is at issue with respect to the request for preliminary injunctive relief. (Tr. of 8/31/12 at 85-86 (Exh. 2)).[6] In response, counsel for Defendants stated that, with respect to this Motion:

> But in terms of the preliminary injunction, I agree. I think the only – it's the same discussion we had months ago, you know, leaving the provisions of the TRO that continued in place and adding a use restriction. That's the only additional relief we would ask for. We think it's within the scope of the initial request which includes other and further –

(Id. at 87 (emphasis added)).[7]

IV. Argument

A. First Element: There is No Threat of Harm, Let Alone Irreparable Harm

Scott Benbenek is Defendant's worldwide president and Plaintiff's former boss. (Benbenek Dep. at 13, 17 (Exh. 3)). If anyone should know or be concerned with the potential for the cataclysmic harm Defendant apparently claims is imminent, it would be him. However, Mr. Benbenek is unaware of any such harm, real or potential:

Q. Has Jeff Yelton done anything to cause your company damages in any way?

A. I'm not aware of any.

---

[6] To be clear, Plaintiff is not conceding that all of the information that Defendant may be contending is "confidential" is confidential or a trade secret (save the QBR's, which are not at issue). In fact, it is becoming clear from another looming motion that is Defendant is now taking an expansive view of that term, which is a matter that will take even more focus off the core issues in this case. In any event, it is incumbent on Defendant to prove that the information at issue is a trade secret or otherwise merits extraordinary protections.

[7] Plaintiff will confine himself to these issues but, to the extent Defendant seeks to expand its pending requests again, Plaintiff does not waive any objection to the lack of notice or the right to seek an opportunity to respond.

(Benbenek Dep. at 176).

Q. Has anybody ever told you that Jeff Yelton has ever used any information that you would contend is confidential information of ScanSource?

A. Say that one again.

Q. Sure. . . . . Has anyone ever told you that Jeff Yelton has used information that is confidential to ScanSource?

A. No.

Q. Have you ever read anything that leads you to believe that Jeff Yelton has ever used information that is confidential to ScanSource?

A. No.

* * * *

Q. Sitting here today, Mr. Benbenek, can you tell me of anything that leads you to believe that Jeff Yelton is doing anything that could possibly harm ScanSource?

A. No, I mean, I know of nothing that he is doing, presently that is. The question seemed worded funny, so --

Q. Let me try a different way. I want you to be comfortable with these questions. I'm trying to make them straightforward, and your answers have been straightforward, so we can continue moving along, but it is important you understand the question. Since leaving the company, has Jeff Yelton done anything that you believe has harmed ScanSource?

MR. FOSTER: Object to the form.

THE DEPONENT: Not that I know of.

* * * *

Q. Has Jeff Yelton ever threatened to do anything against the interest of ScanSource, to the best of your knowledge?

A. To the best of my knowledge, no.

Q. Has Jeff Yelton done anything to benefit either himself or another company to the detriment of ScanSource?

A. Not that I know of.

Q. Has anybody told you that they believe he's done anything to benefit himself or a company to the detriment of ScanSource?

A. None that I can think of, no.

(Id. at 173-74, 175-76, 176). Mr. Benbenek further testified that he has no knowledge that Plaintiff ever even attempted to start a business using ScanSource proprietary information. (Id. at 244-45). Mr. Benbenek also conceded that he has no reason to believe Plaintiff ever attempted to peddle information regarding one vendor to another vendor as theorized in the Motion, but never substantiated. (Id. at 247-48).

Nor does Mr. Benbenek believe that Plaintiff broke any company rule or violated any policy while an employee (id. at 169 ll. 15-18), that Plaintiff violated the provision in his employment contract prohibiting the publishing, dissemination, or disclosure of confidential information (id. at 172-73), or that Plaintiff has ever disclosed any confidential information of ScanSource (id. at 173). In the absence of any actual or potential harm, Defendant's claim that the drastic and sparingly-used remedy of an injunction simply rings hollow.

To date, Defendant has not shown how Plaintiff has attempted to harm Defendant, let alone that any theoretical harm would somehow could be "irreparable." As previously disclosed, Plaintiff sells two-way radios. The information Defendant has claimed Plaintiff took would have had no use to him in either his previously-anticipated venture (VarsGuide) or the one in which he is actually engaged – which is totally outside the point of sale distribution industry. Defendant simply has never begun to make an actual showing of any irreparable harm.

B. Second Element: Defendant Cannot Show Likelihood of Success on the Merits

1. Request for a "Use" Injunction

a. Defendant Has Conceded the Lack of Any Threat of Use

Defendant's claim that Plaintiff must be enjoined from "using" trade secrets suffers from many inherent flaws, the first of which is the lack of any reason to believe he has done so, or will do so. Scott Benbenek's own testimony guts Defendant's "use" claim since he has no reason to believe Plaintiff has either used, or attempted to use, any proprietary information, that Plaintiff ever tried to use ScanSource information for his own business, that Plaintiff has ever tried to peddle ScanSource information, that Plaintiff has done anything to harm ScanSource, has acted against the interest of ScanSource, or has ever attempted to benefit himself at the expense of ScanSource. (Benbenek Dep. at 173-74, 175-76, 176, 244-45, 247-48 (Exh. 3)).

Defendant itself was not so forthright in written discovery, although repeated court intervention finally yielded another concession that there is no evidence of "use." In January, Plaintiff served his first set of discovery. These interrogatories included simple requests for identification of witnesses, as well as simple contention interrogatories. Defendant first responded on March 20, 2012. Defendant has never identified a single witness to testify that Plaintiff has used any trade secrets or confidential information. (See Def. Resp. to Interrog. 1, 4 (Exh. 4)). When asked for facts to support any contention that Plaintiff has "used" any information that Defendant contends is a "trade secret," Defendant interposed an objection that such information was beyond the scope of discovery, and

merely reiterated its allegations regarding misappropriation. (Def. Resp. to Interrog. 23 (Exh. 4)). Defendant offered no facts regarding use.

Plaintiff filed a Motion to Compel on April 27, 2012, seeking such basic information as any facts Defendant contends shows "use" if, in fact, Defendant was contending that Plaintiff used proprietary information. (Pl. Motion to Compel ¶ 3 (Exh. 5)). At the hearing, Plaintiff continued to press that, as to the contention interrogatories, he would not accept boilerplate objections and responses such as "the investigation is continuing." (Hearing tr. of 6/19/12 at 17-25 (Exh. 6)). Judge Welmaker pointedly asked defense counsel "Can you tell him simply what he did?" Defense counsel replied "Your Honor, I can." (Id. at 19). Judge Welmaker instructed: "Just give him a straight answer." (Id. at 21). Judge Welmaker procured another promise from Defendant to answer the questions, including Interrogatory 23, in a straight-forward manner and then considered the matters resolved based on the following colloquy:

> Mr. Murphy: Your Honor, I think this is helping. But this is the first time I've gotten an agreement to get a straight answer.
>
> The Court: Well, he's going to shoot straight with you now. Right?
>
> Mr. Foster: Yes, Your Honor.
>
> The Court: That's what you're telling the Court?
>
> Mr. Foster: That's what I'm telling the Court.

(Id. at 22-23).

Six days later (June 25, 2012), Defendant again responded to the Use interrogatory, and again provided nothing resembling a straightforward answer. Instead, Defendant maintained its objection that its own "use" allegation was beyond the scope of discovery,

and again provided no facts whatsoever to support any contention of use. (Def. Supp. Resp. to Interrog. 23 (Exh. 7)).[8] After being unable to resolve the matter, the Undersigned again contacted Judge Welmaker to alert the Court that the responses promised were not provided, including Defendant's failure to respond to the contention interrogatories. (Exh. 8).

Judge Welmaker promptly held a conference call the next day (June 28, 2012). Unfortunately, there is no transcript of that call. Afterwards, however, Defendant once again amended its responses. After again reciting contentions regarding misappropriation (rather than use), Defendant finally conceded that it "presently lacks further information demonstrating that Plaintiff has used any ScanSource trade secret information." (Exh. 9). This was almost six months after Plaintiff served discovery. And it hasn't presented any such "information" since that time.

As it now sits, all Defendant has offered to date (in an attempt to counter its own admissions) is rank speculation and arguments offered by counsel. There are no witnesses or evidence – just lawyer argument. Surmising that harm is possible if wrongdoing happened is not a foundation upon which injunctive relief can stand. Delmar Studios of the Carolinas v. Kinney, 233 S.C. 313, 320, 104 S.E.2d 338, 342 (1958) (noting in context of non-compete case: "We cannot substitute assumption for proof").

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[8] Defendant added a reference to QBR's, but provided no facts to show use.

b. Defendant's Request is Improper Because There Is No Definiteness as to What Is Encompassed in Any Use Proscription.

In seeking an injunction against "use," Defendant has failed to adequately specify what it is that Plaintiff is to not use. Carolina Chem. Equip. Co., Inc. v. Muckenfuss, 322 S.C. 289, 295, 471 S.E.2d 721, 724 (Ct. App. 1996) ("The threshold issue in any trade secrets case is not whether there was a confidential relationship or a breach of contract or some other kind of misappropriation, but whether there was a trade secret to be misappropriated.") (citing Lowndes Prods., Inc. v. Brower, 259 S.C. 322, 191 S.E.2d 761 (1972)). Before Defendant can obtain injunctive relief, it must at least "describe the subject matter of its alleged trade secrets in sufficient detail to establish each element of a trade secret." Trandes Corp. v. Guy F. Atkinson Co., 996 F.2d 655, 661 (4th Cir. 1993) (citations omitted). It simply must "do more than merely allege that it ha[s] a 'secret.'" Id. (citation omitted).

Defendant's effort to seek a sweeping and vague injunction covering undefined information is improper.[9] Rule 65(d) mandates that any injunction "shall be specific in terms" and that it "shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained." S.C. R. Civ. P. 65(d).[10] An

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[9] The only confidential trade secrets to which Plaintiff has any access are the documents exchanged in discovery (discussed below).

[10] This specificity requirement is a mandatory aspect of due process. United States v. McAndrew, 480 F. Supp. 1189, 1192 (E.D. Va. 1979) (citations omitted). "'The Rule was designed to prevent uncertainty and confusion on the part of those faced with injunctive orders, and to avoid the possible founding of a contempt citation on a decree too vague to be understood.'" CPC Int'l, Inc. v. Skippy Inc., 214 F.3d 456, 459 (4th Cir. 2000) (quoting Schmidt v. Lessard, 414 U.S. 473, 476 (1974)). "The drafting standard established by Rule 65(d) is that an ordinary person reading the court's order should be able to ascertain from the document itself exactly what conduct is proscribed." Fed. Prac. & Proc. Civ., § 2955 Form and Scope of Injunctions or Restraining Orders, 11A Fed. Prac. & Proc. Civ. § 2955 (2d ed.). Plaintiff cites to the parallel federal rule because, in the absence of state authority, federal cases construing the same verbiage are

injunction must provide "fair and precisely drawn notice of what the injunction actually prohibits." Granny Goose Foods, Inc. v. Brotherhood of Teamsters, 415 U.S. 423, 444 (1974). The requirements are mandatory so as to "prevent uncertainty and confusion on the part of those faced with injunctive orders, and to avoid the possible founding of a contempt citation on a decree too vague to be understood." Schmidt v. Lessard, 414 U.S. 473, 476, 94 S.Ct. 713, 38 L.Ed.2d 661 (1974).

Generic proscriptions against using such things as "proprietary materials" or "trade secrets" simply are too vague to be enforceable. Sanford v. RDA Consultants, Ltd., 244 Ga. App. 308, 312, 535 S.E.2d 321, 325 (2000) (citations omitted); Union Pac. R. Co. v. Mower, 219 F.3d 1069, 1073, 1077 (9th Cir. 2000) (injunction against disclosure of "information or communication of a confidential nature, including the information and communications described in the accompanying findings of fact and conclusions of law, that he acquired, learned, or helped to generate during his employment by [UP] or while he was a consultant for plaintiff" simply "does not even come close to satisfying Rule 65's specificity requirements; it provides little, if any, guidance to [enjoined party] regarding how he should determine what particular information is confidential or privileged"); see also S.E.C. v. Sky Way Global, LLC, 710 F. Supp. 2d 1274, 1277-78 (M.D. Fla. 2010) ("follow the law" injunctions are too vague to be enforceable and are not compliant with Rule

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persuasive. Gardner v. Newsome Chevrolet-Buick, Inc., 304 S.C. 328, 330, 404 S.E.2d 200, 201 (1991) ("Since our Rules of Procedure are based on the Federal Rules, where there is no South Carolina law, we look to the construction placed on the Federal Rules of Civil Procedure.") (citing H. Lightsey & J. Flanagan, South Carolina Civil Procedure, (2d ed. 1985)).; Unisun Ins. v. Hawkins, 342 S.C. 537, 542, 537 S.E.2d 559, 562 (Ct. App. 2000) (citing Roberts v. Peterson, 292 S.C. 149, 355 S.E.2d 280 (Ct. App.1987)).

65(d)).[11] Likewise, simply referencing Defendant's policy for a definition is not sufficient. Gibson v. Cline, 28 N.C. App. 657, 659, 222 S.E.2d 478, 479 (1976) ("Reference to some other document is not sufficient to provide a description of the act or acts enjoined or restrained.") (citations omitted).[12]

Because it would be wholly improper to simply subject Plaintiff to inevitable contempt motions from Defendant resulting from a vague and arguable injunction, Plaintiff is certainly entitled to know precisely what information it is that Defendant seeks to have him enjoined from using. Until he has been so advised, Plaintiff must continue to respectfully object to the lack of notice as to what may be involved. Likewise, given Defendant's apparent position that even vendor contact information is somehow proprietary to ScanSource, Plaintiff can not agree to defer to Defendant's overly-broad interpretation of its vague policies, which only serve the purpose of setting a trap for more contempt battles.

c. To the Extent the Use Request Relates to the QBR's They Already Are Protected By a Court Order.

The only confidential information ever specified to be at issue are the Quarterly Business Reviews ("QBR's"). Defendant has marked them "Confidential" pursuant to the amended Consent Amended Confidentiality Order. (Exh. 10). Plaintiff does not challenge

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[11] In striking down an injunction that generically proscribed the use of "trade secrets," the Georgia Supreme Court has held that, at a minimum, the injunction must provide a general description of the materials at issue. Ward v. Process Control Corp., 247 Ga. 583, 584, 277 S.E.2d 671, 673 (1981).

[12] Plaintiff sought to avoid this issue with respect to the TRO by making everything available rather than bogging down the Court with endless arguments about what is confidential. It seemed to be the prudent and efficient course rather than taking respectful exception to the TRO, which would have only complicated further a case that already has spiraled out of control with tangential issues. Plaintiff's efforts, however, appear to have been for naught as Defendant is now taking a broad and undefinable position as to what is confidential.

that they contain confidential information, and never has. The Order already provides: "Documents designated CONFIDENTIAL under this Order shall not be used or disclosed by the parties or counsel for the parties . . . for any purposes whatsoever other than preparing for and conducting the litigation . . . ." (Id. ¶ 6(a)). Accordingly, no injunctive relief is required to prohibit use of these documents, as the information already is protected by force of a Circuit Court Order.

2. Other Provision of the TRO

a. Proscription on Soliciting Confidential Information

Plaintiff maintains his contention that there has been no showing of an entitlement to injunctive relief on this request.[13] That said, Plaintiff is agreeable to committing to not contacting ScanSource employees for the purpose of soliciting confidential information.

b. Return of Information

Plaintiff has complied with the Orders entered to the best of his ability. The Undersigned cannot understand why Defendant does not seize upon Plaintiff's offer to put in an enforceable consent order (i.e. the Consent Prototcol) that, to the extent Plaintiff identifies or locates any other information, he will promptly turn it over. There has been no showing here that would warrant an injunction, but Plaintiff is not opposed to amending the Consent Protocol to allay any fears (and to hopefully once and for all avoid any further innuendo) that ScanSource's rights are somehow being violated. As we have represented

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[13] The e-mail exchange to which Defendant continues to point shows: (1) that Plaintiff did not believe that the list was confidential to ScanSource (a belief Defendant has failed to effectively rebut; and (2) he was cordial when it was explained that he could not have it. Nonetheless, this is an issue about which the parties need not waste money arguing over.

previously, if, for example, Plaintiff finds a flashdrive with QBR's on it, we'll turn it over. There is no reason not to.[14]

While Plaintiff has cooperated from the outset, for purposes of this Motion, Defendant cannot show any kind of entitlement to an injunction for the return of information for two reasons. First, it cannot show that Plaintiff has anything else that has not already been made available through the Consent Protocol. Second, Defendant really does nothing to protect such information in the first place. Defendant has no policy against the use of flash drives and employees routinely use their personal devices, such as home computers, for work. Defendant has no policy governing protection of information on those devices, makes no effort to control them or seek their return post employment, and Mr. Benbenek could not identify any other instance in which Defendant has even sought their return. (Benbenek Dep. at 183-90 (Exh. 3)). The insinuation that Plaintiff should have returned devices and hard drives from his computer simply is wrong. Nonetheless, Plaintiff's consent to the Protocol and Confidentiality Order, both of which are enforceable court orders, obviates any claim for injunctive relief here. These issues already have been dealt with.

---

[14] The QBR documents to which Defendant repeatedly refers do not relate to selling a particular product to a particular end user, and Defendant has yet to articulate even a theory as to how they could have helped Plaintiff's Varsguide idea. (See Benbenek Dep. at 248 (acknowledging they contain no information regarding end users) (Exh. 3)). Defendant certainly cannot contend that they have any value to the two-way radio business.

C. Third Element: An Adequate Remedy At Law Exists If Defendant Somehow Later Proved Use.

Defendant merely parrots, in boilerplate fashion, that it will suffer harm for which no adequate remedy exists at law. Why not? It has never actually made any such showing, or even offered a cogent explanation of what it thinks is going on. All Defendant has ever offered is hyperbole and conclusory allegations that, if Plaintiff discloses "this information" (whatever that is), the harm will be "complete," "impossible to calculate," and "immeasurable." (Motion at 20). What information? Disclosed to whom? What harm? There is not even a cohesive theory here, let alone a showing that the law could not compensate for whatever bizarre scenario Defendant is imagining. Once again, all that is offered is lawyer arguments and boilerplate assertions with no foundation in fact.

That said, allegations of improper theft of business are, in fact, remediable through legal remedies if actually proven. MailSource, LLC v. M.A. Bailey & Associates, 356 S.C. 363, 369-70, 588 S.E.2d 635, 639 (Ct. App. 2003), overruled on other grounds, Poynter Invs., Inc. v. Century Builders of Piedmont, Inc., 387 S.C. 583, 694 S.E.2d 15 (2010). Defendant has specifically sought such damages here. There is no authority that permits a finding of a lack of legal remedy from the mere rote recitation that none exists.

V. Conclusion

For the foregoing reasons, Defendant's Motion should be denied as to any request for an injunction against Use. Defendant also has failed to establish an entitlement to continued injunctive relief as to the issues addressed in Judge Hill's TRO. In the eight months subsequent to Defendant's Motion, nothing has happened. Nothing is anticipated to happen. And given the sequestration of data and devices and entry of a confidentiality

order, nothing can happen. Accordingly, because injunctive relief serves no purpose at this time, the Motion should be denied in its entirety.

Respectfully submitted this 17th day of September, 2012.

For the Plaintiff:

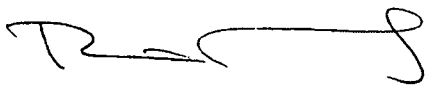

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EXHIBIT 1

STATE OF SOUTH CAROLINA	
	COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	2012-CP-23-00314
JEFF YELTON, PLAINTIFF,	
vs.	TRANSCRIPT OF RECORD
SCANSOURCE, INC., DEFENDANT.	COPY

January 27, 2012
Greenville, South Carolina

B E F O R E:

THE HONORABLE D. GARRISON HILL, JUDGE.

A P P E A R A N C E S:

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SUE E. HARPER, ESQ.
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HOLLIE M. JENKINS
Circuit Court Reporter

I N D E X

(There were no witnesses called.)

E X H I B I T S

(There were no exhibits introduced.)

PROCEEDINGS

THE COURT: This is Yelton v. ScanSource, Inc., 2012-CP-23-00314.

This is a motion for a temporary restraining order. I have a remittal of potential disqualification that's been signed by all parties after I disclosed a potential disqualifying fact. And I'll make that a part of the record.

And, Ms. Erwin [sic], yes, ma'am.

MS. HARPER: Yes, sir, Your Honor.

THE COURT: Good morning.

MS. HARPER: Good morning.

May it please the Court.

I'd like to introduce first my associate, Carmen Thomas, who's here with me. And, in the back, we have some ScanSource employees who -- I realize the Court does not have time to hear testimony today. But in the event that there is a need for testimony, we have our witnesses here.

Jeff Yelton, the Plaintiff in this case, was a highly placed executive at ScanSource. He was going to be let go at the end of December. And he was advised of this by his boss on December the 9th. And the company wanted to give him time after telling him that he was to be gone to effectuate -- and they wanted to effectuate a smooth

transition. So they gave him time to determine what it was he wanted -- how he wanted to couch his departure to others.

Now, he took that time not to create a smooth transition. But he used it, rather, to obtain from people, who were his direct reports, and to download confidential and proprietary information and trade secrets that he took with him when he left ScanSource. We have copies of the information that he downloaded. And it is available for the Court for in-camera review. Because Mr. Yelton has said that whatever he downloaded was just -- he told Mr. Benbenek, his boss, he said that it was just industry-standard information. Well, what he asked his people to download is not industry-standard information at all.

We have communications and -- with vendors and affidavits of subordinates, who in the days after he left, he asked them to download information. And he didn't tell them that he was leaving. We have communications with a Motorola employee, who is a big vendor for ScanSource, that the next business day after he learned he was going to be let go, he asked this gentleman if he had a private e-mail, that he would like to communicate something to him that was for his eyes only.

Maybe not coincidentally, he downloaded the QBR, that

is the quarterly business report, of one of Motorola's biggest competitors. Similarly, he asked one of his employees to download the QBR of another of the biggest competitors of Motorola, Honeywell. And he's traveled and called on both Motorola and Honeywell in the weeks since he departed.

Now, we have another affidavit from a direct report that he asked for the Dell list. But then when he found out that the Dell list didn't contain contact information, then he didn't want it anymore. And we, also, have a copy of the Dell list to proffer for in-camera review.

He -- we have a witness here, Amy Farr [phonetic], who will testify that she saw his office before he left. She's the HR representative that was dealing with Mr. Yelton as he departed the company. She saw his office before he left and after he left, and it had been completely cleaned out the day of his departure with the exception of some personnel files that -- of his direct reports that were left in -- were left there in a cabinet, which he showed her.

THE COURT: Well, didn't he give all this stuff back? Hasn't he offered to do that?

MS. HARPER: No, sir.

We have not been -- nobody has offered to give back any hard copies of anything. Now, we have been told that

there are two disk drives that he's offered to give back. But he hasn't said -- until today, we find that it contains -- there is a lot of ScanSource information on there. But it's not -- it doesn't -- he's never certified that this was everything. And it doesn't explain where the hard copies are.

Now, his affidavit says he put the hard copies of everything that was in his office in a shredder. But it's hard -- this is the first we've heard of that. So we don't know where the hard copies are that he took. And we do have records that he entered and exited numerous times the night before he left and the day of his departure. Assumedly, he was taking things to his car.

THE COURT: Was he not supposed to clean out his office?

MS. HARPER: He was supposed to clean out his office of his own personal things. He was not supposed to clean out his office of any confidential ScanSource information, which we are informed and believe he took with him when he left. It -- we can't find it. He says that he left us the thumb drive that he asked these people to -- he said he left it in his office. We've searched his office. It's not there.

So he has -- since he left, he has sent a text to a former direct report asking her to communicate and to send

him the HP list over her personal e-mail account from home. She declined to do so.

Now, we have information, also, that he is using this -- all of this data for his own benefit. He's calling on vendors. He's calling on vendors who compete with each other and -- having downloaded or sought his employees to download the information concerning their competitors before he left.

Now, he said he started a company called VarsGuide. In fact, he has registered that with the Secretary of State, VarsGuide, Inc., which he will outsource education and marketing events for technology manufacturers. We suspect that this information that he has taken would be very helpful to him and would benefit him in that business.

Now, Mr. Yelton needs to be more forthright about -- and he, to date, has not been. This information belongs to ScanSource. And, frankly, whether it's highly confidential as it is, or not highly confidential as he claims, it's still our information. And he took it in hard copy. He took it in electronic copies. And, now, he says he doesn't know where it is.

We've assembled it at great expense. And Mr. Yelton of all people knew how confidential it was. We have distributorship agreements with all of these vendors that

provide for confidentiality. In fact, some of those distributorship agreements that have the confidentiality clause in them were signed by Mr. Yelton on behalf of the company.

Now, he took these things under cover of night. And then when Mr. Benbenek asked him about it, he said, Well, I didn't know I was leaving when I had them downloaded.

Well, Mr. Benbenek said, Oh, yes, you did, because I talked to you on Friday. And it was the next week that you asked them to download it.

And then he said, Well, what I asked them to download is industry-standard information.

Well, that's not industry-standard information that we have here that he was asked to -- that he asked these others to download for him.

When Mr. Benbenek asked him, Where's the thumb drive? He said that he didn't know. And he didn't know where all the papers that had been in his office were.

So Mr. Ellsworth, the general counsel of the company, writes him and says, Mr. Yelton, would you, please, return these copies, this data, and confidential information, trade secrets? And would you certify that you don't have any more copies, and that you haven't shared it with anyone? And the response was a day and a half later, rather than responding, we get a lawsuit that says, Oh,

you've breached the contract. I've performed it.

But then his lawyer says two days after that -- after claiming that, you know, our assertions that he took stuff with him was fraudulent, and blatant misrepresentations, and pretextual, his lawyer says, oh, by the way, we do have two thumb drives here at my office with stuff that is -- they have put on to thumb drives, two flash drives. I don't know who put it on there, or how they put it on there. But it suggests that there are other copies. And no one has told us otherwise.

And Mr. Murphy says, you know, we haven't even looked at what's on the flash drives. Well, we don't -- what's on the flash drives that he has provided us is not so important as his certification that there isn't any more, and that he doesn't have these hard copies of things that he, apparently, took with him, and that -- you know, where -- who has he -- has he shared this with anyone. In the electronic age, of course, he could have shared this numerous times over the Internet. And there would be really nothing -- we wouldn't have any means of knowing that.

So it's real simple, we want our information and data back. We want all copies of it back. We want him to certify, under oath, that that is all the copies. We want him to tell us, under oath, who he shared it with, and

where it has been stored, and, also, that there is nothing stored on this cloud or any sort of Internet repository that he utilized.

And unless the Court has -- I'd be happy to answer any questions the Court has.

THE COURT: Thank you very much.

MS. HARPER: You're welcome.

MR. MURPHY: Your Honor, Brian Murphy for Mr. Yelton.

As I listened to her argument, I keep going back to the black letter rule of law. And we've got to remember why we're here. We're not here to make any findings of wrong doing. This is a TRO. Now, it's fashioned TRO and preliminary injunction. And, just for the record, I need to say we're not waiving 10 days notice as to a preliminary injunction motion. But for a TRO, certainly, that could be heard today.

But the law is clear. A TRO is a drastic remedy that must be based on clear proof. It cannot be based on conjecture or speculation. And Ms. Harper completely -- repeatedly said that we suspect this, we suspect that. That's speculation and conjecture. When you look at the actual facts that you now have in the record, that speculation and conjecture is completely unfounded.

Now, I'm going to go through what the facts in the record are, and then I'm going to go through what she's,

actually, requesting today. Because in her presentation, Your Honor, notice that she doesn't, actually, go through the requests she made in the motion itself. We can make some progress here today in going through that, and I informed her of that this morning.

The first thing she says she wants is certification as to what he has and doesn't have. Well, you've got an affidavit. The man is sitting right here, Your Honor. If you want to ask him a question, he's willing to answer your question.

But let's talk about the specific documents. Because what they did in their motion and brief, and then in the affidavit, they kept repeating about the same information over and over and over again. And I'm going to go through it. When you, actually, get down to it, there's only a couple of things that are at issue here.

The first is these QBR's. Now, I don't know what she's talking about when she says he downloaded QBR's. The allegations as we understood it from the affidavits -- and I understand from Mr. Yelton that Mr. Yelton, after being informed he was going to be terminated, asked the various people in his group for the last QBR for their particular vendor. We don't deny that. He did it -- while they claim he did it in some surreptitious and secretive manner, he, actually, did it in the most open

manner you could do it, to the point of they even have affidavits of people saying, We heard him say it in the office. There's nothing surreptitious about this, nor is there anything improper about it.

After he was told he was being terminated, Mr. Yelton planned -- his first plan was to interview with these vendors, which he has every right to do. We'll get to their request for relief, because I'm starting to get suspicious that that's what they're trying to stop him from doing.

He has every right to go to Motorola and seek employment. He has every right to go to Honeywell. And he has every right to go to Intermec. What he wanted to do was to make sure that he was up to speed on their business. Because if he wasn't, it would not only make him look back, it would make ScanSource look bad because he was, in fact, the leader of that business group.

But you've got to think for a second, what is a trade secret? Well, a trade secret depends on who you're talking about. I'll give you an analogy. If you have a stock brokerage account with Merrill Lynch, that's between you and Merrill Lynch. That's not a secret. That's information readily shared. As to Dean Witter, it would probably be a trade secret. You wouldn't -- you know, Merrill Lynch wouldn't want their account information

disclosed to Dean Witter. But if Mr. Yelton is talking to Motorola about Motorola, there's no disclosure or misuse of a trade secret in that transaction.

Now, she speculates, with no proof whatsoever, that Mr. Yelton would take Motorola information and disclose it to Honeywell. Your Honor, not one single affidavit even begins to suggest that. We can take the depositions of Motorola, we can take the depositions of the Honeywell people, we can take the depositions of the Intermec people. And we can do that in the course. But, for today's purpose, she's had -- there's absolutely no proof he ever disclosed any information about one vendor to another vendor.

THE COURT: But isn't the point that he agreed contractually to not take or disclose contractual information -- I mean, confidential information, whether or not it was a trade secret within the meaning of the act?

MR. MURPHY: To other folks, sure. There's no evidence he did that.

THE COURT: But the stuff that you had from him on these two thumb drives, are you saying that --

MR. MURPHY: Let me clarify the thumb drives. Because, in her brief, she confuses that issue.

There's an allegation -- well, what happened was he

asked these people to download the last QBR to prepare for his, essentially, job interviews with each. He left -- he says he left the thumb drive in the office. They say they can't find it, but they don't, actually, have a witness to say he took it. The thumb drives I have are not that thumb drive.

THE COURT: I understand that. I don't mean that.

MR. MURPHY: Okay. Well, it doesn't say that in the brief. It says I deny he took it. And then two days later I said, Oh, by the way, I have it. I have given you the contents of those thumb drives. Okay. I made them available last week. They had no interest in coming and picking them up. And if you look at the contents of it, you'll find out why. There's no QBR's on there.

THE COURT: Is there anything on there that would constitute confidential information or a trade secret?

MR. MURPHY: On the thumb drives? Yes, I think so -- well, I'm assuming that from the file names. And we're not opposed to them having that.

THE COURT: So why wouldn't it be reasonable for them to want a certification that this is all I have out there, I didn't share it with anybody else, and that there are no more copies?

MR. MURPHY: Well, one, they've got the affidavit. Two, you don't --

THE COURT: But that's not the same thing.

MR. MURPHY: But you can't bring a TRO to get a certification without showing imminent harm that he's doing something wrong. It's like getting a TRO saying don't punch me in the nose. Okay. You've got to show that there's an imminent threat, that he's done something wrong.

The files that he had on his thumb drive were copied in the normal course of him doing work. And we'll get to the forensic exam. Because I think one of the things, you know, when we get through all this, what was on his computer and all that, we're not opposed to them knowing that, Your Honor. And I'm going to suggest a way that we can work through that.

But for purposes of today, they can have that information back. I'm concerned about -- I want to raise an issue on one of the thumb drives, the Cisco thumb drive. And I didn't -- at the time I e-mailed Mr. Ellsworth, I didn't even want to access the thumb drives. After I saw their brief where it seems to me they were suggesting that I had the thumb drive that he denied taking, I thought I better look at those drives, copy off so the Court can see what's on them.

What I didn't know at the time when I put them -- made them available -- and they're here in court. I mean,

I have them with me. I think they're in my bag. If you look at Tab 2, the Cisco thumb drive -- well, I'll tell you what's on that thumb drive. Because when I looked at this -- you get a little -- it's a file. And you look at the files on the computer. You get a little -- I don't know what they call them, a thumbnail.

THE COURT: Well, this really requires no explanation.

MR. MURPHY: The first document, ScanSource Revs, 5-26-09, I'm assuming that's their document. They're welcome to have that. That's a 2009 document.

The Roger CCD Net Worth, that's the one I don't think we -- they should have. That is information relative to the net worth of a business partner of Mr. Yelton's that has nothing to do with ScanSource. It's that gentleman's personal financial information. And that's one that I didn't realize was going to be on it. They shouldn't have that.

ScanSource 2005 Business Plan, that was a document that was backed up. And you can see that was last modified on 6-9-2005. But it's their data, and we have no objection to it.

The pictures appear to me to be pictures of somebody's house. And I just have a little thumbnail that I can look at. I have no objection to them looking at the

pictures. They don't look to be -- appear to be anything personal. But I think they'll find it's not ScanSource.

If you go to Tab 3. That's the -- it's an Accubanker flash drive. It's in a leather cover. That all appears to be ScanSource-related information. And they can have it back. This isn't the information that was in notebooks. And I'm going to get to this industry-standard allegation here in a minute.

This isn't the information from the notebooks. This is stuff that ended up getting backed up over time. If you check the dates on these, Your Honor, an interesting thing is, they don't allege Mr. Yelton had any idea he was being terminated. And there's no suggestion that he was looking to start up any kind of business before he was told he was being terminated. None of these documents were created prior to Mr. Yelton being told he was being terminated. So there's nothing suspicious there, but we're not opposed to them having it. And we didn't oppose it last week either.

The QBR documents, Your Honor, you could assume for purposes of today that those contain -- that they would be able to establish that those contain trade secrets. It's sensitive business information on what happens with respect to that particular vendor. He's given you an affidavit. He doesn't have anything. There's nothing

there. Okay.

He looked at them. He went and spoke about possible employment with two of those. If they want to try to prove that in the Motorola meeting he disclosed Honeywell or Intermec information, they are more than able to take those depositions. I don't believe they're going to find anything. But they, certainly, haven't given you anything here today that could show the imminent threat of a disclosure of any trade secret.

Documents in his office. Ms. Harper strayed from her affidavits on this one. The actual statement in Mr. Benbenek's affidavit is that the files that Mr. Yelton took were industry-standard stuff. These are notebooks of his stuff that even predates ScanSource. For example, you know, lawyers may have CLE materials in their offices or other types of papers that are not company confidential. Did he take that stuff out? Yeah, it's his.

And, you know, this wasn't all done under some cover of darkness of light -- of night. You see, they have an affidavit saying my guy was doing it during working hours where people were seeing what he was doing. He was walking in and out with these boxes. There's nothing surreptitious here. And he's given you an affidavit, Your Honor, saying he has not taken any of their files. He has none of their documents.

Can they request -- send me a document request to review the files that were in his office? Sure, they can. But they haven't given you anything here today to say that in Mr. Yelton's home, there is a document containing trade secrets that we've got to have back that he isn't being forthright about. It's all speculation and conjecture.

The drop box, she mentioned that. He's explained that. He and other people at the company --

Is Your Honor familiar with drop box?

THE COURT: Not really.

MR. MURPHY: Okay. I can even show it to you here on my computer. I use it. A lot of solo's and small firms use them as a file server. It's a file-seeking software. And what you do is you sign up and you tie it to an e-mail account. And when you put things in that folder -- and you could even, as I understand it, sync it to e-mails. I don't do that. But I use it for my file server.

When I create a file on this computer and put it in that drop box folder, it gets synced up with my home computer. It gets synced up with my desk top at work. And anybody -- any changes made that -- my secretary is synced up. Any changes to that document or if a new document was put in that folder, it within seconds -- and it's usually less than a couple of seconds -- it's on this computer. If my secretary puts something in a drop box,

it will be right here. People use that instead of flash drives. It's like instead of taking -- putting something on a flash drive, taking it home, plugging it in and working on it, taking the flash drive out, they use drop box.

When they deactivated his e-mail account, that, actually, deactivated all the syncing for that drop box. He deleted that drop box. He believes that he can't access the files on his computer anymore. A forensic exam may show that they were at one point. We don't deny that. But he doesn't think he has access to that drop box account anymore. And he's deleted it.

We have to -- she raises an issue that we can't -- I'm not sure we can resolve anymore because he can't sign in, whether those files exist on a cloud server to which he doesn't have access. They can probably resolve that by reactivating his e-mail. We can let him sign into it. And they could delete it, if it is on a cloud server somewhere, if there are files. He doesn't believe so. I don't know the answer to that. He believes he doesn't have access to the files. And then he even informed Mr. Benbenek that -- if you look at the exhibit to his affidavit, he explained that to Mr. Benbenek -- okay -- as well as the business that he's going into, and how it's not in any way competitive.

And I'll explain to you what the business is he's going into, if he's successful. As you may know, ScanSource is a distributor of products. It buys hardware. It, typically, sells these to what are called value-added retailers. And the value-added retailer -- let's say you owned a store, Your Honor, and you had a checkout and you wanted to have a scanner -- bar code scanner, and a printer, and a register. As I understand it, a value-added retailer will come in and tell you what's the best equipment, and set it up for you. And then you've got to go to these different companies and buy this equipment. Well, ScanSource is a distributor of this equipment.

But Mr. Yelton has explained to them that what he is seeking to do is work with one or more vendors when they develop a product to sort of help market and educate these value-added retailers of the benefit of that product. So if Honeywell creates a device, he will help educate the marketplace as to why that's a great device. That doesn't divert any work away from ScanSource. And he has explained to Mr. Benbenek, if he's successful, because he's dealing with vendors of ScanSource, ScanSource will have more business.

So there's nothing suspicious here. There's no reason why he would need any of this information she

speculates he took in order to do his business. And that's what he's looking for. He's looked at two options. One is working directly for a vendor and, two, through this VarsGuide working possibly with more than one vendor. But, again, there's absolutely no contractual prohibition on that.

Let me get to what they were asking for, because that will help focus us on what we need to do here today. One is they asked that he not contact any ScanSource employees and ask for information. The only thing that gives any validity to that is the Hewlett Packard list allegation. That one is complicated. But any time you're up here trying to explain yourself, it's not, you know, a comfortable situation.

He understands now how that can be viewed. And he agrees -- he just won't ask anybody for any more information. That one is easy. There's no interest he has really in contacting ScanSource. But what their affidavit makes clear is no information was disclosed to him. He doesn't have anything.

Even if you believe their affidavit completely, he asked for -- and all it does is it attaches the e-mail traffic. There's nothing to enjoin him, because he doesn't have anything. And, certainly, in the context now that we're in in this litigation, he's not going to talk

to any of the ScanSource employees about any information. That one is easy. There's no imminent threat and no need for an injunction on that. And, Your Honor, if you want to get an assurance from him directly so you can enforce that, that's fine.

The second one is the one that raised my eyebrows. That is they don't want him soliciting a customer or a supplier to provide them -- provide him with information. Now, what is that, Your Honor? That is, in essence, trying to get through a TRO under the guise of trade secret in an effort to put a restrictive covenant that they attempted to negotiate and he rejected twice.

When they first started with these employment agreements, my understanding is, they had a draft which precluded people from going to work for vendors, and the executives balked. Okay. Vendors are not competitors. Other distributors would be competitors. And he's agreed to not go to work for distributors.

So the contract was changed. And it doesn't have anything about -- saying you can't do work for vendors. If you look at Mr. Benbenek's e-mail, which he attached to his affidavit, you'll see some e-mail exchanges that arose after they told Mr. Yelton that he was terminated.

And what you'll see is they proposed a restriction on him going to work for Motorola. He said, No, I'm not

going to agree to that. I think what they're trying to do, Your Honor, is through this notion of a trade secret trying to get some restriction on him talking to the Motorola's of the world when they didn't put it in the employment agreement, and he didn't agree to it post-employment.

Go back to my example, if you would, of the stock broker. If the stock broker and the customer are discussing the customer's information for the stock brokerage's information, that's not an improper disclosure of somebody elses trade secret.

An example I had from one case, I was in a -- I had a case in the chemical industry. It's a very competitive industry. And different chemical companies will supply prices to a manufacturer to try to get the business. Well, we proved in that case -- and everybody ended up admitting it that the practice is when a manufacturer got a price -- and if you're a salesman and you come in and say, I want to sell you this chemical. They showed them the price of the other company and said, Can you beat this?

Now, when that happens, Your Honor, that's not a disclosure of the other companies trade secret. That is a disclosure of the customer's information, which the customer has a right to do, unless it's got some contract

otherwise. That's not a Jeff Yelton misappropriating a trade secret. If Motorola decides to share Motorola information with Jeff Yelton, it has every right to do so, absolutely every right to do so. But she, in her second request, is seeking to stop him from disclosing information with vendors.

Now, if she's talking about disclosing trade secrets of ScanSource to Motorola, there's no evidence that he's done anything but talk about Motorola business with Motorola. There's no evidence of any other kind of trade secret. Certainly, nothing of a Honeywell being discussed with a Motorola.

And, again, we can tee those depositions up very quickly and put an end to that speculation and conjecture. That's the second request. It is absolutely not tied to any even allegation of wrongdoing. I think it's an attempt to back door and get a restrictive covenant that it couldn't negotiate.

The number three request they have is the return of information. That's the one she talked about the most. I don't know what more I can do on that. She has an affidavit about what he has and doesn't have. The one flash drive, she can take it right now. I'm pretty sure it's in my bag. The other one I would like to just give her the one file off of. I mean, if she wants to see the

pictures, that's not a problem. I do have them, Your Honor. And, other than that, there's nothing else there. And nothing that -- for which a TRO can be granted.

Now, she can send a discovery request. She can send a request to admit -- for admissions. She's noticed his deposition. I can't do it next week. But if she wants to take his deposition, that's a -- you know, she can do that. And if she finds something, she can come back for a preliminary injunction. But she doesn't have anything today.

But I do agree that ScanSource is entitled to have its information back. And we've been -- you know, we've been trying to make that available. I don't understand why they continue to refuse to pick up the information, and then scream that they need an injunction and take up the Court's time on it.

Number -- the fourth request of hers is for a forensic examination. And I've already asked her if she had a protocol that she had in mind for that. That's not a TRO issue. But it is a legitimate discovery issue. Okay. Mr. Yelton worked at home frequently.

I've been through these cases with these forensic exams. What they can show is not only what active files are on the computer, but they can often show like what has been deleted. And, sometimes, when something is deleted,

it's -- the file is still there, but you can't access it. It changes the registry data. And then sometimes it gets overwritten, sometimes it doesn't.

They can spend the money on a forensic exam. What they're going to find is probably a lot, over the years, files that existed at one time or another on his computer. I don't -- I think if we get the right protocols in place, I don't think we're going to have a problem with that. Since he's not competing -- where this becomes a real war is when you have two companies competing, one competitor wants to scan, the other wants hard drives. He's not competing. So this makes that a lot easier.

Here is what I don't want, and what I will oppose. I don't want them being able to scan his hard drive and ScanSource being able to just see everything that's on there. Most protocols don't call for that. And the reason is -- well, first of all, our attorney-client communications are on there. He's got a lot of other personal and confidential matters that he doesn't want them to see, as I think one could rightly understand.

But if they want to look for ScanSource data -- what they, typically, have done in the cases I've been involved with is there's a term search list. Again, that's not going to be, I don't think, controversial in this case. They can give us all the terms they want. And if -- and

then the expert will scan and find all those files. We get to look at it to see if there's anything confidential, non-business related, or privileged.

If we challenge that, that can be set aside, and you can review it in camera to determine whether I'm right or not. And then everything else they get to see and we get a copy of. I think we can work that out. That's not a restraining order issue, that's simply a discovery issue. If she wants to send me a protocol, we'll look at it. I do appreciate one thing in their request, they said they'll do it at their cost. And I think we can work number four out.

So, Your Honor, I don't think she's given you anything today that shows Mr. Yelton poses an imminent threat of misappropriation, use or disclosure of any trade secret. It was -- and I haven't seen these files that were supposedly downloaded. But what she hasn't told you is that she has any proof that she can identify any document that was theirs that's gone, that she can tell you any electronic file that was there that's in his possession. She can't do it. Until she can do that, she's not entitled to any relief.

I will work with her. We can expedite discovery the best we can. And I think they have a right to discover whether that happened. I mean, this is litigation. But

until she comes to you with that, there's nothing on which you can make findings that she has met the high standard for a restraining order.

And if she has, if she's saying this is somehow a massive amount of information -- and this Court is going to make findings that, based on the evidence in the record, I can find that Jeff Yelton took information, disclosed it to somebody, and this information -- because let's talk about it. These QBR's probably are extremely valuable if they fell into the wrong hands. And it's stuff you wouldn't want to give to your competitors. Then there's going to be a massive bond that's required in this case.

And the Atwood Agency, which included -- makes very clear -- because when I get these cases, I always get both sides of the argument. Well, since he has no interest in it, there doesn't need to be a substantial bond. But we can make a clear and convincing showing that there's a tremendous amount of business value at play. Atwood said you can't have it both ways. Okay.

They want to sit here and say that this is huge, then they need to post a huge bond. We don't get to that, because there's nothing that you could make findings of fact on to show that there's any imminent threat of any misuse, disclosure, or misappropriation of a trade secret.

THE COURT: Thank you, Mr. Murphy.

MS. HARPER: Your Honor, just briefly. The Trade Secrets Act says that it is a misappropriation for someone to acquire, just acquire. And Mr. Yelton's lawyer is talking all about disclosure, and use, and all this. But to acquire it is a violation of the Trade Secrets Act, and through espionage or electronic means. And he did.

He went to his underlings and he didn't tell them he was leaving. And he said, Download this for me. And he did leave under cover of night. Because between 6:00 and 6:30 after everyone has left the building, he's cleaning out his office. So there is some -- more than a hint that this was done surreptitiously.

The idea that Motorola can give its own information to him and there's nothing wrong with that, we're not arguing about that. What we're arguing about is that he had tremendous amounts of information on all of these vendors who compete with each other.

So if he works for one of these vendors, he comes into that relationship with all this information about its competitors, very detailed. And if the Court would like to see it, we can, actually, show it to the Court. It's very detailed about the kinds of sales, the profit margin, the benefits, the -- all of the money -- you know, the rebates, et cetera. And so that is where this information

is valuable.

And we just want Mr. Yelton to be forthright about this. The story has changed as to what he has or didn't do. And, at first, it was fraudulent to claim that he did it. Well, now, we have proof. He's admitted in his affidavit that he's acquired confidential trade secrets. And he's got them. And he's got them on these thumb drives.

And the reason that we don't want to get the thumb drives from his lawyer's office is that we would like to create a chain of custody of those thumb drives so that we -- when we hire the expert, the expert will get the thumb drives from Mr. Yelton's lawyer.

And the idea that we now -- he has now told us some 10 or 12 days after we asked in a letter, Would you, please, tell us, you know, what you've got and return it. He's told us in this affidavit -- this affidavit was received by e-mail this morning when we were in Greenville County.

So I really haven't had -- it's not as though -- all we wanted was early on for him to tell us this. And why didn't he tell us? You know, frankly, I think that there have been -- I'm going to have to read back through every representation that's made, but there have been numerous representations.

So, frankly, we want our stuff back. We want all copies of it back. We want a certification from him that we have all the copies, and who he's disclosed it to. He says he hasn't disclosed it to ScanSource competitors, but who has he disclosed it to? And why did he need it? Why did he want it?

And just -- the forensics and all of that is not for today. That's not an issue for today. And, you know, we don't need to spend any time on that. But we would like some certification from him that he has returned it all. We want all the hard copies. If he's got things that he says are industry standard, we'd like to see what it is he took from his office.

Thank you, Your Honor.

THE COURT: Thank you.

MR. MURPHY: Again, Your Honor, as a matter of fact of discovery, I probably won't oppose that, if he, you know, has his notebooks. I don't know, they may still be in boxes. They can look at that.

But for purposes of a TRO, she has to show you, clearly, today that it's theirs, that it's a trade secret, and he's using it, or there's some suggestion that there's anything improper. She hasn't met that showing today. Let's do discovery. She can bring a motion for preliminary injunction at the appropriate time.

In terms of this letter. I'll address this letter. That letter was not a gentlemanly we have concerns about your conduct, let's resolve them. And nowhere in that letter did it say if you can work with us on these concerns, we're going to pay you under your contract. This isn't my first rodeo. I know what these letters are. And there's always -- it gives a deadline, and a TRO is filed the next day. So, yes, we went into court because I wanted this to be in state court in Greenville County.

But most of Mr. Ellsworth's demands in that letter were improper. And Mr. Yelton is under no obligation to meet them just because Mr. Ellsworth says you will do this by Thursday at 4:00. Mr. Ellsworth makes one proper request. If you have any information, give it to us. We've been trying. For a week, we've been trying.

THE COURT: Thank you very much for your arguments.

So, Ms. Harper, you're requesting a no-contact provision that Mr. Yelton not contact any employees of ScanSource, and who else?

MS. HARPER: For purposes of obtaining confidential information from them, yes, sir.

THE COURT: All right.

(Pause.)

MR. MURPHY: Your Honor, just for the record, if -- I don't even need to -- in terms of a restraining order, he

has no objection to that. Mr. Yelton has no objection to that.

THE COURT: Well --

MR. MURPHY: The only issue that was raised by that with respect to the post-employment, not these QBR's, but the post-employment was the HP list allegation in which he was not provided any information about their account. But we -- there hasn't been any contact throughout the litigation. That's not at issue, sir.

THE COURT: Well, based on Scratch Golf Company v. Dunes West Residential Golf Properties, Inc., and Rule 65 of the Rules of Civil Procedure, in order for a TRO to be granted, the moving party must show that it would suffer irreparable harm if the injunction or order is not granted, that it will likely succeed on the merits of litigation, and there's an inadequate remedy at law.

Obviously, the disclosure of confidential information, trade secrets would constitute irreparable harm to ScanSource given the nature of the information, and the high level of management involved on both sides -- or former management.

And, secondly, if, in fact, disclosure occurred, there would be an inadequate remedy at law. Because money damages could not rectify that and compensate ScanSource for the damage. In order to show that it would succeed on

the merits, it is likely to need only show that it has alleged a prima facie case as to its causes of action.

I find that the only portions of the request that should be granted are for a provision that Mr. Yelton not contact any employees for purposes of obtaining confidential information, which he, in fact, consents to. And, second, that he is ordered to return any confidential information or trade secrets to ScanSource within 24 hours.

I understand his affidavit. And I know he understands the consequences of signing an affidavit. And he may very well already be in compliance with that. But, to the extent he's not, he has 24 hours to be in compliance.

And as far as --

Are you still requesting a bond given the limited nature of the injunction?

MR. MURPHY: The law requires a bond.

THE COURT: Well, but you're not willing to waive that is what I'm asking?

MR. MURPHY: Yes, sir.

THE COURT: All right. I'll ask ScanSource to post a bond of $5,000.

MR. MURPHY: Can I ask for -- in terms of return, Your Honor, we talked about that one Cisco thumb drive.

The one document on there that relates to another non-parties personal financial information, I think when they look at it, they would agree that there's only one file on that thumb drive that has ScanSource information on it. We've don't -- we've never opposed the return of it.

But what do we do to protect that other gentleman's information?

THE COURT: Now, wait a minute. I'm not sure -- which thumb drive are you talking about?

MR. MURPHY: There's two thumb drives I have. You asked for the return of all information --

THE COURT: Well, there are three, aren't there?

I mean, I understand you say --

MR. MURPHY: Yeah. We only possess two.

THE COURT: You're just talking about the two that are in that envelope?

MR. MURPHY: Right, right. There are two thumb drives --

THE COURT: Okay. I'm with you.

MR. MURPHY: Yes. If he had the thumb drive with the QBR's on it that they -- he says he left it in his office, they don't have it. I understand you want it returned within 24 hours. He doesn't have it.

But in terms of this information which I've been

trying to return, and you've ordered me to return and she won't accept, I'm hesitant to just turn that thumb drive over now with that gentleman's information on it. And I don't know.

Is there another way I can give her that file?

THE COURT: Well, do y'all have any objection to Mr. Murphy holding it in trust?

MS. HARPER: No, sir, not until we can -- you know, we can hire the expert. We're in the process of doing that. We just didn't want to go --

THE COURT: He may not agree to that.

Do you agree to that?

MR. MURPHY: To what, holding it?

THE COURT: Yes.

MR. MURPHY: I'd rather not hold it. I mean, I --

MS. HARPER: We'll give it to you, Judge.

THE COURT: No.

MR. MURPHY: You know, lots of things can happen. I've given you a file list of -- you know, that we printed off this morning. I just -- my only concern -- I'm not concerned about the pictures on it, because they're just pictures of a house, the outside of a house, I think. But there's another person's whose personal financial statement is on that thumb drive. And I don't think anybody else should have access to that.

I don't know how I take that off or -- I don't want to go in deleting files on this thumb drive when there's forensic examinations, apparently, coming up.

THE COURT: Well --

MR. MURPHY: So I don't know how to handle that. But just to turn it over to them is a little problematic.

The other thumb drive is not -- from what I can see is not problematic at all. That's the one that has all those files on it.

THE COURT: Right.

MR. MURPHY: The Cisco one that I'm talking about only has one file that shows ScanSource on it. I'm fine with them having that file. I can move it from one thumb drive to another.

MS. HARPER: There's -- you're saying that one thumb drive only has one thing -- I prefer to have the two thumb drives as they are. Mr. Murphy can hold them in trust in the next -- for the next few days until we can get our expert in place. If he wants to give it to me and waive any claim that I did anything to it, I'm happy to take it.

But we don't want down the road there to be some claim that, oh, you picked it up and you changed it. I mean, I --

MR. MURPHY: I don't know why we would want to do that. We don't care about this -- we have no -- you'll

see -- Your Honor, as I said before, all this is data from before when he got terminated. Some of it goes back to 2004, 2005.

THE COURT: Well, what if you turn it over to Ms. Harper right now on the record, and she agrees to not disclose anything related to that financial statement --

MR. MURPHY: That's fine with us.

THE COURT: -- and a protective order for that?

MS. HARPER: And I would agree to that, Your Honor.

MR. MURPHY: That's fine. No problem.

MS. HARPER: Can I ask for one clarification?

He is to return all confidential information, which would include all copies in whatever form he has them, or has access to them.

MR. MURPHY: My only concern is, Your Honor -- well, I think in conjunction, it has to be a little more specific than that. I know you can't give us a concrete list of what every document might constitute confidential information. I don't know what they're going to contend is confidential information down the road. I've agreed QBR's are.

It appears to me that this list of documents that's on that other thumb drive would be their stuff. And what I just want to kind of -- you know, any ScanSource stuff, we'll get back to them. But I don't want to -- I don't

know if there's anything that's going to end up in the gray area. I know for a contempt proceeding, it has to be a clear and convincing showing.

THE COURT: Well, I mean, he knows what his contract says, and so do they. So I'm not going to get involved in that. I mean, I'm just going to say that whatever he agreed to in the contract to not take, he needs to return. That's the best I can do.

Thank you.

MS. HARPER: Thank you, Your Honor.

THE COURT: If you want to just send me a proposed order, I'll be glad to look at it. And send a copy to Mr. Murphy.

MS. HARPER: Thank you.

THE COURT: Thank you.

**********END OF TRANSCRIPT OF RECORD**********

CERTIFICATE OF REPORTER

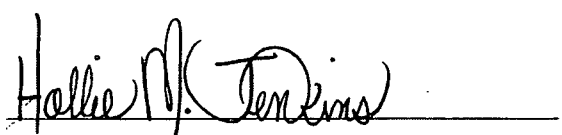
STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the captioned case, relative to appeal, in the Court of General Sessions for Greenville County, South Carolina, on the 27th day of January, 2012.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

February 1, 2012



Hollie M. Jenkins, Court Reporter

My Commission Expires: 09/24/20

EXHIBIT 2

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
CASE NO. 2012-CP-23-0314

Jeff Yelton,
Plaintiff,
vs.
ScanSource, Inc.,
Defendant.

HEARING

DATE TAKEN: August 31, 2012
TIME BEGAN: 1:03 p.m.
TIME ENDED: 2:52 p.m.
LOCATION: Haynsworth Sinkler Boyd, P.A.
75 Beattie Place
Greenville, South Carolina

SPECIAL REFEREE: J. D. Quattlebaum, Esquire
Haynsworth Sinkler Boyd, P.A.
75 Beattie Place
Greenville, South Carolina

REPORTED BY: Debbie Gaddy, CVR
Notary Public for South Carolina

APPEARANCES:

BRIAN P. MURPHY, ESQUIRE
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514 Pettigru Street
Greenville, South Carolina 29601
.....On behalf of the Plaintiff

WILLIAM H. FOSTER, III, ESQUIRE
CARMEN HARPER THOMAS, ESQUIRE
Nelson, Mullins, Riley & Scarborough
104 South Main Street, Suite 900
Post Office Box 10084
Greenville, South Carolina 29603
.....On behalf of the Defendant

ALSO ATTENDING: Jeff Yelton,
John Ellsworth
John Harvey
Dean Gaida (via telephone)

Without the intervention of the court at this point we're going to continue to have to rely on fair play from Mr. Yelton when we don't think we've seen it thus far. Our proprietary information and that of our partners, our reputation as a publicly-traded company is at risk, is at stake here and we need the intervention. We need the relief requested in our petition in order to safeguard that. I don't think we could do more to show what's at stake. I don't think we could do more to show that we've acted appropriately. We've provided the analysis at every turn that's necessary to prove by clear and compelling evidence that Mr. Yelton has in contempt of the TRO and we would ask for your assistance.

SPECIAL REFEREE:

Do you all know -- well, never mind. Forget that. All right. Thank you. I'm obviously not going to rule right here. The Motion for Preliminary Injunction, I'd like to deal with it. Not today. We agreed we wouldn't do that today. I don't know if that's something -- I've gathered that you all perhaps want to have further submissions on that or I mean I'm asking you all.

MR. MURPHY:

I think that would be helpful because I'm not

exactly sure what is being requested in terms of preliminary injunctive relief, what they're seeking. We don't have the devices. We don't -- I mean the issue of contacting employees to solicit confidential information, that's not an issue. We don't have the devices. He's not in the business. He's --

SPECIAL REFEREE:

Well, I don't want to argue it right here. They've asked for it. We need to address it.

MR. MURPHY:

I would ask for further clarification of what's been asked for.

MR. FOSTER:

I'll be happy to do that.

SPECIAL REFEREE:

Why don't we do that. What amount of time would you all need to get that to me? And I want to rule on it. I'll rule on it as quickly as you all want to, unless you all are trying to expand it here. You know, I've always been of the opinion there's a Retraining Order in place that at least with regard to the initial Preliminary Injunction just carries forth what you all are asking for.

MR. MURPHY:

Is there something more you want?
MR. FOSTER:
Well, I mean the separate issue of relief requested today, we'd hoped to get that resolved before --
SPECIAL REFEREE:
I understand that's --
MR. FOSTER:
But in terms of the Preliminary Injunction, I agree. I think the only -- it's the same discussion we had months ago about, you know, leaving the provisions of the TRO that continued in place and adding a use restriction. That's the only additional relief we would ask for. We think that's within the scope of the initial request which includes other and further --
SPECIAL REFEREE:
Right. To continue it through the time of trial?
MR. FOSTER:
Correct.
SPECIAL REFEREE:
So why don't you all --
MR. FOSTER:
Come up with a briefing schedule?
SPECIAL REFEREE:
Right. Well, I don't think we need a -- you tell us

EXHIBIT 3

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
CASE NO. 2012-CP-23-0314

Jeff Yelton,
Plaintiff,
vs.
ScanSource, Inc.,
Defendant.

DEPOSITION OF SCOTT BENBENEK

DATE TAKEN: August 8, 2012

TIME BEGAN: 9:24 a.m.

TIME ENDED: 6:33 p.m.

LOCATION: Brian Murphy Law Firm, PC
514 Pettigru Street
Greenville, South Carolina

REPORTED BY: Traci L. Barr, RPR
GALLAGHER COURT REPORTING
864-234-5744

APPEARANCES:

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Greenville, SC 29601
.....On behalf of the Plaintiff

WILLIAM H. FOSTER, III, ESQUIRE
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Suite 900
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Greenville, SC 29603
.....On behalf of the Defendant

ALSO ATTENDING: Jeff Yelton, John Ellsworth

STIPULATIONS: The within deposition was taken pursuant to the South Carolina Rules of Civil Procedure.
NON-WAIVER: Examination and reading of the deposition are not hereby waived by the witness and the parties.

A. No.

[redacted]

Q. What is your current position at ScanSource?

A. President worldwide operations.

Q. And how long have you been president of worldwide operations?

A. Since June of 2007, or July 1st maybe.

Q. Prior to that, what position did you hold at ScanSource?

A. Executive vice president of operations, corporate operations.

Q. And during what period of time were you in that position?

A. January 2002 through June 2007.

Q. And prior to that?

A. Vice president of merchandising for POS and bar code business unit.

Q. Okay. And during what time was that?

A. '98. I don't know what month. November maybe, October 1998.

Q. Until 2002?

A. Uh-huh.

Q. Now, you joined the company in 1998, correct?

A. Right, June of 1998.

Q. When Mr. Yelton joined ScanSource, what position were you in? Were you president of worldwide operations at that time?
A. No, I was executive vice president of corporate operations.
Q. To whom did Jeff Yelton report when he first joined the company?
A. Mike Baur.
Q. When was a change made in reporting structure so that Jeff Yelton reported to yourself instead of Mr. Baur?
A. June or July 1st, 2007, when I was made president.
Q. Of worldwide operations?
A. Of worldwide operations.
Q. From the time Jeff Yelton joined ScanSource until, let's say, December 9, 2011 -- that's the date that you informed Jeff his employment was ending, correct?
A. Correct.
Q. So let's draw a line on that date and go backwards from the time Jeff joined the company until December 9.
From the time Jeff joined ScanSource up to December 9, 2011, did Jeff Yelton ever say

described in this e-mail would in any way violate Jeff's employment agreement with the company?

A. I'm just reading it carefully again.

Q. Please do. You get to take all the time you want to read a document.

A. Okay. So repeat your question.

Q. Sure. The business venture as it's described in this e-mail to you, do you believe that engaging in this -- starting this company called VarsGuide and doing the things that are described in here would in any way violate Jeff Yelton's employment agreement?

A. Not from the e-mail or the description of the business, no.

Q. And you never told Jeff Yelton that you objected to him engaging in this VarsGuide venture?

A. No.

Q. And you're not aware of anybody else at ScanSource telling him that?

A. Not aware of that, no.

Q. Who made the decision to designate the termination for cause?

A. Legal.

position it was going to change its designation of the termination from not for cause, in which case Mr. Yelton would get his severance, to for cause, in which case he was not paid his severance; is that accurate?

A. I'm not sure I knew -- I'm not sure how to answer that.

Q. Okay.

A. I mean --

Q. Is it your understanding of the contract that if the termination is for cause, then the executive does not get the severance; if it's not for cause, then he or she gets the severance?

A. I understand that, yes.

Q. Okay. And is it your understanding when you let Mr. Yelton go and all the way through December you had designated or determined that the termination was going to be not for cause, he signs a release, you give him severance, and that's complying with the contract, right?

A. Yes.

Q. Is it your understanding at some point the company took a different position or made a decision to not pay the severance and take the

position that his termination was for cause?
A. It's my understanding that the company decided to do that at some point, yes.
Q. Did you play any role in that decision?
A. No.
Q. Do you know who made that decision?
MR. FOSTER:
Object to the form.
THE DEPONENT:
Not definitively, no.
EXAMINATION RESUMED BY MR. MURPHY:
Q. Has anybody told you that someone made the decision? What I'm dancing around and not trying to ask a question --
MR. FOSTER:
This is tough.
EXAMINATION RESUMED BY MR. MURPHY:
Q. It's tough, and if the questions seem they could be asked in a more clear way, it's because I'm trying to avoid the issue Mr. Foster and I are trying to avoid.
Let me ask it this way. Did Mr. Baur tell you that the decision had been made to designate it as for cause?
A. I don't think so, no.

Q. Did Ms. Farr?
A. No.
Q. Was it a lawyer that you learned about this from?
A. I think so, yes.
Q. Okay.
MR. FOSTER:
Brian, I don't know if you're going to get into it, but you might want to -- it's my understanding that you had a prior representation of Mr. Benbenek as it relates to his employment contract, and it's I think the same form of contract.
Have you given any thought to whether that raises any issues in terms of the line of questions you may ask or --
MR. MURPHY:
I don't think we're going to have any issue.
MR. FOSTER:
Okay. I would just preserve an objection for the record.
MR. MURPHY:
What are you objecting to?
MR. FOSTER:
Objection is the wrong word. I've already gone

on the record. That's fine. I'll deal with it later. Just to be clear, you understand what I'm talking about, what I'm referencing?

MR. MURPHY:

I understand what you're referencing.

MR. FOSTER:

Fair enough.

MR. MURPHY:

We don't have to dance around that. The question was, do I see any issue here at the deposition, and I don't.

MR. FOSTER:

Actually, have you considered it, yes.

EXAMINATION RESUMED BY MR. MURPHY:

Q. Mr. Benbenek, do you believe that Jeff Yelton broke any company rule or violated any company policy while he was an employee of the company?

A. No, I mean, I don't have any of that.

Q. You don't have any knowledge of him violating any company policy or rule while he was an employee of the company?

A. Like I say, I don't know the deal about the Dropbox thing, whether that was policy or not, but I'm saying I think in the context that you're asking I don't know. I mean, no.

Q. Mr. Benbenek, do you contend that Jeff Yelton violated any part of his employment agreement with the company?

MR. FOSTER:

Object to the form.

THE DEPONENT:

I'd have to read it, refresh it on my mind about the information or company confidential information.

EXAMINATION RESUMED BY MR. MURPHY:

Q. Well, we can put it in the record.

(Exhibit Number 4 marked for identification.)

EXAMINATION RESUMED BY MR. MURPHY:

Q. We don't have to go through it all right now, but you referenced a meeting that you had with Mr. Yelton on December 9 in the boardroom where you gave him a copy of his contract.

Do you recall that?

A. Uh-huh.

Q. Is Exhibit Number 4, which is Yelton 28 through 48, the contract to which you were referring?

A. Looks like it would be, yes, yes.

Q. So do you believe - you can take what time you want to review it - that Mr. Yelton did anything or has done anything that violates

this agreement?

MR. FOSTER:

Object to the form.

THE DEPONENT:

So what's the question again?

EXAMINATION RESUMED BY MR. MURPHY:

Q. Do you contend that Mr. Yelton has ever done anything that violates this agreement?

A. Well, I don't know -- under the confidential information, I don't know what information he turns out to have or not have, and so I physically haven't been on his devices or his house or anything like that to know, so I don't know.

Q. Well, when you talk about confidential information, what provision of the contract are you referring to?

A. Well, restrictions --

Q. Are you on page 9, or Yelton 36?

A. Yeah, starting number 9, yeah. That's what I stopped and was reading.

Q. Okay.

A. Includes but not limited to any information or documents about the company's financial data, practices, the company's operations, plans, no,

methods of doing business, no, things like that, customer and supplier lists, so I don't know what he has or hasn't. I'm saying if he has some of that, that would be a violation of it, but I don't know if he has it or not.

Q. Well, you've read the definition section. Let's go to page 12 of this, which is Yelton document 39, which covers the use of confidential information.

Do you see the Roman numeral five there that says, for the term of executive's employment and for a period of no less than 24 months?

A. Uh-huh.

Q. Do you see that?

A. Yes.

Q. And it states -- and I want you to take as much time as you want to read this before you answer, but it talks about the employee will not publish, disseminate, provide, or disclose any confidential information or trade secrets to any third party.

Do you see that?

A. Yeah.

Q. Do you have any reason to believe Jeff Yelton has ever violated that provision?

A. I have no knowledge that he has violated that provision.
Q. Is there anything else in that Roman numeral paragraph 5 that you believe Jeff Yelton may have violated?
A. Like I say, I have no -- I personally have no proof or knowledge that he has used confidential information that violates this, so the answer is I know of no way that he's used confidential information wrongly.
Q. Okay. Do you have any reason to believe that Jeff Yelton has ever disclosed any confidential information of ScanSource to anyone?
A. Do I have -- I have no knowledge that he has.
Q. And let's break that down. Has anybody ever told you that Jeff Yelton disclosed any information that you would contend is confidential to ScanSource?
A. Nobody's told me that, no.
Q. Have you ever read anything that would lead you to believe that Jeff Yelton ever disclosed any information that you would contend is confidential to ScanSource?
A. No.
Q. Has anybody ever told you that Jeff Yelton has

ever used any information that you would contend is confidential information of ScanSource?

A. Say that one again.

Q. Sure. Same questions on use. Has anyone ever told you that Jeff Yelton has used information that is confidential to ScanSource?

A. No.

Q. Have you ever read anything that leads you to believe that Jeff Yelton has ever used information that is confidential to ScanSource?

A. No.

Q. Do you have any reason to believe that while employed by ScanSource that Jeff Yelton ever attempted to access information that he was not entitled to access as president of North America point of sale?

A. No.

Q. Do you have any reason to believe that Jeff Yelton has attempted to compete in any way with ScanSource since leaving the company, other than your understanding of the business that's described in Yelton document 491?

A. No.

Q. Do you have any reason to believe that Jeff

Yelton has ever done anything to get anybody to stop doing business with ScanSource?

A. No.

Q. Do you have any reason to believe Jeff Yelton has ever done anything to have anybody reduce the amount of business they have done with ScanSource?

A. I don't know of anything, no.

Q. Sitting here today, Mr. Benbenek, can you tell me of anything that leads you to believe that Jeff Yelton is doing anything that could possibly harm ScanSource?

A. No, I mean, I know of nothing that he is doing, presently that is. The question seemed worded funny, so --

Q. Let me try a different way. I want you to be comfortable with these questions. I'm trying to make them straightforward, and your answers have been straightforward, so we can continue moving along, but it is important you understand the question.

Since leaving the company, has Jeff Yelton done anything that you believe has harmed ScanSource?

MR. FOSTER:

Object to the form.

THE DEPONENT:

Not that I know of.

EXAMINATION RESUMED BY MR. MURPHY:

Q. Has Jeff Yelton done anything to cause your company damages in any way?

A. I'm not aware of any.

Q. Has Jeff Yelton ever threatened to do anything against the interest of ScanSource, to the best of your knowledge?

A. To the best of my knowledge, no.

Q. Has Jeff Yelton done anything to benefit either himself or another company to the detriment of ScanSource?

A. Not that I know of.

Q. Has anybody told you that they believe he's done anything to benefit himself or a company to the detriment of ScanSource?

A. None that I can think of, no.

Q. During the time that Jeff Yelton was employed by the company, are you aware of anything that he ever did to benefit himself or another company to the detriment of ScanSource?

A. No, I mean, I don't have knowledge of anything like that.

Q. Has Jeff Yelton taken any property of ScanSource, to the best of your knowledge?
A. The best of my knowledge, I mean, I don't know. I don't have any -- I don't know.
Q. Have you ever heard anybody at ScanSource state that Jeff took any property belonging to the company?
A. Not that I can state. I mean, there was -- the only thing that I can think that is kind of weird is there was some type of PC provided by some customer of ours that was a mix-up, and I don't even know the story so I'm not the right person to -- they thought he was ordering one to pay for, and then it came and he said, wait a minute, I didn't mean to pay for that, and they just gave it to him. So I don't know if that's considered company property or personal property or what it is, and I don't even know -- I've never seen it or anything like that. That's the only thing I've ever --
Q. When did this occur?
A. I don't know. Sometime in 2011 I think.
Q. Do you have any reason to believe that Jeff Yelton has said anything negative about ScanSource from December 9 forward other than

the comments conveyed to you by Mr. Morgan on December 15?

Let me back up. Do you remember testifying that Mr. Morgan came and made the comment that you did not like about what Jeff had said?

A. Well, it's not that I didn't like it. I thought it was not in the agreement that we agreed to say positive things about each other --

Q. You viewed it as a negative thing --

A. -- the company and him.

Q. You viewed the statement made by Jeff to be a negative thing, right?

A. Yes.

Q. A negative statement about the company?

A. Yes.

Q. Okay. Other than those statements that were conveyed to you from Mark Morgan on December 15th, are you aware of Mr. Yelton making any negative statements about ScanSource?

A. Not aware of any.

Q. Have you lost any business whatsoever as a result of any action by Jeff Yelton?

A. None that I can know about, no.

Q. With respect to the litigation that we're

involved in, do you know how much the company has spent on attorney's fees to date?
A. I have no idea.
Q. Who would know that within your company, if you know?
A. I would assume Mr. Ellsworth would know.
Q. You don't get any financial records or statements that show you what's being spent or being charged --
A. This case?
Q. Yes, sir.
A. No.
Q. Subsequent to your discussions with Mr. Yelton on January 4th, have you had to deal with any Jeff Yelton related issues since January 4th other than giving an affidavit in this case?
A. None come to mind, no.
Q. Have there been any executives that have left the company, say, in the last couple years who have been paid their unvested deferred compensation?
A. Not that I'm aware of.
Q. Who is Patrick Burn; do you know? I'm not trying to suggest you do or not. Do you know who Patrick Burn is? I asked it in a funny

anybody disclosed any company confidential information since this litigation began?
A. I know of none. No, I don't know of any.
Q. Do you know of anybody using any of the confidential information that's been shared during this litigation for any purposes other than the handling of this case?
A. No, I mean, I don't know of any.
Q. Are you aware of any policy within the company that restricts the use of personal computers being used to access company information?
MR. FOSTER:
Object to the form.
THE DEPONENT:
Say it again.
EXAMINATION RESUMED BY MR. MURPHY:
Q. You talked about the Citrix system awhile ago, right?
A. Right.
Q. And the company also moved to another system, an open system, where somebody can get on a web browser and go into the company, correct, company information?
A. Citrix, are you talking about Citrix?
Q. Is there another system used in addition to

Citrix that you're aware of?
A. You can go to a browser and do e-mail at ScanSource and put in your stuff and get your e-mail that way, but you can't get your files and things like that that way.
Q. This is so people can access and work from different locations, correct, that's why you have these systems?
A. Uh-huh.
Q. And can people work at home using their computers that they personally own to access your computer system?
A. Uh-huh, yes, I mean, to my knowledge, that's what Citrix was designed for.
Q. And they can open up documents using their home computers using this system, correct?
A. I think certain ones. I'm not sure if all of them are available through Citrix, but yes, you can open up certain shared drives and stuff like that.
Q. There is no policy against using your own personally bought computer to access the Citrix system or company documents through the Citrix system?
A. No, not that I'm aware of.

Q. Is there any policy or restriction on anybody giving away or selling their home computers that they've used to access company information?
A. Is there any policy for people to give away -- or what was the --
Q. For example, if I'm a ScanSource employee and I'm using my kid's computer or my personal computer we bought with my family money and I'm working from home, checking my e-mail, working on documents from home, do you have any policy or procedure that restricts what I do with that computer at any time, even after I leave the company?
A. Not that I know of, no.
Q. So I could put it out in a garage sale --
A. As far as I know, yes, you could.
Q. Somebody could by, and it may even have old files on it, and that wouldn't violate any company policy, would it?
MR. FOSTER:
Object to the form.
THE DEPONENT:
Well, I -- it probably is a violation if you copied something onto that drive of that

computer. If you were only using it to access the company's information, you're basically just using it as a shell to look into the files that are really ScanSource. I don't know what -- I haven't read the policy about if you copied a company document from that onto your C drive, so to speak, what stipulations are there about what happens with that information if you quit using that computer. Could be nothing or there could be some detailed information.

EXAMINATION RESUMED BY MR. MURPHY:

Q. You don't know of any policy in that regard?

A. I don't know. I don't know.

Q. And there is no policy against the use of flash drives, is there?

A. No policy against the use of flash drives?

Q. Right.

A. Not to my knowledge, no.

Q. Any policy prohibiting an employee from copying work documents onto a flash drive, taking them home and working with those documents on their home computer?

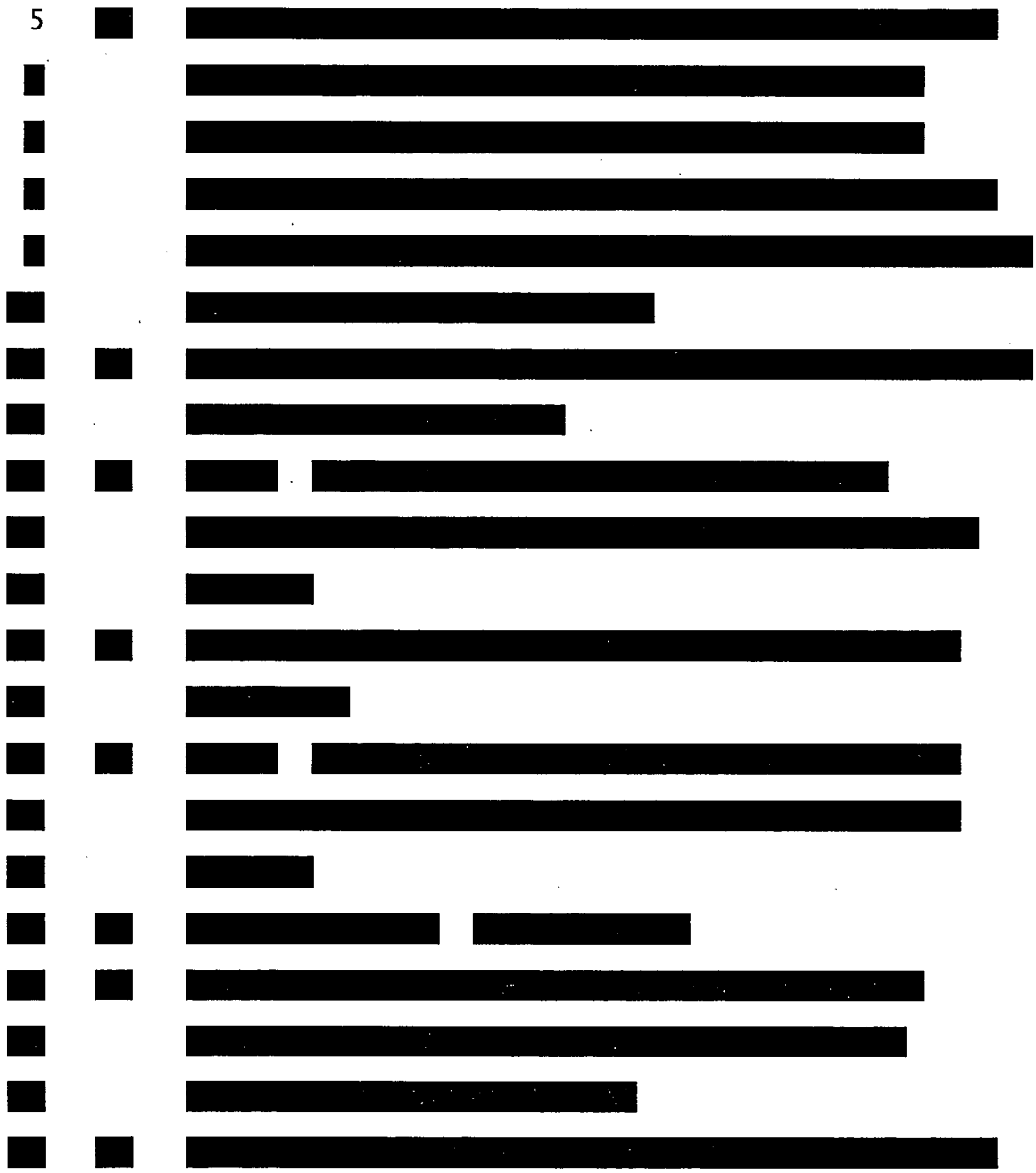
A. I don't know. I mean, I don't know -- I haven't read the policy. I don't know of one but could be one.

Q. Is there any policy restricting the use of copy machines outside of the ScanSource building?
A. Restriction on using copy machines outside the ScanSource building?
Q. Could I take work documents and make photocopies of them other places?
A. You mean if you're -- I guess you could.
Q. There is no policy against that, as far as you know?
A. As far as I know, yeah.
Q. Since the time you've been with ScanSource, is there any employee who's ever left the company who has been -- strike that.
To the best of your knowledge, has ScanSource ever demanded the return of any electronic devices used by an employee after they left other than the situation involving Jeff Yelton?
A. I'm not really the right person to ask. No direct report of mine that I would have been involved with do I know about, so I don't know.
Q. And you don't know of anybody else who's not a direct report of yours ever being told to return electronic devices after they've left the company?
A. To return electronic devices?

Q. Yes.
A. What do you mean by that?
Q. Let's break it down. Anybody ever told that they must return or disclose the use of flash drives after they left the company?
A. I don't know of any.
Q. When an employee departs the company, do you know of anybody sitting down with the employee and asking for a disclosure of what electronic devices they have or what kind of media such as flash drives they might have that ever contained company property?
A. I don't know. I don't know if there is a document like that that asks for that or not.
Q. Or anybody asking for it in like an exit interview or a discussion with the employee?
A. I don't know.
Q. And that's true today that you don't know of any such policy, and even after Jeff Yelton has left the company, the company still hasn't, to the best of your knowledge, implemented any policy or procedure where employees are questioned about what electronic devices they have or what media they would have such as flash drives that might contain company

information?

A. It's possible they could have put something more -- I don't know. I don't know the details of any of that.



Q. Well, if you don't have any idea what's on that list, how can you testify it's proprietary information?
A. Because HP was a vendor of ours, and if they provided us information, it's proprietary to us, that's why.
Q. You don't know what the HP list is, do you?
A. No, I don't.
Q. You were asked a question by Mr. Foster, he asked you would it be appropriate in your mind for Mr. Yelton to start a business such as the business described in Exhibit Number 3 using ScanSource proprietary information.
Do you recall that question?
A. Yes.
Q. And your answer was no?
A. Correct.
Q. Do you have any reason to believe Mr. Yelton did that?
A. I have no knowledge that he did that.
Q. And you don't have any knowledge that Mr. Yelton ever planned to use ScanSource proprietary information to start or operate a company called VarsGuide?
A. I have no knowledge that he planned to start a

business VarsGuide or to use proprietary information?

Q. That's good. I'll clarify.

Do you have any knowledge or reason to believe that Mr. Yelton ever planned to use ScanSource proprietary information to start VarsGuide?

A. No.

Q. Do you have any reason to believe that Mr. Yelton ever intended to use ScanSource proprietary information to operate VarsGuide?

A. I don't have any specific knowledge of that.

Q. Do you have any reason to believe that Mr. Yelton ever planned to use ScanSource proprietary information for any venture or employment after he left ScanSource?

A. He didn't tell me that he was going to do that, and that would be the only way that I could know that, so I don't have any knowledge of that.

Q. But you testified for your lawyer that if Mr. Yelton had QBR's and customer lists, he could use that information for purposes of operating a company like the one described in Exhibit Number 3?

A. I did, and I'll testify to that again. I mean,

that would be very helpful information in a business like this. That would be very enticing to one vendor to say, I know who these customers are of this other vendor, so that vendor may be likely to say, great, I'll hire you to do some marketing programs for me or educational things to try to teach those customers about our products.

Q. So what you're anticipating is that a Motorola or a Honeywell would knowingly use ScanSource proprietary information to market its products?

MR. FOSTER:

Object to the form.

THE DEPONENT:

I'm testifying -- I'm not testifying anything about Motorola or Honeywell. You asked me about Mr. Yelton, if he had that information would it be handy for his business, and I said if someone used it improperly, yes, it would be handy.

REEXAMINATION RESUMED BY MR. MURPHY:

Q. And you said it would be used to convince one vendor to hire Mr. Yelton knowing that he had the proprietary information related to another vendor?

A. I said that's an example of how it could be used, yes.
Q. Okay. Do you have any reason to believe that anybody at Motorola would ever do business with Jeff Yelton because they thought he was disclosing proprietary information belonging to a Honeywell or an Intermec?
A. I don't have any knowledge that they would or they wouldn't.
Q. Do you have any reason to believe that anyone at Honeywell would ever hire Jeff Yelton because they believed that he would use trade secrets related to Motorola or Intermec?
A. Yeah, I'm not sure trade secrets is the right word. In that case, it would be customer information.
Q. Do you think someone at Honeywell would do that?
A. I have no idea. I mean, I can't testify to what anybody -- what they would do.
Q. Do you have any reason to believe that Jeff Yelton ever went to Honeywell or Intermec or HP and ever discussed with them any information from a ScanSource QBR other than information related to that specific company?

A. I have no knowledge of that, no.
Q. You don't have any reason to believe he ever did that, do you?
A. No, I don't have any knowledge he did do it, so if that's the same as reason to believe, then so be it.
Q. What did you understand VarsGuide to be focusing on?
A. I really haven't given it much thought.
Q. If you hadn't given it much thought, what makes you think that the information in the QBR's would be helpful?
A. Well, because I read the description, you know, right here, and so that's why. I mean, I've given it some thought today.
Q. Does the information in the QBR's tell you what end users are buying?
A. What end users are buying? No.
Q. I couldn't look at a Honeywell QBR and find out what an end user or how much an end user, any particular end user, is buying of a product, could I?
A. Maybe. Maybe in some QBR's there is big deal information that says that reseller number 1 sold this to Wal-Mart, reseller number 2 sold

EXHIBIT 4

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	JUDICIAL CIRCUIT
Jeff Yelton,	)	Civil Action No. 2012-CP-23-0314
Plaintiff,	)	
vs.	)	**DEFENDANT'S RESPONSES TO PLAINTIFF'S FIRST INTERROGATORIES AND REQUESTS FOR PRODUCTION**
ScanScource, Inc.,	)	
Defendant.	)	

Pursuant to Rules 33 and 34, S.C. Rules of Civil Procedure, Defendant ScanSource, Inc. ("ScanSource") hereby responds to Plaintiff's First Interrogatories and Requests for Production.

ANSWERS AND OBJECTIONS TO INTERROGATORIES

1. Give the names and addresses of persons known to Defendant to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

ANSWER: ScanSource objects to this interrogatory to the extent it seeks to have ScanSource name a witness, such as ScanSource's counsel, whose testimony is protected from disclosure by the attorney-client privilege or as work product. ScanSource's investigation into the facts of the case is ongoing, and it reserves the right to supplement this answer. Unless otherwise indicated, the persons listed may be reached through ScanSource's counsel.

Person	Summary	Statement
1. Jeanne Aiken	Ms. Aiken has knowledge of confidential information requested by Plaintiff and the circumstances of the request.	Yelton00009 to 12

Person	Summary	Statement
2. Rick Burke	Mr. Burke has knowledge of ScanSource's secured door entry system and Plaintiff's ScanSource laptop.	Yelton00016 to 17
3. Scott Benbenek	Mr. Benbenek has knowledge of the termination.	Yelton00020 to 27
4. Robbie Cox	Mr. Cox has knowledge of confidential information taken by Plaintiff and the circumstances of the request.	Yelton00018 to 19
5. Christopher Eassy	Mr. Eassy has knowledge of email issues related to ScanSource's system.	Yelton00006 to 8
6. John Ellsworth	Mr. Ellsworth's testimony is protected from disclosure by the attorney-client privilege or as work product.	None
7. Stephen Fowler	Mr. Fowler has knowledge of confidential information taken by Plaintiff and the circumstances of the request.	None
8. Amy Pharr	Ms. Pharr has knowledge of the termination.	Yelton00001 to 2
9. Chris Spearman	Mr. Spearman has knowledge of confidential information taken by Plaintiff and the circumstances of the request.	Yelton00003 to 5
10. Other ScanSource representatives	Other ScanSource representatives may have knowledge regarding the subject matters of this action.	None
11. Any person named by Plaintiff Contact information provided by Plaintiff	These persons will have the knowledge described by Plaintiff.	None
12. Mark Morgan	Mr. Morgan has knowledge of confidential information requested by Plaintiff and the circumstances of the request.	None

2. Set forth a list of documents, in paper or electronic form, that relate to the claim or defense in the case.

ANSWER: ScanSource objects to this interrogatory because it seeks information that is protected by the attorney-client privilege or as work product, or that is confidential. Protected information is withheld from discovery and described on a

privilege log or is designated Confidential pursuant to the Confidentiality Protective Order entered by the Court. In addition, ScanSource objects to this interrogatory pursuant to Rule 33(c), S.C. Rules of Civil Procedure. Therefore, ScanSource answers by specifying the following documents as responsive to this request; which are produced in response to the Requests for Production: Yelton00001 to Yelton00613. ScanSource's investigation is ongoing, and it reserves the right to supplement this answer.

3. List the names and addresses of any expert witnesses whom Defendant proposes to use as a witness at the trial of the case.

ANSWER: ScanSource answers that none is proposed at this time; ScanSource has hired a consulting expert, who may or may not testify at trial.

4. For each person known to Defendant or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform Plaintiff of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

ANSWER: ScanSource refers to and incorporates its answer to Interrogatory No. 1.

5. Identify by date, participant, and mode, all oral, electronic, and written communications between employees or agents of Defendant regarding the decision to terminate Plaintiff's employment.

ANSWER: ScanSource objects to this interrogatory because it seeks information that is protected by the attorney-client privilege or as work product. Protected information is withheld from discovery and described on a privilege log. In addition, ScanSource objects to this interrogatory pursuant to Rule 33(c), S.C. Rules of Civil Procedure. Further, ScanSource objects to this interrogatory as overly broad and unduly burdensome because it seeks identification of all such communications; ScanSource has made and continues to make a reasonable inquiry into the likely responsive repositories.

21. Identify all documents, in paper or electronic form, and other tangible things that were considered as part of the investigation upon which you purportedly relied in deciding to terminate Plaintiff.

ANSWER: ScanSource objects to this interrogatory because it seeks identification of "all" such documents; ScanSource has made and continues to make a reasonable search of likely repositories. In addition, ScanSource objects to this interrogatory pursuant to Rule 33(c), S.C. Rules of Civil Procedure. ScanSource also objects to this interrogatory because "considered" and "relied" are vague and ambiguous. Subject to these objections, ScanSource answers that its investigation is ongoing, and it reserves its right to supplement this answer.

22. If you contend Plaintiff has misappropriated any information that you contend is a trade secret belonging to you, specify:

a. each trade secret that forms the basis of your contention;
b. each fact upon which you rely in contending that Plaintiff misappropriated the trade secret;
c. each witness that has knowledge of Plaintiffs misappropriation of the trade secret; and
d. each document upon which you rely in support of your contention.

ANSWER: ScanSource objects to this interrogatory because it seeks information that is outside the scope of discovery pursuant to Rule 26, S.C. Rules of Civil Procedure. Subject to this objection, ScanSource answers that Plaintiff misappropriated trade secrets pursuant to S.C. Code Ann. § 39-8-20 as described in the affidavits of Chris Spearman and Robbie Cox, specified as Yelton00003 and Yelton00018, respectively. By referring to these affidavits, ScanSource does not intend to and does not limit its answer to the information described in the affidavits. ScanSource's investigation is ongoing, and it reserves its right to supplement this answer.

23. If you contend Plaintiff has used any information that you contend is a trade secret belonging to you, specify:

a. each trade secret that forms the basis of your contention;

b. each fact upon which you rely in contending that Plaintiff used the trade secret;
c. each witness that has knowledge of Plaintiff's use of the trade secret; and
d. each document upon which you rely in support of your contention.

ANSWER: ScanSource objects to this interrogatory because it seeks information that is outside the scope of discovery pursuant to Rule 26, S.C. Rules of Civil Procedure. Subject to this objection, ScanSource answers that Plaintiff misappropriated trade secrets pursuant to S.C. Code Ann. § 39-8-20 as described in the affidavits of Chris Spearman and Robbie Cox, specified as Yelton00003 and Yelton00005, respectively. By referring to these affidavits, ScanSource does not intend to and does not limit its answer to the information described in the affidavits. ScanSource's investigation is ongoing, and it reserves its right to supplement this answer.

24. With respect to John Ellsworth's letter dated January 16,2012 state each and every act on the part of Plaintiff upon which you rely in contending that Plaintiff breached a "duty of loyalty" that he owed ScanSource and, for each such act:

a. specify the date upon which such action took place;
b. identify all witnesses upon whom you rely in contending that such a violation occurred;
c. specify any damages you claim to have incurred from each such breach; and
d. identify each document upon which you rely in support of your contention.

ANSWER: ScanSource objects to this interrogatory pursuant to Rule 33, S.C. Rules of Civil Procedure. In addition, ScanSource objects to this interrogatory because it seeks identification of "every" such act; ScanSource has made and continues to make a reasonable search of likely sources of information. Subject to these objections, ScanSource answers that Plaintiff breached his duty of loyalty to ScanSource as described in the affidavits of Jeanne Aiken, Chris Spearman, and Robbie Cox, specified

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: _____

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(864) 250-2300

Attorneys for ScanSource, Inc.

Columbia, South Carolina

March 20, 2012

EXHIBIT 5

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE Jeff Yelton, Plaintiff, vs. ScanSource, Inc., Defendant.	))))))))))	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT CASE NO.: 2012-CP-23-0314 **MOTION AND ORDER INFORMATION FORM AND COVERSHEET**

Plaintiff's Attorney:	Defendant's Attorney:
Brian Murphy, Bar No. 6770 Address: Brian Murphy Law Firm, PC, 514 Pettigru Street, Greenville, SC 29601 Phone: 864-370-9400 Fax 864-241-1386 E-mail: brian@brianmurphylawfirm.com Other: _____	William H. Foster, Bar No. _____ Address: Nelson Mullins Riley & Scarborough LLP, P. O. Box 10084, Greenville, SC 29603 Phone: 864-250-2222 Fax864-250-2329 E-mail: bill.foster@nelsonmullins.com Other: _____

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Motion to Compel
Estimated Time Needed: 30 minutes Court Reporter Needed: ☒ **YES**/☐ **NO**

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

_____ April 27, 2012
Signature of Attorney for ☒ Plaintiff /☐ Defendant Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: $ _____
☐ EXEMPT: (check reason)
- ☐ Rule to Show Cause in Child or Spousal Support
- ☐ Domestic Abuse or Abuse and Neglect
- ☐ Indigent Status ☐ State Agency v. Indigent Party
- ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
- ☐ Motion for Stay in Bankruptcy
- ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
- ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
  Name of Court Reporter: _____
- ☐ Other: _____

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	JUDGE CODE _____ Date: _____

CLERK'S VERIFICATION

Collected by:_____ Date Filed: _____
☐ MOTION FEE COLLECTED: $ _____
☐ CONTESTED – AMOUNT DUE: $ _____

State of South Carolina	)	**IN THE COURT OF COMMON PLEAS**
	)	
County of Greenville	)	**2012-CP-23-0314**
Jeff Yelton,	)	
Plaintiff,	)	
v.	)	**Plaintiff's Motion to Compel**
ScanSource, Inc.,	)	
Defendant.	)	

Plaintiff now moves for an order compelling full and complete responses to interrogatories and requests to produce (Exh. A). The following is a summary of the issues giving rise to this Motion.

1. Refusal to Produce Documents Regarding Alleged Trade Secrets and Confidential Information

Defendant has taken the frivolous position that information that is "confidential" under the Consent Protective Order is shielded from discovery, which defeats the very purpose of the Order. Defendant has refused to provide any of the documents forming the basis of its claims. See Def. Response to Requests to Produce 1, 3 - 7, 11, 12, 15, 16. Plaintiff cannot begin to assess Defendant's claims – and Defendant could never begin to prove them – if the information is withheld from discovery. The Court already has entered a Consent Protective Order to ensure that any legitimate confidential information is not misused.

2. Defendant's Refusal to Specify Alleged Misappropriation

In response to Defendant's own allegation Plaintiff sought a specification of the information Defendant claims to have misappropriated. Pl. Interrog. 22. Defendant cites one affidavit, but in addition to a litany of boilerplate objections, makes clear that it is not limiting its claim to this response. Defendant owes Plaintiff a full and unqualified response.

3. Defendant's Refusal to Specify Alleged Use

As with Defendant's misappropriation claim, Defendant refuses to fully disclose the basis of any contention that Plaintiff has used any trade secrets. See Def. Response to Plaintiff Interrog. 23. Defendant owes Plaintiff a full and unqualified response.

4. Defendant's Own Contentions Regarding Alleged Wrongdoing By Plaintiff

Defendant claims it terminated Plaintiff for "cause." Plaintiff naturally has sought specification as to what specific provision of the employment agreement he violated or what specific rules or policies he allegedly violated. Pl. Interrogatories 19-20. Defendant refuses to provide this and just refers to policies generally. Such a response is not proper as Plaintiff is entitled to know what specific provisions of his contract or Defendant's policies he is alleged to have violated.

5. Decision to Terminate Plaintiff's Employment

Interrogatories 5 and 6 seek the identification and summaries of oral and written communications relative to the decision to terminate Plaintiff's employment. Interrogatory 9 seeks information regarding each person who was involved, their involvement, and the facts known to them, and identification the relevant documents. Interrogatory 21 seeks

identification of the document related to the investigation. As the Court can plainly see, it is impossible to discern what these communications were from the responses provided.

6. Defendant's Decision to Later Designate Plaintiff's Termination as For Cause

Interrogatories 7 and 8 seek the identification and summaries of oral and written communications relative to the decision to later characterize Plaintiff's termination as being "for cause" (after the parties already had entered into a separation agreement). Interrogatory 10 seeks identification of witnesses, their knowledge, and relevant documents regarding the input that led into the decision. Defendant objects repeatedly and then incorporates a prior response that provides no responsive information. Plaintiff is entitled to straightforward unqualified answers if Defendant is going to be permitted to maintain its claims.

7. Defendant's Communications Regarding Its Claims

Plaintiff seeks communications between Defendant and other persons or entities regarding Defendant's allegations. Pl. Request to Produce 7. Such communications relate directly to Defendant's contentions and to its damages claim.

8. Communications Between the Parties

After engaging in extensive efforts to obtain all of Plaintiff's communications, Defendant refuses to provide any discovery as to communications between Plaintiff and Defendant during a very limited time period, even though such communications are used by Defendant to assert claims. See Def. Resp. to Pl. RTP 15. Defendant has demanded extensive discovery from Plaintiff in this area, which Plaintiff has cooperated in providing. Discovery is a two-way street and Plaintiff's discovery is far more circumscribed. Because

the communications between the parties are central to this case, there is no valid objection to providing them.

Respectfully submitted this 27th day of April, 2012.

For the Plaintiff:

Brian P. Murphy No. 6770

Brian Murphy Law Firm, PC
514 Pettigru Street
Greenville, SC 29601
(864) 370-9400
(864) 241-1386 (fax)

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	JUDICIAL CIRCUIT
Jeff Yelton,	)	Civil Action No. 2012-CP-23-0314
Plaintiff,	)	
vs.	)	**DEFENDANT'S RESPONSES TO PLAINTIFF'S FIRST INTERROGATORIES AND REQUESTS FOR PRODUCTION**
ScanScource, Inc.,	)	
Defendant.	)	

Pursuant to Rules 33 and 34, S.C. Rules of Civil Procedure, Defendant ScanSource, Inc. ("ScanSource") hereby responds to Plaintiff's First Interrogatories and Requests for Production.

ANSWERS AND OBJECTIONS TO INTERROGATORIES

1. Give the names and addresses of persons known to Defendant to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

ANSWER: ScanSource objects to this interrogatory to the extent it seeks to have ScanSource name a witness, such as ScanSource's counsel, whose testimony is protected from disclosure by the attorney-client privilege or as work product. ScanSource's investigation into the facts of the case is ongoing, and it reserves the right to supplement this answer. Unless otherwise indicated, the persons listed may be reached through ScanSource's counsel.

Person	Summary	Statement
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Person	Summary	Statement
2. Rick Burke	Mr. Burke has knowledge of ScanSource's secured door entry system and Plaintiff's ScanSource laptop.	Yelton00016 to 17
3. Scott Benbenek	Mr. Benbenek has knowledge of the termination.	Yelton00020 to 27
4. Robbie Cox	Mr. Cox has knowledge of confidential information taken by Plaintiff and the circumstances of the request.	Yelton00018 to 19
5. Christopher Eassy	Mr. Eassy has knowledge of email issues related to ScanSource's system.	Yelton00006 to 8
6. John Ellsworth	Mr. Ellsworth's testimony is protected from disclosure by the attorney-client privilege or as work product.	None
7. Stephen Fowler	Mr. Fowler has knowledge of confidential information taken by Plaintiff and the circumstances of the request.	None
8. Amy Pharr	Ms. Pharr has knowledge of the termination.	Yelton00001 to 2
9. Chris Spearman	Mr. Spearman has knowledge of confidential information taken by Plaintiff and the circumstances of the request.	Yelton00003 to 5
10. Other ScanSource representatives	Other ScanSource representatives may have knowledge regarding the subject matters of this action.	None
11. Any person named by Plaintiff Contact information provided by Plaintiff	These persons will have the knowledge described by Plaintiff.	None
12. Mark Morgan	Mr. Morgan has knowledge of confidential information requested by Plaintiff and the circumstances of the request.	None

2. Set forth a list of documents, in paper or electronic form, that relate to the claim or defense in the case.

ANSWER: ScanSource objects to this interrogatory because it seeks information that is protected by the attorney-client privilege or as work product, or that is confidential. Protected information is withheld from discovery and described on a

privilege log or is designated Confidential pursuant to the Confidentiality Protective Order entered by the Court. In addition, ScanSource objects to this interrogatory pursuant to Rule 33(c), S.C. Rules of Civil Procedure. Therefore, ScanSource answers by specifying the following documents as responsive to this request; which are produced in response to the Requests for Production: Yelton00001 to Yelton00613. ScanSource's investigation is ongoing, and it reserves the right to supplement this answer.

3. List the names and addresses of any expert witnesses whom Defendant proposes to use as a witness at the trial of the case.

ANSWER: ScanSource answers that none is proposed at this time; ScanSource has hired a consulting expert, who may or may not testify at trial.

4. For each person known to Defendant or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform Plaintiff of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

ANSWER: ScanSource refers to and incorporates its answer to Interrogatory No. 1.

5. Identify by date, participant, and mode, all oral, electronic, and written communications between employees or agents of Defendant regarding the decision to terminate Plaintiff's employment.

ANSWER: ScanSource objects to this interrogatory because it seeks information that is protected by the attorney-client privilege or as work product. Protected information is withheld from discovery and described on a privilege log. In addition, ScanSource objects to this interrogatory pursuant to Rule 33(c), S.C. Rules of Civil Procedure. Further, ScanSource objects to this interrogatory as overly broad and unduly burdensome because it seeks identification of all such communications; ScanSource has made and continues to make a reasonable inquiry into the likely responsive repositories.

ScanSource's investigation is ongoing, and it reserves the right to supplement this answer.

6. For each communication identified above, set forth a detailed summary of the communications or, if such communication occurred solely in writing, specify the document(s) that contain the contents of the communication.

ANSWER: ScanSource refers to and incorporates its answer to Interrogatory No. 5.

7. Identify by date, participant, and mode, all oral, electronic, and written communications between employees or agents of Defendant regarding the decision to designate the termination of Plaintiffs employment as being for "cause" as indicated in John Ellsworth's letter to Plaintiff dated January 16, 2012.

ANSWER: ScanSource objects to this interrogatory because it seeks information that is protected by the attorney-client privilege or as work product. Protected information is withheld from discovery and described on a privilege log. In addition, ScanSource objects to this interrogatory pursuant to Rule 33(c), S.C. Rules of Civil Procedure. Further, ScanSource objects to this interrogatory as overly broad and unduly burdensome because it seeks identification of all such communications; ScanSource has made and continues to make a reasonable inquiry into the likely responsive repositories. ScanSource's investigation is ongoing, and it reserves the right to supplement this answer.

Date	Participants	Summary
Ongoing from January 4, 2012 to January 16, 2012	Scott Benbenek, John Ellsworth, Corky Harper	The conclusion that Plaintiff had breached his employment agreement and had triggered his termination for cause under his Employment Agreement was a legal conclusion reached after privileged and confidential consultation with counsel.

8. For each communication identified above, set forth a detailed summary of the communications or, if such communication occurred solely in writing, specify the document(s) that contain the contents of the communication.

ANSWER: ScanSource refers to and incorporates its answer to Interrogatory No. 7.

9. Identify by name address and phone number each and every person who provided information, was consulted, who participated in, or who was otherwise involved in the decision to terminate Plaintiffs employment. For each person identified, specify:

a. the specific role such person played in the decision;
b. the relevant facts known to the person, or that he or she provided in the decision-making process leading to the decision, including other options considered, whether or not you contend they were relied upon in making the decision; and
c. all documents and communications created, considered by, or otherwise related to his or her role in the decision including, but not limited to, any notes or communications or other documents regarding the decision.

ANSWER: ScanSource objects to this interrogatory because it seeks information that is protected by the attorney-client privilege or as work product. The decision to terminate Plaintiff was made with the input and advice of counsel. Protected information is withheld from discovery and described on a privilege log. In addition, ScanSource objects to this interrogatory pursuant to Rule 33(c), S.C. Rules of Civil Procedure.

Also, ScanSource objects to this interrogatory as overly broad and unduly burdensome because it seeks identification of persons who were not substantively involved in the decision to terminate Plaintiff, and thus are outside the scope of discovery under Rule 26, S.C. Rules of Civil Procedure. Further, this interrogatory is overly broad and unduly burdensome because it duplicates information sought by Interrogatory No. 5. ScanSource objects to this interrogatory because "involved," "role," and "considered" are vague and ambiguous.

Thus, ScanSource answers by referring to and incorporating its answer to Interrogatory No. 5. ScanSource also will answer pursuant to Rule 33 by specifying the documents containing responsive information. ScanSource's investigation is ongoing, and it reserves the right to supplement this answer.

10. Identify by name address and phone number each and every person who provided information, was consulted, who participated in, or who was otherwise involved in the decision to designate the termination of Plaintiffs employment as being for "cause" as indicated in John Ellsworth's letter to Plaintiff dated January 16, 2012. For each person identified, specify:

a. the specific role such person played in the decision;

b. the relevant facts known to the person, or that he or she provided in the decision-making process leading to the decision, including other options considered, whether or not you contend they were relied upon in making the decision; and

c. all documents and communications created, considered by, or otherwise related to his or her role in the decision including, but not limited to, any notes or communications or other documents regarding the decision.

ANSWER: ScanSource objects to this interrogatory because it seeks information that is protected by the attorney-client privilege or as work product. The decision to terminate Plaintiff was made with the input and advice of counsel. Protected information is withheld from discovery and described on a privilege log. In addition, ScanSource objects to this interrogatory pursuant to Rule 33(c), S.C. Rules of Civil Procedure.

Also, ScanSource objects to this interrogatory as overly broad and unduly burdensome because it seeks identification of persons who were not substantively involved in the decision to terminate Plaintiff, and thus are outside the scope of discovery under Rule 26, S.C. Rules of Civil Procedure. Further, this interrogatory is overly broad and unduly burdensome because it duplicates information sought by Interrogatory No. 5. ScanSource objects to this interrogatory because "involved," "role," and "considered" are vague and ambiguous.

Thus, ScanSource answers by referring to and incorporating its answer to Interrogatory No. 7. ScanSource also will answer pursuant to Rule 33 by specifying the documents containing responsive information. ScanSource's investigation is ongoing, and it reserves the right to supplement this answer.

11. With respect to John Ellsworth's letter to Plaintiff dated January 16, 2012, specify by employee, date, time, and mode (e.g. phone, email, text message) each "contact" between Plaintiff and a ScanSource employee to which you refer in the first numbered paragraph and, for each such contact, set forth:

a. each "certain customer list" to which you refer:
b. each fact upon which you rely in contending that such list is "confidential;"
c. each fact upon which you rely in contending that such list is "proprietary;"
d. the source(s) of the information upon which you rely in making the allegations in the first numbered paragraph including, but not limited to, the names, addresses, and phone numbers of each witness; and
e. a list of each document that relates to each such contact or that constitutes the "certain customer list" to which you refer.

ANSWER: ScanSource objects to this interrogatory because "constitutes" is vague and ambiguous. In addition, ScanSource objects to this interrogatory pursuant to Rule 33(c), S.C. Rules of Civil Procedure. Subject to these objections, ScanSource answers by identifying the following customer lists that are highly confidential and proprietary. The confidential status of these documents is described in ScanSource's Business Ethics and Code of Conduct, in the definitions of "Confidential Information" and "Trade Secrets" in ¶ 11(b) and Policy #112, section entitled "Confidentiality," attached as Exhibit D to Defendant's Answer and Counterclaim, and pertinent provisions of the S.C. Trade Secrets Act. Among other reasons, this information was prepared by employees of ScanSource from ScanSource data and thus is owned by and belongs to ScanSource.

As described in the Affidavit of Jeanne Aiken, Yelton00009 to 12, on January 4, 2012, Plaintiff sent a text message to Ms. Aiken asking her to "send [him] the HP customer list from your home email or give it to me on a memory stick? Pretty please." This list contains customer names, contact names, and addresses.

12. With respect to John Ellsworth's letter to Plaintiff dated January 16, 2012, specify by employee, date, time, and mode (e.g. phone, email, text message) each communication between Plaintiff and a ScanSource employee to which you refer in the second numbered paragraph and, for each such contact, set forth:

a. each item of "vendor information" to which you refer;
b. each fact upon which you rely in contending that such item is "confidential" or "proprietary;"
c. the name of each vendor to which such item relates;
d. the source(s) of the information upon which you rely;
e. a list of each document that relates to each such contact or that constitutes or contains the vendor information to which you refer;
f. each item of "confidential, proprietary customer. . information" to which you refer;
g. each fact upon which you rely in contending that such customer information is "confidential" or "proprietary;"
h. the name of each customer to which such item relates;
i. the source(s) of the information upon which you rely; and
j. a list of each document that relates to each such contact or that constitutes or contains the customer information to which you refer.

ANSWER: ScanSource objects to this interrogatory because "constitutes" is vague and ambiguous. In addition, ScanSource objects to this interrogatory pursuant to Rule 33(c), S.C. Rules of Civil Procedure. Subject to these objections, ScanSource answers by identifying the following vendor information that is highly confidential and proprietary. The confidential status of this information is described in ScanSource's Business Ethics and Code of Conduct, in the definitions of "Confidential Information" and "Trade Secrets" in ¶ 11(b) and Policy #112, section entitled "Confidentiality," attached as Exhibit D to Defendant's Answer and Counterclaim, and pertinent provisions of the S.C. Trade Secrets Act. Among other reasons, this information was prepared by

employees of ScanSource from ScanSource data and thus is owned by and belongs to ScanSource.

As described in the Affidavit of Jeanne Aiken, Yelton00009 to 12, after a meeting on December 12, 2011, Plaintiff asked Ms. Aiken about the Dell List, which is a confidential point of sale customer list, and said he did not want it after she explained that it did not contain contact names and addresses.

Sometime on December 13 or 14, 2011, Plaintiff asked Chris Spearman, Stephen Fowler, and Robbie Cox to download the last vendor quarterly business report ("QBR") for Motorola, Honeywell, and Intermec, respectively, onto a thumb drive that Plaintiff provided. See the Affidavits of Chris Spearman, Yelton00003 to 5, and Robbie Cox, Yelton00018 to 19. Plaintiff also asked Stephen Fowler to create some slides for him. QBRs contain detailed background information on purchases by each major ScanSource customer over at least 12 quarters, including information about sales, margins, profits, revenues, market share, and long term plans, among other matters.

13. With respect to John Ellsworth's letter to Plaintiff dated January 16, 2012, specify by employee, date, time, and mode (e.g. phone, email, text message) each communication with Plaintiff upon which you rely in claiming that Plaintiff "initially denied having done this" and identify all documents that memorialize such communications or that relate to the communication(s) to which you refer.

ANSWER: As described in the Affidavit of Scott Benbenek, Yelton00020 to 27, on January 4, 2012, Mr. Benbenek called Plaintiff to ask, among other questions, where the thumb drive and files were that Plaintiff had taken. Plaintiff responded that he took the information before he knew he was leaving, which Mr. Benbenek disputed. Plaintiff said he did not know where the thumb drive was and that he must have left it in his office.

14. With respect to John Ellsworth's letter to Plaintiff dated January 16, 2012, specify by employee, date, time, and mode (e.g. phone, email, text message) each communication with Plaintiff upon which you rely in claiming that Plaintiff "admitted these activities but . . . told the Company that you do not know where the thumb drive is" and identify all documents that memorialize such communications or that relate to the communication(s) to which you refer.

ANSWER: ScanSource refers to and incorporates its answer to Interrogatory No. 13.

15. With respect to the third numbered paragraph of John Ellsworth's letter to Plaintiff dated January 16, 2012, specify:

a. each file or hard copy of data;
b. your basis for claiming that such file or hard copy was "removed;"
c. the individual(s) to whom you claim Plaintiff stated that he did not know where any of this information is at present;"
d. any documents related to this allegation, that memorialize or document the communications at issue, or upon which you otherwise rely in making your claims in the third numbered paragraph.

ANSWER: ScanSource refers to and incorporates the Affidavit of Amy Pharr, Yelton00001 to 2, and its answer to Interrogatory No. 12. In addition, ScanSource answers by specifying the documents returned to ScanSource on February 14, 2012, at the office of Plaintiff's counsel. According to Plaintiff, he removed from these documents from his office at ScanSource:

Document Title	Date
ScanSource POS/Barcode Business Unit US & Canada, Projection 2010	Not dated
ScanSource POS/Barcode Business Unit US & Canada, Score Reports	Not dated
"SEO" Folder, containing various materials	Various
"Web" Folder, containing various materials	Various
VDC Research Confidential Memorandum regarding NFC Payments	10/06/2011
Handwritten notes	Not dated
Status Change Statement regarding R. Cox	12/12/2011
ScanSource Online Community Strategy	08/18/2009
Engagement Survey Leader's Guide, Follow-Up Process: From Information to Results with Your Engagement Survey Notebook	2010

Document Title	Date
Envelope, containing ScanSource – 2010 Employee Engagement Survey	11/08/2010
PowerPoint regarding 2004 Year in Review and 2005 Business Plan	Not dated
NCR, various materials	Not dated
Email from F. Dotson to M. Baur regarding information for response to Lee Schram	11/01/2005
Notebook containing traffic sources for 2008 and 2009	2008/2009
Collection of Harvard publications	Various

16. With respect to the fifth numbered paragraph of John Ellsworth's letter to Plaintiff dated January 16, 2012, specify:

a. the "vendor" to whom you refer;
b. every fact upon which you rely in contending that Plaintiff's communication with such vendor were "surreptitious;"
c. the individual(s) with whom you contend Plaintiff communicated
d. each source upon which you rely in making the claims in the fifth numbered paragraph; and
e. any documents related to this allegation, that memorialize or document the communications at issue, or upon which you otherwise rely in making your claims in the fifth numbered paragraph.

ANSWER: ScanSource refers to and incorporates the affidavit of Christopher Eassy, Yelton00006 to 8, which includes as an attachment an email sent by Plaintiff to Jim Welch of Motorola on December 12, 2011, requesting Mr. Welch's outside email address. Plaintiff's communication was surreptitious because he attempted to avoid ScanSource's email system and, as Plaintiff stated plainly in the email, was "intend[ed] for [Mr. Welch's] eyes only."

17. With respect to the sixth numbered paragraph of John Ellsworth's letter to Plaintiff dated January 16, 2012, specify:

a. the date, time, mode and name of each person to whom Plaintiff supposedly made the comments you attribute to him;
b. the "proprietary customer list data" referred to in the sixth numbered paragraph;
c. the business Plaintiff told you he intended to solicit;
d. any documents related to this allegation, that memorialize or document the communications at issue, or upon which you

otherwise rely in making your claims in the fifth numbered paragraph.

ANSWER: ScanSource objects to this interrogatory pursuant to Rule 33(c), S.C. Rules of Civil Procedure. Subject to this objection, ScanSource answers by referring to the January 4, 2012 email from Plaintiff to Scott Benbenek, Yelton00020, and the Affidavit of Scott Benebenek, Yelton00027.

18. Identify by name address and phone number each and every person who provided information, was consulted, who participated in, or who was otherwise involved in the decision to terminate Plaintiffs employment. For each person identified, specify:

a. the specific role such person played in the decision Plaintiff;
b. the relevant facts known to the person, or that he or she provided in the decision-making process leading to the decision, including other options considered, whether or not you contend they were relied upon in making the decision; and
c. all documents and communications created, considered by, or otherwise related to his or her role in the decision including, but not limited to, any notes or communications or other documents regarding the decision.

ANSWER: ScanSource objects to this interrogatory as overly burdensome because it duplicates Interrogatory No. 9; therefore, ScanSource refers to and incorporates its response to Interrogatory No. 9.

19. If you contend that Plaintiff violated any policy, rule, or standard of conduct that was considered in the decisions to terminate his employment, specify each such incident by date, identify each person with knowledge of your contention, and identify all documents related to the alleged violation.

ANSWER: ScanSource objects to this interrogatory because it seeks information that is protected by the attorney-client privilege or as work product. In addition, ScanSource objects to this interrogatory pursuant to Rule 33(c), S.C. Rules of Civil Procedure. ScanSource also objects to this interrogatory because "considered" is vague and ambiguous. Further, ScanSource objects to this interrogatory because it seeks

information that is outside the scope of discovery pursuant to Rule 26, S.C. Rules of Civil Procedure. And ScanSource objects to this interrogatory because it seeks identification of "all" such documents; ScanSource has made and continues to make a reasonable search of likely repositories.

ScanSource terminated Plaintiff pursuant to item 5(b) of its Employment Agreement with him, Yelton00028 to 52. Policies governing Plaintiff's employment are identified as Yelton00331 to 438. ScanSource's investigation is ongoing, and it reserves its right to supplement this answer.

20. If you contend Plaintiff violated any term of the May 28, 2008 Employment Agreement specify the specific term upon which you rely, each such incident by date, identify each person with knowledge of your contention, and identify all documents related to the alleged violation(s).

ANSWER: ScanSource objects to this interrogatory because it seeks information that is protected by the attorney-client privilege or as work product. In addition, ScanSource objects to this interrogatory pursuant to Rule 33(c), S.C. Rules of Civil Procedure. Further, ScanSource objects to this interrogatory because it seeks information that is outside the scope of discovery pursuant to Rule 26, S.C. Rules of Civil Procedure. And ScanSource objects to this interrogatory because it seeks identification of "all" such documents; ScanSource has made and continues to make a reasonable search of likely repositories.

ScanSource terminated Plaintiff pursuant to item 5(b) of its Employment Agreement with him, Yelton00028 to 52. Policies governing Plaintiff's employment are identified as Yelton00331 to 438. ScanSource's investigation is ongoing, and it reserves its right to supplement this answer.

21. Identify all documents, in paper or electronic form, and other tangible things that were considered as part of the investigation upon which you purportedly relied in deciding to terminate Plaintiff.

ANSWER: ScanSource objects to this interrogatory because it seeks identification of "all" such documents; ScanSource has made and continues to make a reasonable search of likely repositories. In addition, ScanSource objects to this interrogatory pursuant to Rule 33(c), S.C. Rules of Civil Procedure. ScanSource also objects to this interrogatory because "considered" and "relied" are vague and ambiguous. Subject to these objections, ScanSource answers that its investigation is ongoing, and it reserves its right to supplement this answer.

22. If you contend Plaintiff has misappropriated any information that you contend is a trade secret belonging to you, specify:

a. each trade secret that forms the basis of your contention;
b. each fact upon which you rely in contending that Plaintiff misappropriated the trade secret;
c. each witness that has knowledge of Plaintiffs misappropriation of the trade secret; and
d. each document upon which you rely in support of your contention.

ANSWER: ScanSource objects to this interrogatory because it seeks information that is outside the scope of discovery pursuant to Rule 26, S.C. Rules of Civil Procedure. Subject to this objection, ScanSource answers that Plaintiff misappropriated trade secrets pursuant to S.C. Code Ann. § 39-8-20 as described in the affidavits of Chris Spearman and Robbie Cox, specified as Yelton00003 and Yelton00018, respectively. By referring to these affidavits, ScanSource does not intend to and does not limit its answer to the information described in the affidavits. ScanSource's investigation is ongoing, and it reserves its right to supplement this answer.

23. If you contend Plaintiff has used any information that you contend is a trade secret belonging to you, specify:

a. each trade secret that forms the basis of your contention;

b. each fact upon which you rely in contending that Plaintiff used the trade secret;
c. each witness that has knowledge of Plaintiff's use of the trade secret; and
d. each document upon which you rely in support of your contention.

ANSWER: ScanSource objects to this interrogatory because it seeks information that is outside the scope of discovery pursuant to Rule 26, S.C. Rules of Civil Procedure. Subject to this objection, ScanSource answers that Plaintiff misappropriated trade secrets pursuant to S.C. Code Ann. § 39-8-20 as described in the affidavits of Chris Spearman and Robbie Cox, specified as Yelton00003 and Yelton00005, respectively. By referring to these affidavits, ScanSource does not intend to and does not limit its answer to the information described in the affidavits. ScanSource's investigation is ongoing, and it reserves its right to supplement this answer.

24. With respect to John Ellsworth's letter dated January 16,2012 state each and every act on the part of Plaintiff upon which you rely in contending that Plaintiff breached a "duty of loyalty" that he owed ScanSource and, for each such act:

a. specify the date upon which such action took place;
b. identify all witnesses upon whom you rely in contending that such a violation occurred;
c. specify any damages you claim to have incurred from each such breach; and
d. identify each document upon which you rely in support of your contention.

ANSWER: ScanSource objects to this interrogatory pursuant to Rule 33, S.C. Rules of Civil Procedure. In addition, ScanSource objects to this interrogatory because it seeks identification of "every" such act; ScanSource has made and continues to make a reasonable search of likely sources of information. Subject to these objections, ScanSource answers that Plaintiff breached his duty of loyalty to ScanSource as described in the affidavits of Jeanne Aiken, Chris Spearman, and Robbie Cox, specified

as Yelton00009, Yelton00003, and Yelton00018, respectively. By referring to these affidavits, ScanSource does not intend to and does not limit its answer to the information described in the affidavits. ScanSource continues to assess its damages, which include but are not limited to the costs and attorneys' fees in defending this action and damage to its reputation and business relationships. ScanSource's investigation is ongoing, and it reserves its right to supplement this answer.

25. With respect to John Ellsworth's letter dated January 16, 2012 state each and every act on the part of Plaintiff upon which you rely in contending that Plaintiff violated the Computer Fraud and Abuse Act and, for each such act:

a. specify the date upon which such action took place;
b. identify all witnesses upon whom you rely in contending that such a breach occurred;
c. specify any damages you claim to have incurred from each such breach: and
d. identify each document upon which you rely in support of your contention.

ANSWER: ScanSource objects to this interrogatory because it is overly broad, unduly burdensome, and seeks information that is outside the scope of discovery under Rule 26, S.C. Rules of Civil Procedure. ScanSource does not waive its rights to assert any causes of action against Plaintiff.

26. With respect to John Ellsworth's letter dated January 16, 2012, identify each item you contend Plaintiff has "converted."

ANSWER: ScanSource objects to this interrogatory because the answer may be determined by the results of the examination of Plaintiff's electronic devices that is underway. Subject to this objection, ScanSource answers that Plaintiff converted at least the information that is described in the affidavits of Chris Spearman and Robbie Cox, specified as Yelton00003 and Yelton00018, respectively. By referring to these affidavits, ScanSource does not intend to and does not limit its answer to the information described

in the affidavits. ScanSource's investigation is ongoing, and it reserves its right to supplement this response.

27. Identify each "written demand for satisfactory performance" provided to Plaintiff pursuant to paragraph 5(b) of the Employment Agreement of May 28, 2008.

ANSWER: ScanSource objects to this interrogatory because it is overly broad, unduly burdensome, and seeks information that is outside the scope of discovery under Rule 26, S.C. Rules of Civil Procedure. Written demand for satisfactory performance is not required if the termination is based on item 5(b)(ii) or (iii) of the Employment Agreement.

RESPONSES AND OBJECTIONS TO REQUESTS TO PRODUCE

1. All documents or other things identified in your responses to the foregoing interrogatories.

RESPONSE: ScanSource objects to this request because it seeks information that is protected by the attorney-client privilege or as work product, or that is confidential. Protected information is withheld from discovery and described on the Privilege Log, which is attached as Exhibit A, or is designated Confidential pursuant to the Confidentiality Protective Order entered by the Court. Subject to these objections, ScanSource answers by producing the documents on the enclosed CD, labeled Yelton00001 to Yelton00613. ScanSource's investigation is ongoing, and it reserves its right to supplement this response.

2. A complete copy of Plaintiff's personnel file.

RESPONSE: ScanSource responds by producing Yelton00028 to Yelton00096, which are the materials in Plaintiff's Employment File.

3. All documents upon which you rely in denying any allegation raised by Plaintiff.

RESPONSE: ScanSource objects to this request because it seeks information that is protected by the attorney-client privilege or as work product, or that is confidential. Protected information is withheld from discovery and described on the Privilege Log, which is attached as Exhibit A, or is designated Confidential pursuant to the Confidentiality Protective Order entered by the Court. Subject to this objection, ScanSource responds by referring to the documents produced and labeled as Yelton00009, Yelton00005, and Yelton00018. ScanSource's response includes but is not

limited to these documents. ScanSource's investigation is ongoing, and it reserves its right to supplement this response.

4. All documents upon which you rely in asserting any defense to the claims raised by Plaintiff.

RESPONSE: ScanSource objects to this request because it seeks information that is protected by the attorney-client privilege or as work product, or that is confidential. Protected information is withheld from discovery and described on the Privilege Log, which is attached as Exhibit A, or is designated Confidential pursuant to the Confidentiality Protective Order entered by the Court. Subject to this objection, ScanSource responds by referring to the documents produced and labeled as Yelton00009, Yelton00005, and Yelton00018. ScanSource's response includes but is not limited to these documents. ScanSource's investigation is ongoing, and it reserves its right to supplement this response.

5. Any written communications (including electronic) between Defendant and/or any other person or entity regarding Plaintiff from December 1, 2011 through the present.

RESPONSE: ScanSource objects to this request because it seeks information that is protected by the attorney-client privilege or as work product, or that is confidential. Protected information is withheld from discovery and described on the Privilege Log, which is attached as Exhibit A, or is designated Confidential pursuant to the Confidentiality Protective Order entered by the Court. In addition, ScanSource objects to this request because it seeks information that is outside the scope of discovery under Rule 26, S.C. Rules of Civil Procedure. Further, ScanSource objects to the request because "Defendant" is vague and ambiguous in the context of requesting communications; Defendant is a corporation. Subject to these objections, ScanSource

responds by producing Yelton00443 to Yelton00613. ScanSource further responds that its investigation is ongoing, and it reserves its right to supplement this response.

6. Any other documents maintained by Defendant regarding Plaintiff.

RESPONSE: ScanSource objects to this request because it seeks information that is protected by the attorney-client privilege or as work product, or that is confidential. Protected information is withheld from discovery and described on the Privilege Log, which is attached as Exhibit A, or is designated Confidential pursuant to the Confidentiality Protective Order entered by the Court. In addition, ScanSource objects to this request because it seeks information that is outside the scope of discovery under Rule 26, S.C. Rules of Civil Procedure. Subject to these objections, ScanSource responds by producing the documents labeled Yelton00001 to Yelton00613. ScanSource's investigation is ongoing, and it reserves its right to supplement this response.

7. All communications between Defendant and any other person or entity (including employment agency) regarding Plaintiffs termination of employment or the allegations set forth in John Ellsworth's letter to Plaintiff dated January 16, 2012.

RESPONSE: ScanSource objects to this request because it seeks information that is protected by the attorney-client privilege or as work product, or that is confidential. Protected information is withheld from discovery and described on the Privilege Log, which is attached as Exhibit A, or is designated Confidential pursuant to the Confidentiality Protective Order entered by the Court. In addition, ScanSource objects to this request because it seeks information that is outside the scope of discovery under Rule 26, S.C. Rules of Civil Procedure. Further, ScanSource objects to the request

because "Defendant" is vague and ambiguous in the context of requesting communications; Defendant is a corporation.

ScanSource also objects to this request as overly broad and unduly burdensome because it is duplicative as included within Request No. 5. ScanSource also objects because the request seeks production of "all" such documents; ScanSource has made a reasonable search of likely repositories.

Subject to these objections, ScanSource responds by producing the documents identified in response to Request No. 5. ScanSource's investigation is ongoing, and it reserves its right to supplement this response.

8. All employee handbooks or similar publications for employees regarding terms and conditions of employment applicable to Plaintiff's employment.

RESPONSE: ScanSource objects to this request because it seeks "all" such documents; ScanSource made a reasonable search of likely repositories. In addition, ScanSource objects to this request because "similar publications" is vague and ambiguous. Further, ScanSource objects to this request because it seeks information that is outside the scope of discovery under Rule 26, S.C. Rules of Civil Procedure. Subject to these objections, ScanSource responds by producing Yelton00331 to Yelton00438, which are the following policies:

- Business Ethics and Code of Conduct, Policy #111
- Intellectual Property & Confidentiality, Policy #112
- Conflicts of Interest, Policy #113
- Financial and Accounting Matters, Policy #114
- Internet Usage and General Communications Policy #143
- Computer Software and Usage Policy #142

9. A copy of any insurance policy under which the defense of this action is provided (with or without a reservation of rights).

RESPONSE: ScanSource objects to this request because it seeks information that is outside the scope of discovery under Rule 26, S.C. Rules of Civil Procedure.

10. A copy of any reservation of rights letter from any insurer related to this action.

RESPONSE: ScanSource objects to this request because it seeks information that is outside the scope of discovery under Rule 26, S.C. Rules of Civil Procedure.

11. All policies, manuals, memoranda, or other directives or other documents that refer or relate to Defendant personnel management policies and/or practices applicable to Plaintiff's employment from January 1, 2011 through his last day of employment.

RESPONSE: ScanSource objects to this request because it seeks "all" such documents; ScanSource has made a reasonable search of likely repositories. In addition, ScanSource objects to this request because it seeks information that is outside the scope of discovery under Rule 26, S.C. Rules of Civil Procedure. Further, ScanSource objects to this request as overly broad and unduly burdensome because the information it seeks appears to be included in Request No. 8. Therefore, subject to these objections, ScanSource refers to and incorporates its response to Request No. 8.

12. All documents upon which Defendant rely in asserting any affirmative defenses to the Complaint.

RESPONSE: ScanSource objects to this request because it seeks information that is protected by the attorney-client privilege or as work product, or that is confidential. Protected information is withheld from discovery and described on the Privilege Log, which is attached as Exhibit A, or is designated Confidential pursuant to the Confidentiality Protective Order entered by the Court. In addition, ScanSource objects to this request because it seeks "all" such documents; ScanSource has made and continues to make a reasonable search of likely repositories. Subject to these objections,

ScanSource responds by producing the documents labeled Yelton00001 to Yelton00613. ScanSource's investigation is ongoing, and it reserves its right to supplement this response.

13. Any statements taken from any witness in this case.

RESPONSE: ScanSource's investigation into the facts of the case is ongoing, and it reserves the right to supplement this answer.

Person	Statement
1. Jeanne Aiken	Yelton00009
2. Rick Burke	Yelton00016
3. Scott Benbenek	Yelton00020
4. Robbie Cox	Yelton00018
5. Christopher Eassy	Yelton00006
6. Amy Pharr	Yelton00001
7. Chris Spearman	Yelton00003

14. A copy of the exhibit to the Employment Agreement signed by Plaintiff.

RESPONSE: ScanSource responds by producing Yelton00028 to Yelton00052.

15. All electronic (including email and text messages) received from or sent to Plaintiff since December 9, 2012.

RESPONSE: ScanSource objects to this request because it seeks information that is protected by the attorney-client privilege or as work product, or that is confidential. Protected information is withheld from discovery and described on the Privilege Log, which is attached as Exhibit A, or is designated Confidential pursuant to the Confidentiality Protective Order entered by the Court. In addition, ScanSource objects to this request because it seeks "all" such messages; ScanSource has made and continues to make a reasonable search of likely repositories. Further, ScanSource objects to this request because it seeks information that is outside the scope of discovery under Rule 26, S.C. Rules of Civil Procedure. Also, ScanSource objects to this request because

December 9, 2012 has not occurred; ScanSource responds as if 2012 was meant to be 2011. ScanSource's review of potentially responsive documents is ongoing, and it reserves its right to supplement this response.

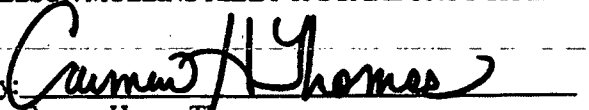
16. A copy of all documents received by Defendant from Plaintiff or otherwise returned by Plaintiff on or after December 15, 2011.

RESPONSE: ScanSource objects to this request to the extent it seeks copies of the documents returned by Plaintiff to ScanSource pursuant to the temporary restraining order entered by the Court on February 8, 2012. To provide those documents to Plaintiff in discovery would defeat the purpose of the order. Subject to this objection, ScanSource responds by listing the documents returned to ScanSource on February 14, 2012:

Document Title	Date
ScanSource POS/Barcode Business Unit US & Canada, Projection 2010	Not dated
ScanSource POS/Barcode Business Unit US & Canada, Score Reports	Not dated
"SEO" Folder, containing various materials	Various
"Web" Folder, containing various materials	Various
VDC Research Confidential Memorandum regarding NFC Payments	10/06/2011
Handwritten notes	Not dated
Status Change Statement regarding R. Cox	12/12/2011
ScanSource Online Community Strategy	08/18/2009
Engagement Survey Leader's Guide, Follow-Up Process: From Information to Results with Your Engagement Survey Notebook	2010
Envelope, containing ScanSource – 2010 Employee Engagement Survey	11/08/2010
PowerPoint regarding 2004 Year in Review and 2005 Business Plan	Not dated
NCR, various materials	Not dated
Email from F. Dotson to M. Baur regarding information for response to Lee Schram	11/01/2005
Notebook containing traffic sources for 2008 and 2009	2008/2009
Collection of Harvard publications	Various

ScanSource's investigation is ongoing, and it reserves its right to supplement this response.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 

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Attorneys for ScanSource, Inc.

Columbia, South Carolina

March 20, 2012

EXHIBIT A

PRIVILEGE LOG

Jeff Yelton v. ScanSource, Inc.
C/A No. 2012-CP-23-0314

The documents listed on this log with a Bates number containing "Yelton" are produced in response to the requests for production, but portions of these documents have been redacted. The documents with a Bates number containing "Priv" are not being produced because the entire document is protected from disclosure for the reason indicated.

Bates No. Start	Bates No. End	Date	Description	Author	Recipients	Carbon Copies	Prior History	Privileged Reason
YeltonPriv00001	YeltonPriv00001	12/16/11	Email regarding telephone	A. Pharr	T. Graham	J. Ellsworth	Earlier email from J. Ellsworth to T. Graham, with cc to A. Pharr, dated 12/15/11	Attorney-Client
YeltonPriv00002	YeltonPriv00002	12/15/2011	Email regarding source guide	V. Goodin	J. Yelton			Confidential; Subject to TRO
YeltonPriv00003	YeltonPriv00003		HP Authorized Partners – all products.xls					Confidential; Subject to TRO
YeltonPriv00004	YeltonPriv00012	9/2011	Source Guide Update 9/2011.xls					Confidential; Subject to TRO
YeltonPriv00013	YeltonPriv00013		Database for Dell.xls					Confidential; Subject to TRO
YeltonPriv00014	YeltonPriv00036	2011	Honeywell Q3 2011 QBR.					Confidential; Subject to TRO
YeltonPriv00037	YeltonPriv00055	2011	Q3 2011 QBR.ppt					Confidential; Subject to TRO
YeltonPriv00056	YeltonPriv00088	10/2011	Q311QBR101911ScSc FINAL.pptx (Motorola Solutions)					Confidential; Subject to TRO
Yelton00455	Yelton00455	12/19/11	Email regarding tax planning assistance	Amy Pharr	Mike Baur; S. Benbenek, J. Ellsworth			Attorney-Client
Yelton00457	Yelton00457	12/19/11	Email regarding tax planning assistance	M. Baur	S. Benbenek	J. Ellsworth; A. Pharr		Attorney-Client
Yelton00458	Yelton00458	12/19/11	Email regarding tax planning assistance	S. Benbenek	J. Ellsworth; A. Pharr	M. Baur		Attorney-Client

Bates No. Start	Bates No. End	Date	Description	Author	Recipients	Carbon Copies	Prior History	Privileged Reason
Yelton00460	Yelton00460	12/19/11	Email regarding tax planning assistance	S. Benbenek	J. Ellsworth; A. Pharr			Attorney-Client
Yelton00461	Yelton00461	12/18/11	Email regarding tax planning assistance	S. Benbenek	J. Ellsworth; A. Pharr	M. Baur		Attorney-Client
Yelton00462	Yelton00462	12/16/11	Email regarding please send	J. Ellsworth	A. Pharr			Attorney-Client
Yelton00464	Yelton00464	12/16/11	Email regarding please send	J. Ellsworth	A. Pharr			Attorney-Client
Yelton00490	Yelton00490	1/4/12	Email regarding what I'm going to do	M. Baur	S. Benbenek	J. Ellsworth		Attorney-Client
Yelton00540	Yelton00540	1/4/12	Email regarding what I'm going to do	S. Benbenek	M. Baur; J. Ellsworth			Attorney-Client
Yelton00551	Yelton00551	12/19/11	Email regarding tax planning assistance	M. Baur	S. Benbenek	J. Ellsworth; A. Pharr		Attorney-Client
Yelton00553	Yelton00553	12/19/11	Email regarding tax planning assistance	S. Benbenek	J. Ellsworth; A. Pharr	M. Baur	Earlier email from S. Benbenek to J. Ellsworth and A. Pharr regarding tax planning assistant, dated 12/19/11	Attorney-Client
Yelton00554	Yelton00554	12/19/11	Email regarding tax planning assistance	S. Benbenek	J. Ellsworth; A. Pharr			Attorney-Client
Yelton00556	Yelton00556	12/19/11	Email regarding tax planning assistance	A. Pharr	M. Baur; S. Benbenek	J. Ellsworth	Earlier email from M. Baur to S. Benbenek, with cc to J. Ellsworth and A. Pharr regarding tax planning assistant, dated 12/19/11	Attorney- Client
Yelton00558	Yelton00558	12/19/11	Email regarding tax planning assistance	M. Baur	S. Benbenek	J. Ellsworth; A. Pharr		Attorney-Client
Yelton00560	Yelton00560	12/19/11	Email regarding tax planning assistance	S. Benbenek	J. Ellsworth; A. Pharr			Attorney-Client
Yelton00561	Yelton00561	12/18/11	Email regarding tax planning assistance	S. Benbenek	J. Ellsworth; A. Pharr	M. Baur		Attorney-Client

CERTIFICATE OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for ScanSource, Inc., do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by sending a copy of the same by Federal Express, to the following address(es):

Pleadings:

DEFENDANT'S RESPONSES TO PLAINTIFF'S FIRST INTERROGATORIES AND REQUESTS FOR PRODUCTION

Counsel Served:

Brian P. Murphy, Esq.
514 Pettigru Street
Greenville, SC 29601

Jessica Sestili
Administrative Assistant

March 20, 2012

State of South Carolina	)	**IN THE COURT OF COMMON PLEAS**
	)	
County of Greenville	)	**2012-CP-23-0314**
	)	
Jeff Yelton,	)	
	)	
Plaintiff,	)	
v.	)	**CERTIFICATE OF SERVICE**
	)	
ScanSource, Inc.,	)	
	)	
Defendant.	)	
	)	

This is to certify that a copy of Plaintiff's Motion to Compel in this matter was served on the Defendant ScanSource, Inc., on April 27, 2012, by hand-delivering a copy as follows:

William H. Foster, Esq.
Nelson Mullins Riley & Scarborough LLP
104 South Main Street, Suite 900
Greenville, SC 2963

H. Lorraine (Lorry) Miller, PLS
Legal Assistant to Brian Murphy

Brian Murphy Law Firm, P.C.
514 Pettigru Street
Greenville, SC 29601
Phone: (864) 370-9400
Fax: (864) 241-1386

EXHIBIT 6

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE

JEFF YELTON, PLAINTIFF, -VS- SCANSOURCE, INC., DEFENDANT.	2012-CP-23-00314 JUNE 19, 2012 TRANSCRIPT OF RECORD

B E F O R E:

THE HONORABLE G. EDWARD WELMAKER, JUDGE

A P P E A R A N C E S:

BRIAN MURPHY, ESQUIRE
ATTORNEY FOR THE PLAINTIFF

BILL FOSTER, ESQUIRE
ATTORNEY FOR THE DEFENDANT

DANETTE P. HANKS
CIRCUIT COURT REPORTER

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E X H I B I T S

(NONE)

June 19, 2012

(WHEREUPON, Court convened with all parties present and the following proceedings were had.)

THE COURT: Have y'all resolved any of these matters?

MR. MURPHY: Possibly one. I think it still needs to be heard, but possibly one. About eight issues.

THE COURT: You've got what?

MR. MURPHY: Eight issues.

THE COURT: How long have y'all been talking about these eight issues?

MR. MURPHY: I filed a motion -- we conferred after they responded in March. I filed a motion in April. There's been an agreement ---

THE COURT: This is for the motion to compel or ---

MR. MURPHY: Compel.

THE COURT: --- about the deposition ---

MR. MURPHY: The deposition is resolved.

THE COURT: Y'all got that worked out?

MR. MURPHY: That's worked out.

THE COURT: So this is just a motion to compel?

MR. MURPHY: Right.

THE COURT: And eight issues remaining and you've worked part of them out?

MR. MURPHY: Well, Your Honor, when I address them, you'll see that they're like contention interrogatories. They contended we misappropriated trade secrets. We ask them, identify the trade secret. They don't identify any. We ask them, if you contend we used your trade secrets, tell us what you're relying on. We get nothing but objections. It's real hard to just throw those out. As you'll see, all seven of the substantive issues go right to the heart of the case. One or two at the end may be less important than the others, but they are certainly, most of them are -- they're simple contention interrogatories.

THE COURT: All right. Is this the -- tell me how I'm going to follow this? Is this going to be on Defendant's Response to Plaintiff's First Interrogatories?

MR. MURPHY: Your Honor, what I did was I kind of organized it topically in the motion and put them in categories. But I will be referring to the responses and I'll give you that as it, as it goes along. Do you have a copy of the responses? They should have been attached -- I can pass ---

THE COURT: Sometimes I don't find them as well as I need to. There's plenty of them, it looks like, so, all right, this will be ---

MR. MURPHY: What I can do, Your Honor, is just sort of address the topics and then point you to where the interrogatory response is.

THE COURT: All right.

MR. MURPHY: If you would like a little background, Your Honor, this is a case that began to arise in January of this year when Mr. Yelton, who was an executive with ScanSource, received a pre-suit letter from ScanSource alleging misappropriation of trade secrets, breach of duty, loyalty, et cetera. We filed suit for breach of contract, because one of the things that ScanSource did was it had reached an agreement with the Plaintiff to separate ways and they had terminated -- decided to terminate his employment without cause, which they have a right to do under the contract. Entered into a separation agreement, all was fine and good. In January, they decided to change that after the termination from no cause to cause, and that's what's led to this dispute.

So we sued for breach of that contract and they have countersued. Their counterclaims include breach of contract, including the employment agreement.

They've allege misappropriation of trade secrets, breach of duty of loyalty, breach of covenant and good faith, fair dealing and conversion of their property. We served, in January -- I believe it was in January -- we served our discovery, setting out the contention interrogatories on this misappropriation, use, disclosure, et cetera.

In February, the Court signed a consent protective agreement, and I have copies of that if you want. That has a very important provision in it, Your Honor. It says, in paragraph eight, that you cannot refuse to disclose information and discovery on the grounds that there's greater protections required than in this order. Actually it says, quote, no party may withhold information from discovery on the ground that it requires protection greater than that afforded by this order, unless the party moves for an order providing such special protection. In other words, once you get a consent protective order, like the one you signed, you can't then just object to discovery saying that this is confidential. But that's what they've done here. On March 20, they finally responded to our discovery requests. We filed this motion more than a month later, after we were unable to resolve the issues. Nothing has been provided in

the interim. But, as the Court may be aware, I think it's landed on your desk, or we've attempted to lay it on your desk once or twice, the Defendants have continued to assert in this case that they're entitled to injunctive relief. They say that the misappropriations in this case are so daunting and heinous that they're entitled to injunctive relief. But as we go through the issues, Your Honor, you'll see that they have not disclosed to us what that is. The first issue, Your Honor, ---

THE COURT: You're not seeking that now; right? You're not seeking -- that's not before we now; is it?

MR. FOSTER: Your Honor, it is by reference of Judge Hill before special referee Derrick Quattlebaum. And Mr. Quattlebaum -- it's our contention that Mr. Quattlebaum has indicated that he agreed with ScanSource that the issue of injunctive relief should be heard, is what prompted this motion. I think -- and I don't ---

THE COURT: An indication? Did he indicate or did he issue a ruling?

MR. FOSTER: The parties were -- and I don't mean to interrupt Brian's train of thought or anything, but the parties were working on what -- and

we have a copy for the court here -- a consent protocol regarding the electronic discovery associated with some devices that Mr. Yelton was forced to turn in. That's one of the issues that Judge Hill had referred to Mr. Quattlebaum to serve as a special referee for the parties. Our contention was he had also specifically referred to the issue of continuing preliminary injunctive rule if Judge Hill had granted a temporary restraining order.

THE COURT: Did he say that in his order?

MR. FOSTER: Yes, Your Honor. And so when the parties were discussing that issue, and Mr. Quattlebaum indicated that he agreed that that matter was before him, it's my -- just from reviewing the correspondence, email correspondence we had at that time, it seems that that's what prompted this motion to compel. Mr. Murphy had previously indicated that he was going to provide us with a description of where he felt our responses were short, if you will. That never happened. We just got the motion to compel. All of the -- in our view, all of the issues that are before the Court today have actually been resolved because the very additional protection that Mr. Murphy is referencing is required in paragraph eight of the original protective order, we've now arranged. And

that's an order that -- a consent order that both parties have now signed that we will submit to the Court for consideration that gives us the additional protection that we sought in -- when we initially responded and were unable to give Mr. Yelton all of the documents and information he's seeking.

THE COURT: But now you're ready to give him everything?

MR. FOSTER: Absolutely, Your Honor, once this is entered. This case -- just to give you some context, this case didn't really start with a letter, a pre-suit letter. This case started when ScanSource approached Mr. Yelton in December. He's a very well respected and long serving executive with the company. Approached him in December, indicated that it was time to part ways, and we allege that from that point until about a week later, December 15th or 16th, he began to gather proprietary information to take with him when he left. And when that was disclosed to the company shortly after he had left the premises for the last time, that's what prompted the pre-suit letter that Mr. Murphy referenced.

From our perspective, this case, the TRO that Judge hill entered, the consent protocol that the parties spent over two months hammering out since this

case was filed, is all about and is expressly about, ensuring what we believe is trade secret proprietary information, documents, if you will, that were electronically removed from the premises, were back, that Mr. Yelton gave it all back. And that's what this, literally over two months of good faith and well-intention negotiations between Mr. Murphy and my firm to hammer this order out, all to ensure that Mr. Yelton no longer had any of our stuff. Quote, unquote, my mom's an English teacher. I apologize. But then to -- in discovery -- we do have the original protective order. But in responding to discovery, we reached out to Mr. Murphy and said, look, you know, we can't just give him back all the stuff that this case is about without any restrictions. And we couldn't get an agreement as to any additional protection, so we responded to discovery. We objected. And here we are. And what we've tried to work out is giving that additional protection, we now have it, we can respond, I can ---

THE COURT: How do you have it now?

MR. FOSTER: Well, Your Honor, we have it once this -- if the Court reviews this and finds this consent amended protective order or confidentiality order acceptable and it's entered ---

THE COURT: It's acceptable to Mr. Murphy?

MR. MURPHY: I've signed it, Your Honor. It doesn't resolve the issues.

MR. FOSTER: Your Honor, we should be allowed -- and in fact, I thought this was resolved with this order we negotiated. I was surprised we weren't able to take it off the docket for this morning when Brian and I talked about it yesterday afternoon. Mr. Murphy wants us to supplement specific interrogatory responses and requests for production. We've agreed to. He's asked that we do so by next Monday. We'll try to get it all done. I think we can get the interrogatory responses done. I'm not sure, there's a lot of documents that are being electronically reviewed to be produced. But Mr. Murphy insisted that we agree, and I don't think I'm speaking out-of-school, to do so without reservation or objection. Your Honor, we've not done anything wrong that we should be penalized and forced to waive our objections. He's asking for, among other thing, and nothing untoward about it, for us to identify all communications regarding the decision to terminate for cause. Well, that obviously implicates correspondence and communication with counsel protected by attorney/client privilege. I can't waive that. Nor

should we.

MR. MURPHY: I suggest we go through the issues. I think we've taking up a lot of time -- we're not even into the issues here. You don't even know what I want.

THE COURT: Does he know what you want?

MR. MURPHY: I think it's clear in the -- from the motion. But I think -- here's the problem. He says, I'll respond next week to your requests from January, but I'm keeping my objections. That's not satisfactory. We're not -- I want to go through and get ruling on these.

THE COURT: Well, does he know now -- I don't know whether he's seen what ---

MR. MURPHY: And that's -- when we get into the issues you'll see. There's simple contention interrogatories. If you claim I misappropriated a trade secret, identify the trade secret. They knew in January what I wanted. I then ---

THE COURT: Is that all you want?

MR. MURPHY: There's like six or seven examples like that. And I get objection, objection, objection, objection, and then on my requests to produce, which he's saying I'm going to produce stuff, I'm keeping my objections.

THE COURT: But you're asking him to give you information by next Monday?

MR. MURPHY: Well, here's the issue by next Monday. That's not just the date I'm picking out to be difficult. The only individual they've identified with knowledge as to the decision-making is a gentleman named Scott Bendonec, to whom Mr. Yelton reported, his deposition is set for that Friday, the 29th. So that's why we've got till Monday. That's not just I'm being demanding. But, you know, I can't accept the representation that, oh, we've going to give him everything next week, why don't we just shut this hearing down and go away? Because he's not willing to, on simple contention interrogatories that we've outlined, simply answer the question. If he has privileged communications, and he did provide a privilege law, that's fine. He can say, the only communications were between Mr. Bendonec and counsel and that's it, and they were privileged. That's it. That's all he has to say. But we're not getting that. What we got is a suit. When we're getting sued for misappropriating trade secrets and over five months later we don't even have an identification of what they're claiming we took. Over five months later after they brought a motion for an injunction and

claiming we're doing irreparable harm, we don't even know what we done. And that's why I need rulings on this. I can't just accept -- if he wants to say, I'll withdraw my objections and respond to the interrogatories and requests to produce that are subject to the motion, then we can go home. But I'm not getting that.

THE COURT: I thought he was saying that, but he does not know what his objections may be until he looks at the material. He's already ---

MR. MURPHY: If you're claiming we stole your information, tell us ---

THE COURT: Well, you keep harping on that one. I guess there's seven other ones. You can give him the trade secrets that he stole; can't you?

MR. FOSTER: I can now, Your Honor.

THE COURT: You cannot?

MR. FOSTER: I can now, yes, sir.

THE COURT: Okay. All right. That's taken care of. He's going to tell you by Monday, if not this week, what trade secrets are an issue.

MR. MURPHY: Well, the first issue I have is on these documents to be produced. And he's saying -- and I'd like to just kind of go through these and we may be able to do it very quickly. But he's still

objecting to the requests to produce where he said he's going to produce documents. And I want to know ---

THE COURT: What has he -- tell me the next one. See, he's already agreed to one.

MR. MURPHY: Well, the requests to produce that are part of number one, are one, three to seven, eleven, twelve, fifteen and sixteen. Now, if he's going to say, I'll produce all the documents, there's no objection now that I have this consent confidentiality order, I can move on. I don't want to continue to drag this out. But if what he's saying is -- because the original, Your Honor, he can't object on that basis. He said, I objected anyway, now I need a disk. Now that I've got this, I'm going to continue objecting.

THE COURT: So your only objection is going to be on work product and attorney/client privilege?

MR. FOSTER: With respect to the production of documents, Your Honor, we will produce all responsive non-privileged documents that we have in our possession, custody and control.

THE COURT: And that would explain to him what is privileged and why it's privileged?

MR. FOSTER: Yes, sir.

MR. MURPHY: I think they've done that. I think they gave us a log on that. Now, he may have more that he wants to be put in the log.

THE COURT: So he says he's going to give you everything that's not privileged. Are you fussing about what's privileged?

MR. MURPHY: No.

THE COURT: Okay.

MR. MURPHY: I don't have any basis to fuss ---

THE COURT: Has he agreed then that you win?

MR. MURPHY: Just now. Just now he has.

THE COURT: Okay. Well, you overwhelmed him with your ---

MR. FOSTER: He does that all the time.

THE COURT: Yeah, he's put up the white flat, it looks like.

MR. MURPHY: Well, then the next issue, Your Honor, if we can tick them off that efficiently I'm happy. The next issue is interrogatory number twenty-two. That's on page fourteen of those responses. And that is ---

THE COURT: Do you agree with that, too?

MR. FOSTER: Well, let me find his ...

MR. MURPHY: It's page fourteen of your

responses.

MR. FOSTER: I even them color-coded, Your Honor.

MR. MURPHY: Your Honor, what this interrogatory says is, if you contend Plaintiff has misappropriated any information that you contend is a trade secret belonging to you, it asks for four different thing. He's referred to two affidavits. The affidavit of a Mr. Spearman doesn't say that the Plaintiff misappropriated anything. The Affidavit of Mr. Cox doesn't say that he provided anything to Mr. Yelton. So ...

THE COURT: The answer is zero then, I guess.

MR. MURPHY: Well, if he'll say that, that's fine. But they won't say that, Your Honor. And I'm getting sued. Okay? My client is getting sued and they're seeking injunctive relief, still, against him, but they will not tell me what they claim he misappropriated. I'm entitled to a clean answer to say -- if they say -- one document keeps coming up, QBRs. If they want to say he misappropriated QBRs, that's fine. Just say it's QBRs. But instead, I got objections and when they cite those two affidavits, they add the language in here, ScanSource does not

intend to and does not limit its answer to the information described in the affidavits. But then they don't tell us what additional information they are relying on. And I'm entitled to know.

MR. FOSTER: Your Honor, what he's not reading to you is the next sentence which says, ScanSource's investigation is on-going and it reserves the right -- its right to supplement its answer. A few points that are sort of ---

THE COURT: Isn't that boilerplate stuff?

MR. MURPHY: No, Your Honor.

THE COURT: It's not boilerplate?

MR. MURPHY: Yes. It's objectionable boilerplate. Now if you read the response, you will not see one trade secret mis ---

THE COURT: Well, the response refers to affidavits.

MR. MURPHY: But they don't say we misappropriated anything.

THE COURT: Maybe you ought to send them another interrogatory and say, which part of the affidavit has the trade secrets?

MR. MURPHY: Your Honor, ---

THE COURT: Frame it that since you now have limited your trade secret violation to these two

affidavits, is it paragraph seven, is it paragraph eight or is it paragraph nine?

MR. MURPHY: And then two months from now I'll get responses and we'll be right back here. Why am I not entitled to ask a contention interrogatory, if you claim I did something, tell me what I did.

THE COURT: Can you tell him simply what he did?

MR. FOSTER: Your Honor, I can. And I think it's a bit, it's a bit of a ruse, not to cast aspersions on my good friend, to say he doesn't know what he did and to say, I've been sued. He sued us.

THE COURT: Well, but he's got a suit now against him. It doesn't matter ---

MR. FOSTER: Absolutely, Your Honor. We certainly have counterclaimed.

THE COURT: You both are suing each other, so ...

MR. FOSTER: Absolutely true, Your Honor. But what we've done, and the linchpin to all of this, not to oversimplify things, but it's like, Coca-Cola is involved in a lawsuit with an executive who ran out the door with the formula for Coca-Cola. And we caught him like catching a thief running out of the building with a TV over their head. We caught him, we

got the TV back. And he says discovery was -- he sues us and says discovery response is, give me the formula for Coca-Cola. No. We're not just going to give that to you. We're not going to give the TV back to the person we caught running out of the building with it, unless you promise you're going to keep that TV in your office, he can come and watch the shows.

THE COURT: That's been taken care of now; right?

MR. FOSTER: But it wasn't when ---

THE COURT: Let's move forward now.

MR. FOSTER: Yes, sir, Your Honor.

THE COURT: Why can't you give a simple answer without referring to affidavits, this is what we think you did. And the trade secret is, you know what it is and here it is, and specify it, rather than saying in this affidavit you can find it if you look all the way through the fine print.

MR. FOSTER: Absolutely, Your Honor, and we can do that. But we don't believe ---

THE COURT: Then do it.

MR. FOSTER: Yes, sir. We don't believe that we should be forced to waive otherwise valid objections.

THE COURT: Well, we understand. And your

valid objections are? Attorney/client privilege ---

MR. FOSTER: Attorney/client privilege, anything that's not responsive, obviously. We have the right to ---

THE COURT: Any what?

MR. FOSTER: Anything that might not be responsive. If it's not responsive -- he asked for a big ream of documents and we can, okay, we're not producing these, it's not responsive.

THE COURT: He's a simple guy. He's going to ask for specific things. That's what he wants; right? You don't want them to send you boxes of things; do you?

MR. MURPHY: No. If he's claiming ---

THE COURT: That you have to go through?

MR. MURPHY: No. If he's claiming I stole boxes of things, but I don't think he is.

MR. FOSTER: And Your Honor, one other ---

THE COURT: Just give him a straight answer.

MR. FOSTER: Absolutely, Your Honor. And I've got no problem giving him a straight answer. One thing that I -- objection we would also preserve is when he asks us to identify all correspondence or identify all documents, I believe it's appropriate under the rules for us to produce the documents and

tell them where the answers are. And I don't think we should give up that right or be forced to do Plaintiff's work for him simply because he fileed this motion, while in our view, we were seeking the additional protection that is called for in the original order that he's relying on. That's all.

THE COURT: You want him to do the work and go through the boxes?

MR. FOSTER: Like anybody else, yes, Your Honor.

THE COURT: Okay.

MR. MURPHY: Well, if there's going to be boxes that say, the trade secrets are somewhere in here ---

MR. FOSTER: I'll give him the bates number and it probably won't be a box.

THE COURT: Okay. You guys surely ---

MR. MURPHY: Your Honor, ---

THE COURT: Do I need to have a tea party? I mean, what I can do is just have y'all go to the conference room and talk until about two thirty and then come back and we can continue the hearing. Do you think that would help?

MR. MURPHY: Your Honor, I think this is helping. But this is the first time I've gotten an

agreement to get a straight answer.

THE COURT: Well, he's going to shoot straight with you now. Right?

MR. FOSTER: Yes, Your Honor.

THE COURT: That's what you're telling the Court?

MR. FOSTER: That is what I'm telling the Court.

THE COURT: There's not going to be any game-playing? Both of you, and Mr. Murphy, too, y'all are going to not do all the legalese stuff. Y'all are going to get down to the heart of the matter and get it resolved. That's what your clients want. That's what they deserve.

MR. FOSTER: Yes, sir, Your Honor.

THE COURT: What can I do for you today, Mr. Murphy? Do you need an order? Or is everything agreed to now?

MR. MURPHY: Your Honor, if he is saying on the stuff that's subject to this motion, he's going to answer and the only objection is going to be attorney/client work product, or if there's a document he can point to me the document and say, the answer is in the document, and it does answer it, I'm happy.

THE COURT: You've said that; right?

MR. FOSTER: Yes, Your Honor, preserving all valid objections. And I'm -- Your Honor, I'm fine -- you know, if Mr. Murphy has had an experience with me that's any different than what I'm representing, I will shoot straight. I will give him what he's entitled to receive under the rules. And I'm fine with the Court's order saying, we will timely supplement our responses in good faith and not issue any invalid objection under the law. I commit to that. I committed to it yesterday.

THE COURT: So if I do a Form 4 that both parties have agreed on the record to play nice, that's going to work? Because then if I get it again, you have to play nice.

MR. MURPHY: Your Honor, I got the transcript. I think the transcript will speak for itself.

THE COURT: Okay. All right.

MR. MURPHY: Just to be clear, are we talking about the 25th?

MR. FOSTER: The 25th is ---

THE COURT: That'll give him some time to get ready for the depositions. Yeah.

MR. MURPHY: I mean, I might be able to fudge a little bit. I want to make sure. See, I ---

THE COURT: Do y'all need an order from me?

MR. MURPHY: I don't think we do, Your Honor.

THE COURT: I'll do a play nice order or ---

MR. FOSTER: I think we're fine, Judge.

THE COURT: Okay. Good. Good work.

MR. FOSTER: Judge, thank you for your time this morning.

THE COURT: All right.

(END OF REQUESTED TRANSCRIPT OF RECORD)

CERTIFICATE OF REPORTER

I, the undersigned Danette P. Hanks, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Pickens County, South Carolina, on the 19th day of June, 2012.

This transcript may contain quoted material. Such material is reproduced as read by the speaker.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

July 6, 2012

_____

Circuit Court Reporter

EXHIBIT 7

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	JUDICIAL CIRCUIT
Jeff Yelton,	)	Civil Action No. 2012-CP-23-0314
Plaintiff,	)	
vs.	)	**DEFENDANT'S SUPPLEMENTAL RESPONSES TO PLAINTIFF'S FIRST INTERROGATORIES AND REQUESTS FOR PRODUCTION**
ScanScource, Inc.,	)	
Defendant.	)	

Pursuant to Rules 33 and 34, S.C. Rules of Civil Procedure, Defendant ScanSource, Inc. ("ScanSource") hereby supplements its responses to Plaintiff's First Interrogatories and Requests for Production.

ANSWERS AND OBJECTIONS TO INTERROGATORIES

5. Identify by date, participant, and mode, all oral, electronic, and written communications between employees or agents of Defendant regarding the decision to terminate Plaintiff's employment.

ANSWER: ScanSource objects to this interrogatory because it seeks information that is protected by the attorney-client privilege or as work product. Protected information is withheld from discovery and described on a privilege log. In addition, ScanSource objects to this interrogatory pursuant to Rule 33(c), S.C. Rules of Civil Procedure. Further, ScanSource objects to this interrogatory as overly broad and unduly burdensome because it seeks identification of "all" such communications; ScanSource has made and continues to make a reasonable inquiry into the likely responsive repositories. Subject to and without waiving any objection, ScanSource states that

ANSWER: ScanSource objects to this interrogatory because it seeks information that is outside the scope of discovery pursuant to Rule 26, S.C. Rules of Civil Procedure. Subject to and without waiving any objection, ScanSource answers that Plaintiff misappropriated trade secrets pursuant to S.C. Code Ann. § 39-8-20 as described in the affidavits of Chris Spearman and Robbie Cox, specified as Yelton00003 and Yelton00018, respectively. By referring to these affidavits, ScanSource does not intend to and does not limit its answer to the information described in the affidavits. ScanSource further states that Plaintiff can ascertain information responsive to this interrogatory at Yelton06537 and Yelton06518. ScanSource may also rely upon those documents contained in Plaintiff's Dropbox account, and activity reflected therein during the relevant timeframe.

ScanSource's investigation, review and production of responsive documents and information is ongoing, and it reserves the right to supplement this answer.

23. If you contend Plaintiff has used any information that you contend is a trade secret belonging to you, specify:

a. each trade secret that forms the basis of your contention;
b. each fact upon which you rely in contending that Plaintiff used the trade secret;
c. each witness that has knowledge of Plaintiff's use of the trade secret; and
d. each document upon which you rely in support of your contention.

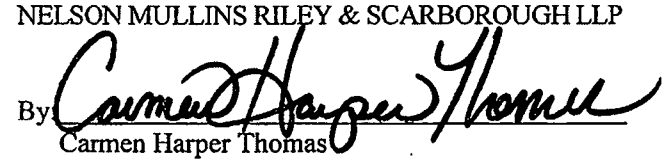
ANSWER: ScanSource objects to this interrogatory because it seeks information that is outside the scope of discovery pursuant to Rule 26, S.C. Rules of Civil Procedure. Subject to and without waiving any objection, ScanSource answers that Plaintiff misappropriated trade secrets pursuant to S.C. Code Ann. § 39-8-20 as described in the affidavits of Chris Spearman and Robbie Cox, specified as Yelton00003 and

Yelton00005, respectively. By referring to these affidavits, ScanSource does not intend to and does not limit its answer to the information described in the affidavits. ScanSource further states that Plaintiff can ascertain information responsive to this interrogatory at Yelton06537 and Yelton06518. ScanSource may also rely upon those documents contained in Plaintiff's Dropbox account, and activity reflected therein during the relevant timeframe.

ScanSource's investigation, review and production of responsive documents and information is ongoing, and it reserves the right to supplement this answer.

documents and information is ongoing, and it reserves its right to supplement this response.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 

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Attorneys for ScanSource, Inc.

Columbia, South Carolina

June 25, 2012

EXHIBIT 8

Brian Murphy

From: Brian Murphy <brian.murphy@mindspring.com>
Sent: Wednesday, June 27, 2012 4:53 PM
To: 'gwelmakerj@sccourts.org'
Cc: 'gwelmakerlc@sccourts.org'; Bill Foster (bill.foster@nelsonmullins.com)
Subject: Yelton v. Scansource 12-314
Attachments: Def Sup Resp to Pl 1st Disc_6.25.12.pdf

Importance: High

Judge Welmaker:

I very much regret the need to contact you again regarding the Motion to Compel but, after we were assured of a resolution at last week's hearing on Plaintiff's Motionl, what we were told is not what has happened. And given the pending deposition on Friday, this matter has urgency.

As you can recall, my primary complaint was that, amidst all of the objections, Defendant never provided simple responses to simple contention interrogatories. Defendant claimed that the only impediment was an amendment to the confidentiality order to allow for documents to be designated "highly confidential" (something I had agreed to). Defendant stated that they would provide simple responses (preserving attorney client privilege) and all responsive documents by Monday. That was important because Mr. Benbenek's deposition was set for this Friday at 9. It had been set earlier, but Defendant would not produce Mr. Benbenek and, instead, filed a Motion for Protective order.

On Monday I was told the information would be provided on Tuesday (yesterday). Yesterday, we received approximately 8000 documents, most of which are not "highly confidential," but that should have been produced many months ago. More documents were produced today (we are up around 9000 so far). Many of these documents, including blank documents marked "highly confidential" are complete gibberish and appear to parts of spreadsheets that are completely unintelligible. Yet, I have had to pay to have them printed out. Mr. Foster now has informed me that he has many more documents to produce that he has not even reviewed yet. He has informed me that he cannot produce all responsive documents by Friday and will not agree to leave the deposition open.

As to the responses (see attached), there is nothing "simple" about them. Some do not appear to have been amended at all. The myriad objections remain. In other places, Defendant simply refers to 5000 or so documents as their answer. For example, when simply asked why Defendant designated Plaintiff's termination as being "for cause" (after entering into a severance agreement with him), Defendant refers to a list of documents that is itself 50 pages long. The lists of documents for each subject are not even sequential, so that one cannot look at any grouping of documents and even attempt to discern what the answer to any particular question could be.

We also have not received the privilege log. There was one with the original responses, but I am now informed that Defendant 's draft new privilege log is approximately 70 pages long. I cannot even begin to evaluate that at this point.

In short, nothing you were told would happen has happened. In fact, it has only become more clear that Defendant has simply been punting on discovery, rather than attempting to respond to the requests served in January. I believe we need a resolution to the Motion and to require Defendant to produce Mr. Benbenek on Friday and, to the extent it is determined that Defendant has not responded fully and in a manner that allows Mr. Benbenek to testify, then I am requesting an Order that the deposition be left open.

I would appreciate the opportunity to be heard as soon as possible. I am mindful of your admonition that the parties must "play nice," however, I fail to see how this approach by Defendant can be considered as anything approaching even the most basic level of expectations when it comes to discovery.

EXHIBIT 9

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	JUDICIAL CIRCUIT
Jeff Yelton,	)	Civil Action No. 2012-CP-23-0314
Plaintiff,	)	
vs.	)	**DEFENDANT'S SECOND SUPPLEMENTAL ANSWERS TO PLAINTIFF'S FIRST INTERROGATORIES**
ScanSource, Inc.,	)	
Defendant.	)	

Pursuant to Rule 33, S.C. Rules of Civil Procedure, Defendant ScanSource, Inc. ("ScanSource") hereby supplements its first supplemental answers to Plaintiff's First Interrogatories.

SECOND SUPPLEMENTAL ANSWERS AND OBJECTIONS TO INTERROGATORIES

5. Identify by date, participant, and mode, all oral, electronic, and written communications between employees or agents of Defendant regarding the decision to terminate Plaintiff's employment.

ANSWER: ScanSource objects to this interrogatory because it seeks information that is protected by the attorney-client privilege or as work product. Protected information is withheld from discovery and described on a privilege log attached as Exhibit A to this Supplemental Response. In addition, ScanSource objects to this interrogatory pursuant to Rule 33(c), S.C. Rules of Civil Procedure. Further, ScanSource objects to this interrogatory as overly broad and unduly burdensome because it seeks identification of "all" such communications; ScanSource has made and continues to make a reasonable inquiry into the likely responsive repositories.

for Motorola, Honeywell, and Intermec, described above, the confidential and proprietary information removed by Plaintiff via Dropbox (Yelton12814 to 12871), and the confidential and proprietary documents removed from Plaintiff's office on December 15 and 16. ScanSource intends to rely upon those witnesses identified in response to Interrogatory No. 19 above to establish its claim that Plaintiff misappropriated the trade secrets of ScanSource. ScanSource further intends to rely upon the testimony, reports and other evidence as may be provided by FTI and Rosen with respect to certain devices returned by Plaintiff pursuant to the TRO and the Consent Protocol, as well as Plaintiff's work computer, and evidence as may be discovered on these and other devices identified in discovery.

ScanSource's investigation, review and production of responsive documents and information is ongoing, and it reserves the right to supplement this answer.

23. If you contend Plaintiff has used any information that you contend is a trade secret belonging to you, specify:

a. each trade secret that forms the basis of your contention;
b. each fact upon which you rely in contending that Plaintiff used the trade secret;
c. each witness that has knowledge of Plaintiff's use of the trade secret; and
d. each document upon which you rely in support of your contention.

ANSWER: ScanSource objects to this interrogatory because it seeks information that is outside the scope of discovery pursuant to Rule 26, S.C. Rules of Civil Procedure. Subject to and without waiving any objection, ScanSource answers that Plaintiff misappropriated trade secrets pursuant to S.C. Code Ann. § 39-8-20 as described in the affidavits of Chris Spearman and Robbie Cox, specified as Yelton00003 and Yelton00005, respectively. By referring to these affidavits, ScanSource does not intend

to and does not limit its answer to the information described in the affidavits. ScanSource further states that Plaintiff can ascertain information responsive to this interrogatory at Yelton06537 and Yelton06518. ScanSource may also rely upon those documents contained in Plaintiff's Dropbox account, and activity reflected therein during the relevant timeframe.

ScanSource further states that the Company presently lacks further information demonstrating Plaintiff has used any ScanSource trade secret information, but submits that it intends to rely on the above evidence, as well as evidence set forth in the Company's responses to Interrogatories Nos. 7, 19, 20 and 22 above to establish Plaintiff's threatened use and disclosure, as well as Plaintiff's likely use and disclosure, of ScanSource's confidential, proprietary and trade secret information. ScanSource further notes that Plaintiff has admitted to his intention to form a business using ScanSource's proprietary and confidential information (Yelton00490-91, 00540, 12536-38, 12586), and ScanSource believes Plaintiff has and continues to use such information for this stated purpose. ScanSource also notes that Plaintiff has, upon information and belief, met with Motorola, Honeywell and Intermec, and has used ScanSource proprietary and confidential information in order to pursue his own interests in pursuit of business opportunities with these and other ScanSource customers.

ScanSource's investigation, review and production of responsive documents and information is ongoing, and it reserves the right to supplement this answer.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: _____

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Attorneys for ScanSource, Inc.

Greenville, South Carolina

July 13, 2012

EXHIBIT 10

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO: 2012CP2300314

Jeff Yelton *vs.* ScanSource Inc

CHECK ONE:

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy:

☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other: _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☐ Statement of Judgment by the Court:

Dated at Greenville, South Carolina, this 29th day of June, 2012.

Court Reporter:

PRESIDING JUDGE - G edward Welmaker

This judgment was entered on the 29th day of June, 2012, and a copy mailed first class this 29th day of June, 2012, to attorneys of record or to parties (when appearing pro se) as follows:

Brian Patrick Murphy 514 Pettigru St Greenville, SC 29601

ATTORNEY(S) FOR THE PLAINTIFF(S)

Sue Erwin Harper Nelson Mullins Riley & Scarborough, LLP P.O. Box 11070 Columbia, SC 29211
Dowse B Rustin IV Nelson Mullins Riley & Scarborough Llp P.O. Box 10084 Greenville, SC 29603

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court - Clerk of Court

CPFORM4M
SCCA SCRCP Form 4 Revised 06/2008

State of South Carolina	)	**IN THE COURT OF COMMON PLEAS**
	)	
County of Greenville	)	**2012-CP-23-0314**
Jeff Yelton	)	
	)	
Plaintiff,	)	
vs.	)	
	)	**Consent Amended Confidentiality Order**
ScanSource, Inc.	)	
	)	
Defendant.	)	

Whereas, the parties to this Consent Confidentiality Order ("parties"), have stipulated that certain discovery material is and should be treated as confidential, and have agreed to the terms of this order; accordingly, it is this 14th day of February, 2012, ORDERED:

1. **Scope.** All documents produced in the course of discovery, all responses to discovery requests and all deposition testimony and deposition exhibits and any other materials which may be subject to discovery (hereinafter collectively "documents") shall be subject to this Order concerning confidential information as set forth below.

2. **Form and Timing of Designation.** Confidential documents shall be so designated by placing or affixing the word "CONFIDENTIAL" on the document in a manner which will not interfere with the legibility of the document and which will permit complete removal of the Confidential designation. Documents shall be designated CONFIDENTIAL prior to, or contemporaneously with, the production or disclosure of the documents. Inadvertent or unintentional production of documents without prior designation as confidential shall not be deemed a waiver, in whole or in part, of the right to designate documents as confidential as otherwise allowed by this Order.

3. **Documents Which May be Designated Confidential.** Any party may designate documents as confidential but only after review of the documents by an attorney who has, in

good faith, determined that the documents contain information protected from disclosure by statute, sensitive personal information, trade secrets, or confidential research, development, or commercial information. The certification shall be made concurrently with the disclosure of the documents, using the form attached hereto at Attachment A which shall be executed subject to the standards of Rule 11 of the South Carolina Rules of Civil Procedure. Information or documents which are available in the public sector may not be designated as confidential.

4. **Use of a Party's Own Material.** This Order has no effect upon, and shall not apply to any producing party's use of his or its own Confidential documents or material for any purpose.

5. **Depositions.** Portions of depositions shall be deemed confidential only if designated as such when the deposition is taken or within seven business days after receipt of the transcript. Such designation shall be specific as to the portions to be protected.

6. **Protection of Confidential Material.**

a. **General Protections.** Documents designated CONFIDENTIAL under this Order shall not be used or disclosed by the parties or counsel for the parties or any other persons identified below (¶ 6.b.) for any purposes whatsoever other than preparing for and conducting the litigation in which the documents were disclosed (including any appeal of that litigation). The parties shall not disclose documents designated as confidential to putative class members not named as plaintiffs in putative class litigation unless and until one or more classes have been certified.

b. **Limited Third Party Disclosures.** The parties and counsel for the parties shall not disclose or permit the disclosure of any documents designated CONFIDENTIAL under the terms of this Order to any other person or entity except as set forth in subparagraphs (1)-(5) below, and then only after the person to whom disclosure is to be

made has executed an acknowledgment (in the form set forth at Attachment B hereto), that he or she has read and understands the terms of this Order and is bound by it. Subject to these requirements, the following categories of persons may be allowed to review documents which have been designated CONFIDENTIAL pursuant to this Order:

(1) counsel and employees of counsel for the parties who have responsibility for the preparation and trial of the lawsuit;

(2) parties and employees of a party to this Order but only to the extent counsel shall certify that the specifically named individual party or employee's assistance is necessary to the conduct of the litigation in which the information is disclosed[2];

(3) court reporters engaged for depositions and those persons, if any, specifically engaged for the limited purpose of making photocopies of documents;

(4) consultants, investigators, or experts (hereinafter referred to collectively as "experts") employed by the parties or counsel for the parties to assist in the preparation and trial of the lawsuit; and

(5) other persons only upon consent of the producing party or upon order of the court and on such conditions as are agreed to or ordered.

c. **Control of Documents.** Counsel for the parties shall take reasonable efforts to prevent unauthorized disclosure of documents designated as Confidential pursuant to the terms of this order. Counsel shall maintain a record of those persons, including employees of counsel, who have reviewed or been given access to the documents along

[2] At or prior to the time such party or employee completes his or her acknowledgment of review of this Order and agreement to be bound by it (Attachment B hereto), counsel shall complete a certification in the form shown at Attachment C hereto. Counsel shall retain the certification together with the form signed by the party or employee.

[3]

with the originals of the forms signed by those persons acknowledging their obligations under this Order.

d. **Copies.** All copies, duplicates, extracts, summaries or descriptions (hereinafter referred to collectively as "copies"), of documents designated as Confidential under this Order or any portion of such a document, shall be immediately affixed with the designation "CONFIDENTIAL" if the word does not already appear on the copy. All such copies shall be afforded the full protection of this Order.

7. **Filing of Confidential Materials.** In the event a party seeks to file any material that is subject to protection under this Order with the court, that party shall take appropriate action to insure that the documents receive proper protection from public disclosure including: (1) filing a redacted document with the consent of the party who designated the document as confidential; (2) where appropriate (*e.g.* in relation to discovery and evidentiary motions), submitting the documents solely for *in camera* review; or (3) where the preceding measures are not adequate, seeking permission to file the document under seal. Absent extraordinary circumstances making prior consultation impractical or inappropriate, the party seeking to submit the document to the court shall first consult with counsel for the party who designated the document as confidential to determine if some measure less restrictive than filing the document under seal may serve to provide adequate protection. This duty exists irrespective of the duty to consult on the underlying motion. Nothing in this Order shall be construed as a prior directive to the Clerk of Court to allow any document be filed under seal. The parties understand that documents may be filed under seal only with the permission of the court after proper motion.

8. **Greater Protection of Specific Documents.** No party may withhold information from discovery on the ground that it requires protection greater than that afforded by this Order unless the party moves for an Order providing such special protection. However, the parties

agree that ScanSource may secure additional protection of certain key proprietary information by designating the material as CONFIDENTIAL – ATTORNEY RESTRICTED. Any documents so designated by ScanSource must be retained by Plaintiff's counsel. Plaintiff shall be entitled to review any document marked CONFIDENTIAL – ATTORNEY RESTRICTED solely at the office of Plaintiff's counsel in "hard copy" format, but shall not be allowed to remove such documents from his counsel's office or make copies or summaries of such documents of any kind. Documents marked CONFIDENTIAL – ATTORNEY RESTRICTED may be stored electronically by Plaintiff's counsel, but may not be shared electronically with Plaintiff. Documents marked CONFIDENTIAL – ATTORNEY RESTRICTED shall otherwise be subject to the provisions of this Order as they relate to CONFIDENTIAL documents, without exception, including those provisions regarding the right of a party to challenge any designation and the use of documents in depositions and filings.

9. **Challenges to Designation as Confidential.** Any CONFIDENTIAL designation is subject to challenge. The following procedures shall apply to any such challenge.

a. The burden of proving the necessity of a Confidential designation remains with the party asserting confidentiality.

b. A party who contends that documents designated CONFIDENTIAL are not entitled to confidential treatment shall give written notice to the party who affixed the designation of the specific basis for the challenge. The party who so designated the documents shall have fifteen (15) days from service of the written notice to determine if the dispute can be resolved without judicial intervention and, if not, to move for an Order confirming the Confidential designation.

5

c. Notwithstanding any challenge to the designation of documents as confidential, all material previously designated CONFIDENTIAL shall continue to be treated as subject to the full protections of this Order until one of the following occurs:

(1) the party who claims that the documents are confidential withdraws such designation in writing;

(2) the party who claims that the documents are confidential fails to move timely for an Order designating the documents as confidential as set forth in paragraph 9.b. above; or

(3) the court rules that the documents should no longer be designated as confidential information.

d. Challenges to the confidentiality of documents may be made at any time and are not waived by the failure to raise the challenge at the time of initial disclosure or designation.

10. **Treatment on Conclusion of Litigation.**

a. **Order Remains in Effect.** All provisions of this Order restricting the use of documents designated CONFIDENTIAL shall continue to be binding after the conclusion of the litigation unless otherwise agreed or ordered.

b. **Return of CONFIDENTIAL Documents.** Within thirty (30) days after the conclusion of the litigation, including conclusion of any appeal, all documents treated as confidential under this Order, including copies as defined above (¶6.d.) shall be returned to the producing party unless: (1) the document has been entered as evidence or filed (unless introduced or filed under seal); (2) the parties stipulate to destruction in lieu of return; or (3) as to documents containing the notations, summations, or other mental impressions of the receiving party, that party elects destruction. Notwithstanding the

above requirements to return or destroy documents, counsel may retain attorney work product including an index which refers or relates to information designated CONFIDENTIAL so long as that work product does not duplicate verbatim substantial portions of the text of confidential documents. This work product continues to be Confidential under the terms of this Order. An attorney may use his or her work product in a subsequent litigation provided that its use does not disclose the confidential documents.

11. **Order Subject to Modification.** This Order shall be subject to modification on motion of any party or any other person who may show an adequate interest in the matter to intervene for purposes of addressing the scope and terms of this Order. The Order shall not, however, be modified until the parties shall have been given notice and an opportunity to be heard on the proposed modification.

12. **No Judicial Determination.** This Order is entered based on the representations and agreements of the parties and for the purpose of facilitating discovery. Nothing herein shall be construed or presented as a judicial determination that any specific document or item of information designated as CONFIDENTIAL by counsel is subject to protection under Rule 26(c) of the South Carolina Rules of Civil Procedure or otherwise until such time as a document-specific ruling shall have been made.

13. **Persons Bound.** This Order shall take effect when entered and shall be binding upon: (1) counsel who signed below and their respective law firms; and (2) their respective clients.

7

IT IS SO ORDERED.

The Honorable G. Edward Welmaker

6-19, 2012

Greenville, South Carolina

WE SO CONSENT:

NELSON MULLINS RILEY & SCARBOROUGH LLP

By:_____

William H. Foster III, SC Bar No. 66221
bill.foster@nelsonmullins.com
Carmen Harper Thomas, SC Bar No. 76012
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Attorneys for ScanSource, Inc.

BRIAN MURPHY LAW FIRM, PC

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Attorneys for Plaintifff

ATTACHMENT A
CERTIFICATION BY COUNSEL OF DESIGNATION OF INFORMATION AS CONFIDENTIAL

State of South Carolina	)	**IN THE COURT OF COMMON PLEAS**
	)	
County of Greenville	)	**2012-CP-23-0314**
Jeff Yelton	)	
	)	
Plaintiff,	)	
vs.	)	
	)	**Consent Amended Confidentiality Order**
ScanSource, Inc.	)	
	)	
Defendant.	)	

Documents produced herewith **[whose bates numbers are listed below (or) which are listed on the attached index]** have been marked as CONFIDENTIAL subject to the Confidentiality Order entered in this action which Order is dated [confidentiality order date].

By signing below, I am certifying that I have personally reviewed the marked documents and believe, based on that review, that they are properly subject to protection under the terms of Paragraph 3 of the Confidentiality Order.

Date: [date attachment A signed]

[Signature of Counsel [s/name]]
Signature of Counsel

[Printed Name of Counsel [A]]
Printed Name of Counsel

ATTACHMENT B

ACKNOWLEDGMENT OF UNDERSTANDING
AND
AGREEMENT TO BE BOUND

State of South Carolina	)	**IN THE COURT OF COMMON PLEAS**
	)	
County of Greenville	)	**2012-CP-23-0314**
Jeff Yelton	)	
	)	
Plaintiff,	)	
vs.	)	
	)	**Consent Amended Confidentiality Order**
ScanSource, Inc.	)	
	)	
Defendant.	)	

The undersigned hereby acknowledges that he or she has read the Confidentiality Order dated [confidentiality order date], in the above captioned action, understands the terms thereof, and agrees to be bound by such terms. The undersigned submits to the jurisdiction of the Greenville County Court of Common Pleas in matters relating to the Confidentiality Order and understands that the terms of said Order obligate him/her to use discovery materials designated CONFIDENTIAL solely for the purposes of the above-captioned action, and not to disclose any such confidential information to any other person, firm or concern.

The undersigned acknowledges that violation of the Stipulated Confidentiality Order may result in penalties for contempt of court.

Name:	[undersigned name [att B]]
Job Title:	[Job Title [att B]]
Employer:	[Employer [att B]]
Business Address:	[Business Address [att B]]

Date: **[date attachment B signed]**

[Signature [attachment B]]
Signature

ATTACHMENT C

CERTIFICATION OF COUNSEL OF NEED FOR ASSISTANCE OF PARTY/EMPLOYEE

State of South Carolina	)	IN THE COURT OF COMMON PLEAS
	)	
County of Greenville	)	2012-CP-23-0314
Jeff Yelton	)	
	)	
Plaintiff,	)	
vs.	)	
	)	**Consent Amended Confidentiality Order**
ScanSource, Inc.	)	
	)	
Defendant.	)	

Pursuant to the Confidentiality Order entered in this action, most particularly the provisions of Paragraph 6.b.2., I certify that the assistance of [name of assistant [att C]] is reasonably necessary to the conduct of this litigation and that this assistance requires the disclosure to this individual of information which has been designated as CONFIDENTIAL.

I have explained the terms of the Confidentiality Order to the individual named above and will obtain his or her signature on an "Acknowledgment of Understanding and Agreement to be Bound" prior to releasing any confidential documents to the named individual and I will release only such confidential documents as are reasonably necessary to the conduct of the litigation.

The individual named above is:

- ☐ A named party;
- ☐ An employee of named party [employee of named party]. This employee's job title is [employee's job title] and work address is [employee's work address].

Date: **[date attachment C signed]**

[Signature [attachment C]]
Signature

Nelson Mullins

Nelson Mullins Riley & Scarborough LLP
Attorneys and Counselors at Law
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September 17, 2012

Hand Delivered

Derrick Quattlebaum
75 Beattie Place, 11th Floor
Greenville, SC 29601-2119

RE: Jeff Yelton v. ScanSource Inc.
C/A No. 2012-CP-23-00314
Our File No. 18309/05002

Dear Derrick:

First, thank you for your time and attention to this case. We recognize that the issues, evidence, and arguments from counsel may have proven tedious at times, and we appreciate your thoughtful consideration of our client's position.

ScanSource, Inc.'s ("ScanSource" or the "Company") Motion for Preliminary Injunction is pending before you, and the Company is submitting the enclosed materials in support of same.[1] We respectfully contend that an Order granting preliminary injunctive relief is *urgently* required to prevent irreparable harm to ScanSource in the form of the misappropriation of its Confidential Information (as defined by the Court's February 8, 2012 Order), loss of goodwill, and harm to its customer relationships and reputation.

The threat of irreparable harm to ScanSource absent injunctive relief is irrefutable, and the Company's evidence in support of the requested relief is overwhelming. The utter *lack* of harm to Plaintiff should the requested relief be granted is likewise irrefutable, and he can offer no evidence to support his dubious position that he should not be enjoined from using or disclosing proprietary information he claims he does not possess, admits he has no right to possess, and claims he has no need for in his current business endeavors.

[1] Instead of restating information that has already been presented in this case, ScanSource refers to the materials previously submitted, which are included in the enclosed binder ("Binder"), along with documents recently received from former ScanSource employee Penn Williams, which are filed herewith under seal. (Binder, Tab 5.)

Against this starkly contrasted backdrop, ScanSource seeks the following preliminary injunctive relief, through and including a trial of this matter or further order of the Court:

1) Plaintiff, and all those acting in concert and active participation with him, shall be prohibited from directly or indirectly contacting any ScanSource employee to provide Plaintiff with Confidential Information, Trade Secrets, or proprietary information.

2) Plaintiff, and all those acting in concert and active participation with him, shall be prohibited from directly or indirectly contacting any vendor or customer of ScanSource to provide Plaintiff with Confidential Information, Trade Secrets, or proprietary information.

3) Plaintiff, and all those acting in concert and active participation with him, is required to return any and all property or information rightfully belonging to, or wrongfully taken from, ScanSource, including but not limited to any and all documents, materials, or electronic media containing information regarding ScanSource, its products, vendors, customers, or suppliers, including all copies thereof, and eliminating any and all access to the property or information via any Dropbox or other online or cloud accounts.

4) Plaintiff is prohibited from using, disclosing, or transmitting any ScanSource Confidential Information, Trade Secrets, or proprietary information.

5) Any such other and further relief as the Court may deem just and equitable.

The initial Motion for Preliminary Injunction describes the elements of injunctive relief and supporting case law and facts. (Binder, Tab 1.) Since that Motion was filed on January 24, 2012, the evidence supporting the injunctive relief has grown, and Plaintiff can produce no evidence or argument to suggest the relief requested is not appropriate.[2]

The additional evidence of Plaintiff's misappropriation of ScanSource's information is set forth in ScanSource's Petition for Rule to Show Cause for Contempt and Sanctions and supplemental affidavits. (Binder, Tabs 2, 3, & 4.) ScanSource also relies upon Plaintiff's affidavits and the September 14 response to a subpoena served on former ScanSource employee, Penn Williams. (*Id.* at Tab 5.) Ms. Williams worked as a direct subordinate of Mr. Yelton and left her employment on December 15, 2011 (one day before Mr. Yelton).

[2] As he did at the August 31 hearing before the Special Referee, Plaintiff may again seek to offer the testimony of Scott Benbenek to support his position. However, a more fulsome review of Mr. Benbenek's testimony shows that although he has not been involved in the Company's investigation of these matters since reporting his concerns on January 4, 2012, Mr. Benbenek actually testified that he believed Plaintiff had taken ScanSource Confidential Information, that Plaintiff has no right or legitimate reason to possess or use such information, and that the unauthorized use or disclosure of that information would irreparably harm ScanSource. (Binder, Tab 6.)

We believe the evidence conclusively shows that Plaintiff has retained a significant amount of ScanSource Confidential Information (as such term has been defined by Judge Hill), including the external flash drive containing the Quarterly Business Reviews of some of ScanSource's largest customers (the "QBR Flash Drive"). There is no dispute that this is protected information and the Plaintiff has no right to possess it, much less make any use of it.

Plaintiff has taken numerous actions to acquire ScanSource information and to cover his tracks, hiding the extent of his misappropriation but exposing his bad faith and the threat of irreparable harm it presents to ScanSource:

1) He uploaded 863 files to his Dropbox account on his last day in the office. (Binder at Tab 2, pp. 5-6.)

2) He used Killdisk to disable the ScanSource laptop. (*Id.* at p. 7.)

3) On January 17, 2012, he used the same USB flash device in his home computer that he had asked Chris Spearman and Robbie Cox to put QBRs onto on December 12, 2011. (*Id.* at pp. 13-17; July 26, 2012 Supplemental Affidavit of Dean Gaida, attached to Motion for Expedited Hearing, at Tab 3; August 28, 2012 Supplemental Affidavit of Dean Gaida, attached to Notice of Filing Supplemental Affidavit, at Tab 4.)

4) He has not turned over three USB flash devices that were connected to both his ScanSource laptop the last week he was in the office and his home computer on January 17, 2012, and thus were in his possession the day before he filed the Complaint in this action. (July 26, 2012 Supplemental Affidavit of Dean Gaida ¶¶ 10-11, attached to Motion for Expedited Hearing, at Tab 3.) He also has not turned over two additional USB flash devices that were connected to his ScanSource laptop the last week he was in the office. (*Id.*)

In light of these facts, the threat of irreparable harm to ScanSource is palpable and beyond dispute. Plaintiff has sworn under oath that he has returned all Confidential Information, has made no use of it, and has no need of it. Thus, his continued resistance to a preliminary injunction that would prevent him from making any use of ScanSource's Confidential Information—information he claims he does not have and for which he asserts to have no use—is, frankly, chilling.

Further, ScanSource risks immediate and irreparable injury because Mr. Yelton is not being forthcoming regarding his activities and intentions. In his January 4 email to ScanSource and in his submissions to this Court, Plaintiff claims to have no need for ScanSource's Confidential Information and that he has no intention of competing with the Company.[3] However, his

[3] *See* Email from Jeff Yelton to Scott Benbenek, Subject: What I'm Going to Do (Jan. 4, 2012 8:02 PM), attached as an exhibit to Plaintiff's Affidavit in Opposition to TRO (Jan. 26, 2012), attached hereto as Exhibit A to ScanSource's Petition for Rule to Show Cause, Tab 2; Plaintiff's

submissions make it clear that his claim is false. Now, documents provided by Plaintiff and Ms. Williams lay bare Plaintiff's true intentions. (Binder, Tab 5.)

Plaintiff attached to his August 30, 2012 affidavit a letter titled "New Distribution Model." (Plaintiff's Additional Documents in Opposition to Motion for Contempt ¶ 18, Exhibit D ("New Distribution Model.")) This particular letter was addressed to Honeywell, but he also sent this letter to Motorola. (Transcript of August 31, 2012 Hearing at 64:11-20.) In this letter, Yelton describes a business plan that is designed to compete directly with the marketing services provided by ScanSource, a distributor, to its vendors. (New Distribution Model, third list.) Also in the letter, he refers to a target market of "low value customers." (*Id.* at 1, item 1 in second list.) This market likely correlates to the same customers identified in "Bottom 1000 Catalog Reciepients.xls," which is one of the files that was accessed by Yelton in his Dropbox account on January 4, 2012. Yelton knew he was treading on thin ice by reaching out like this to ScanSource vendors, admitting in the letter that "I'm sure you can't believe I'm taking this position," and that he "can assure you I wrote this with a lot of trepidation."

In addition, on January 3, 2012, Plaintiff emailed Penn Williams with his "basic business model for Varsguide." (*See* Email from Jeff Yelton to Penn Williams, "A few notes to review before we meet" (Jan. 3, 2012 4:08 PM), attached under seal at Tab 5.) (*See* Petition for Rule to Show Cause at 5, Tab 2.) This email is similar to the letter he was sending to Motorola and Honeywell, except by the time he sends it to Ms. Williams, it is his business model.[4] Without the preliminary injunction against his use of ScanSource information, Plaintiff will rely on the resources he took from ScanSource to fulfill his business plan for Varsguide, as he described in the January 3, 2012 email.

Although Plaintiff recently has said that "Varsguide has not been engaged by anyone in the industry to date and I have done no work for any vendors of ScanSource, VARS, or point-of-sale end users," this statement does not mean that he has not *tried* to be engaged or to do work for ScanSource's vendors, nor does it speak to his plans once this litigation has concluded. (*See* Plaintiff's Affidavit in Opposition to Motion for Contempt ¶ 14 (Aug. 30, 2012).) In January, he proposed a marketing program to Honeywell, furthering his Varsguide business plan. (*See* Emails between Jeff Yelton and Penn Williams, Subject: Bi-optic scanner program (Jan. 9-13, 2012), attached under seal at Tab 5.) If this effort had been successful, his August 30 affidavit would be false. Plaintiff knows this, and it appears he is toeing as closely as he dares to the line, if not going over it without our knowledge.

There is no question but that Plaintiff improperly took ScanSource Confidential Information. ScanSource's information is still out there, and Plaintiff appears to be doing his best to avoid any ruling of this Court that would restrict him in his use of this Confidential Information in his new business ventures. Although the parties agreed on a Consent Protocol for the return and

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Documents in Opposition to Defendant's Motion for Contempt, Yelton Affidavit ¶ 2 (Aug. 27, 2012) ("I believe that deleting the data was the proper thing to do and I had no need for it").

[4] The contrast between what Plaintiff represented to Mr. Benbenek and ScanSource on January 4 and his email to Ms. Williams is particularly telling.

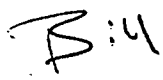
investigation of electronic information, including evaluation of the Search Results, Plaintiff has thwarted ScanSource's efforts to investigate the devices that he *has* turned over. This failure to cooperate with the Consent Protocol is significant. Around every evidentiary corner in this case, the proof of Plaintiff's conduct mounts, despite his efforts to delay and frustrate the process. Plaintiff must be enjoined from use of the information and must be enjoined not to possess it, to be required to return all ScanSource Confidential or proprietary information.

The other factors supporting a preliminary injunction also are present. ScanSource has made a prima facie showing that it will succeed on the merits, as it has and will continue to demonstrate Plaintiff's violation of his contractual obligations regarding ScanSource's Confidential Information. No remedy other than an injunction is available to stop Plaintiff from using and possessing ScanSource's information. Indeed, if he still has any of the five (5) flash drives he used on his ScanSource computer the last week he was at work, even the Court's TRO has not stopped Plaintiff from possessing the information.

Based on the evidence of Plaintiff's actions since he was told of his termination on December 9, 2011, and on South Carolina law, ScanSource is entitled to a preliminary injunction as described above. ScanSource reserves the right to provide additional support for this Motion or to request a hearing after it receives Plaintiff's submission on September 17th. We will be glad to answer any questions you may have to assist in your consideration of this motion.

With best regards, I am

Very truly yours,



William H. Foster

Enclosure
cc: Brian Murphy, Esq.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	SEVENTH JUDICIAL CIRCUIT
Jeff Yelton,	)	Civil Action No. 2012-CP-23-0314
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
Scansource, Inc.,	)	
	)	
Defendant.	)	
	)	

DOCUMENTS SUBMITTED BY SCANSOURCE IN SUPPORT OF SCANSOURCE'S MOTION FOR PRELIMINARY INJUNCTION

William H. Foster, Esq.
Nelson Mullins Riley & Scarborough, L.L.P.
Poinsett Plaza, Suite 900
104 S. Main Street
Greenville, South Carolina 29601

Jeff Yelton v. ScanSource, Inc.
In the Court of Common Pleas (Greenville County)
Civil Action No. 2012-CP-23-0314

Table of Contents

1. Motion for Preliminary Injunction filed January 24, 2012
2. Petition for Rule to Show Cause with supporting exhibits filed July 17, 2012
3. Motion for Expedited Hearing filed July 30, 2012
4. Notice of Filing Supplemental Affidavit of Dean Gaida filed August 28, 2012
5. Emails between Jeff Yelton to Penn Williams
6. ScanSource's Presentation to Special Referee at August 31, 2012 hearing
7. Transcript from August 31, 2012 hearing

EXHIBIT 3

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
Jeff Yelton,	)	Civil Action No. 2012-CP-23-0314
	)	
Plaintiff,	)	
	)	**DEFENDANT SCANSOURCE'S MOTION FOR EXPEDITED HEARING**
vs.	)	
	)	
ScanSource, Inc.,	)	
	)	
Defendant.	)	**PRIORITY MATTER**
	)	

COMES NOW the Defendant ScanSource, Inc. ("ScanSource" or the "Company") and respectfully moves this Court for an expedited hearing on ScanSource's Petition for a Rule to Show Cause for Civil Contempt by Plaintiff Jeff Yelton and Motion to Compel and for Sanctions, filed July 17, 2012. This Motion is made in good faith on the grounds that additional forensic discovery has further confirmed that Plaintiff Jeff Yelton has deliberately failed to return three electronic storage devices that contain ScanSource's confidential and proprietary information in direct violation of this Court's order to return all such devices. (*See* Supplemental Affidavit of Dean Gaida of FTI at ¶¶ 9-11 ("Supplemental Affidavit"), attached as Exhibit A.)

As explained at length in ScanSource's original Petition, a forensic examination of Yelton's work laptop and the devices previously returned to the Special Referee pursuant to this Court's Temporary Restraining Order ("TRO") demonstrate that Yelton has failed to return five electronic storage devices that were attached to his work laptop during the time period between his learning of his impending termination and his departure. (Petition, pp. 1-2, 13-17.) The evidence further shows that ScanSource proprietary data was being downloaded by Yelton onto these devices during this time period. (*Id.* at pp. 15-16.)

Now, additional forensic review shows that three of these five missing devices were connected to Yelton's personal HP laptop *after* his departure from the Company and, in fact, were attached to that computer as late as the evening of January 17, 2012, the day *after* he received the Company's letter demanding the return of all ScanSource proprietary information. (Supplemental Affidavit at ¶ 10.) As these devices potentially contain the Company's trade secret and/or proprietary information, and as Yelton has to date shown no qualms about taking the Company's intellectual property and ignoring this Court's mandates, the Court's intervention is urgently needed.

Further, ScanSource requests that the hearing be set before the Honorable D. Garrison Hill, who granted the TRO that Yelton has defied. Besides issuing the TRO, Yelton's false representations that also support an order of contempt were submitted to Judge Hill. Judge Hill is familiar with the underlying facts in the case and the complexity of the issues, and his hearing the Petition would expedite resolution of the claims.

A proposed Order is attached to this Motion.

[*SIGNATURE PAGE ATTACHED*]

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: _____

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SC Bar No. 66221
E-Mail: bill.foster@nelsonmullins.com
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(803) 799-2000

Attorneys for ScanSource, Inc.

Greenville, South Carolina

July 30, 2012

CERTIFICATE OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough, LLP, attorneys for ScanSource, Inc., do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by hand delivering a copy of the same to the following address(es):

Pleadings: DEFENDANT SCANSOURCE'S MOTION FOR EXPEDITED HEARING

Counsel Served:

Brian Murphy, Esq.
Brian Murphy Law Firm, P.C.
514 Pettigru Street
Greenville, SC 29601

Karan DiGiacomo
Administrative Assistant

July 30, 2012

EXHIBIT A

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE.	)	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT
Jeff Yelton, Plaintiff, vs. ScanSource, Inc., Defendant.	)	Civil Action No. 2012-CP-23-0314 **SUPPLEMENTAL AFFIDAVIT OF DEAN GAIDA**

I, Dean Gaida, swear, upon penalties of perjury, as follows:

1. My name is Dean Gaida, I am above the age of 18, and I have personal knowledge of and am competent to testify about the matters addressed herein.

2. On July 18, 2012, I executed an affidavit regarding the results of a forensic investigation conducted by FTI Consulting Technology LLC ("FTI") of electronic information related to this case ("July 18 Affidavit"). This supplemental affidavit relates to additional forensic investigation of similar and related information, and it is intended to supplement and be incorporated with my July 18, 2012 affidavit.

3. As described in Part I.A, ¶ 8, of my July 18 Affidavit, FTI determined that five electronic storage devices were connected to the ScanSource Laptop by USB during the period of December 9, 2011 to December 15, 2011, to drive letter E. Specifically, those USB devices that were connected to the Laptop were the following:

a. CBM Flash Disk USB Device, Serial No. 16145301AACCA911

b. Flash Disk USB Device, Serial No. 102002081627B702

c. FLASH Drive AU_USB20 USB Device, Serial No. J0904000000000017362

d. USB Flash Disk USB Device, Serial No. 20111106291553540012117107

e. USB2.0 Flash Disk USB Device, Serial No. 2009092806133745384

4. As described in Part I.A, para. 9 of the July 18 Affidavit, none of these five devices were among the 12 devices that were examined by John Akerman, as described in John Akerman's July 10, 2012 affidavit ("Akerman Affidavit"), and were not the two USB devices provided to FTI by ScanSource.

5. John Akerman created forensic images of the 12 devices he examined, and FTI has custody of copies of those forensic images. These devices include a Dell Laptop (Inspiron PP09L, Serial No. S/T: 7BGQK51), an HP Laptop (Compaq NC6400, Serial No. CND7040KN7), and a Desktop Computer with five hard drives (described in ¶¶ 6 and 7 of the Akerman Affidavit). These devices are the only devices of the 12 that have USB ports to which a USB storage device could be connected. Akerman's Affidavit identifies the images associated with these devices as numbers 9, 10, 12_01, 12_02, and 12_05.

6. The HP Laptop and Dell Inspiron utilized the Windows XP Operating System, which, in normal use will capture a USB device's information whenever a USB device is successfully plugged in. Certain information related to USB activity is recorded within the Windows Registry SYSTEM file and other system files listed below. These files and their use are similar to that of the Windows 7 Operating System; only the location and file name of the setupapi.log and location of the NTUSER.dat is different.

System Registry hive found at C:\Windows\System32\config\SYSTEM
setupapi.log found at C:\Windows\setupapi.log
NTUSER file found at C:\Documents and Settings\<user>\ NTUSER.dat

7. Like the ScanSource Laptop, the Custom Desktop used the Windows 7 Operating System, for which certain USB activity is recorded as explained in Part I, ¶¶ 4 and 5 of the July 18 Affidavit.

8. As FTI had done with the ScanSource Laptop, FTI examined these images to generate a report of the removable USB devices recorded by Windows that were connected on or after December 15, 2011. As before FTI reviewed the list of connections through the setupapi file and linked these connections to a particular profile to determine the last time connected. For the Dell laptop and Custom Desktop FTI identified and utilized the user profile labeled "Jeff"; for the HP laptop only the administrator profile was in use and was used during this examination.

9. Again, as FTI had done with the ScanSource Laptop, FTI used Access Data's Registry Viewer and EnCase to analyze the system files of these 3 devices. FTI identified 8 separate devices connected to the HP Laptop and 1 connected to the Custom Desktop during this time frame. No devices were connected to the Dell laptop during this time frame. The results of the analyses for each device are attached as Exhibits A (HP Laptop), and B (Desktop Computer).

10. The analyses show that 3 of the 5 devices that were connected to the ScanSource Laptop by USB between December 9, 2011 to December 15, 2011, also were connected to the HP Laptop after December 15, 2011:

Devices Connected by USB to ScanSource Laptop, 12/9/11 to 12/15/11	**HP Laptop Connection Information**	
	First Connect	**Last Connect**
CBM Flash Disk USB Device, S/N 16145301AACCA911	Not Connected	Not Connected
Flash Disk USB Device, S/N 102002081627B702	1/17/12, 9:19 PM	1/17/12, 9:19 PM
FLASH Drive AU_USB20 USB Device, S/N J0904000000000017362	7/31/09, 4:37 PM	1/17/12, 9:13 PM
USB Flash Disk USB Device, S/N 20111106291553540012117107	Not Connected	Not Connected
USB2.0 Flash Disk USB Device, S/N 2009092806133745384	1/17/12, 9:15 PM	1/17/12, 9:16 PM

11. As shown on Exhibit A, the USB analyses of the HP Laptop resulted in a match on both the serial number and friendly name to the 3 devices that also were connected to the ScanSource Laptop. This means that these same 3 devices were both connected to the ScanSource work laptop in December of 2011 and subsequently connected to his personal HP laptop in January 2012 after his departure date from the firm. This indicates that Yelton still had possession of these 3 USB devices in January 2012.

12. I conducted or oversaw the investigation and analysis for which the results are described in this supplemental affidavit. This supplemental report has been prepared based on information currently available to me. I reserve the right to amend this report or submit a supplemental report as additional, relevant information becomes available to me. As such, my opinions may be subject to change.

13. FTI is retained by Nelson Mullins Riley & Scarborough LLP to provide forensic investigation services related to this case.

[*SIGNATURE PAGE ATTACHED*]

FURTHER AFFIANT SAYETH NOT.

Dean Gaida.
Dean Gaida

SWORN TO and subscribed before me this
26th day of July, 2012.

Yolanda LaGuerra
Notary Public for State of New York

My Commission Expires: January 28, 2015

Yolanda LaGuerra
Notary Public, State of New York
No. 01LA4977093
Certificate Filed in Queens County
Commission Expires January 28, 2015

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Exhibit A 2

HP Laptop 3

Exhibit B 4

Desktop Computer 5

EXHIBIT A

[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
JeffYehun	F01624-2-IA1-E010	USB DISK USB Device	USB_DISK/1_21	07431137000CA0		Administrator	1/17/12 9:13 PM	1/17/12 9:14 PM	1/17/12 9:13 PM
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
JeffYehun	F01624-2-IA1-E010	USB Flash Disk USB Device	USB/Flash_Disk/2	CC0307010100504100079006040		Administrator	1/19/12 7:31 PM	1/19/12 7:32 PM	1/19/12 7:30 PM
JeffYehun	F01624-2-IA1-E010	USB DISK USB Device	USB_DISK/1_21	07431132000940		Administrator	1/17/12 9:17 PM	1/23/12 10:19 PM	1/23/12 10:02 PM
JeffYehun	F01624-2-IA1-E010	USB DISK USB Device	USB_DISK/1_21	07431132010240		Administrator	1/17/12 9:16 PM	1/23/12 10:18 PM	1/23/12 10:03 PM
JeffYehun	F01624-3-IA1-E010	USB Device	1	89ADAD09720FF9C01FFBA0DDCA0_		Administrator	1/28/12 9:14 AM	1/28/12 9:15 AM	1/28/12 9:14 AM

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EXHIBIT B

CUSTODIAN	EVIDENCE #	DEVICE NAME	DEVICE ID	SERIAL #	DRIVE LETTER	USER	FIRST TIME CONNECTED (EST)	LAST TIME CONNECTED (EST)	LAST USER
JeffYalton	F01624-2-JA1-E014	SanDisk CF SDDR-109 USB Device	SanDisk/CF_SDDR-109/1804	20081023011130A3	K:	clf	5/20/11 5:36 PM	5/15/12 7:43 PM	5/17/12 5:16 PM

611

EXHIBIT 4

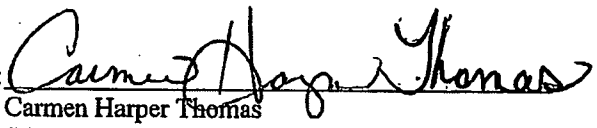
FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2012 AUG 28 P 2:32

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
Jeff Yelton,	)	Civil Action No. 2012-CP-23-0314
Plaintiff,	)	
vs.	)	**NOTICE OF FILING SUPPLEMENTAL AFFIDAVIT OF DEAN GAIDA IN SUPPORT OF PETITION FOR RULE TO SHOW CAUSE AND MOTION FOR SANCTIONS**
ScanSource, Inc.,	)	
Defendant.	)	

PLEASE TAKE NOTICE that Defendant ScanSource, Inc. hereby files the August 28, 2012 Supplemental Affidavit of Dean Gaida, which is filed in support of Defendant's Petition for a Rule to Show Cause for Civil Contempt by Plaintiff Jeff Yelton and Motion to Compel and for Sanctions Pursuant to Rule 37, SCRCP.

[*SIGNATURE PAGE ATTACHED*]

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 

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Post Office Box 10084 (29603-0084)
Greenville, SC 29601
(864) 250-2300

Attorneys for ScanSource, Inc.

Greenville, South Carolina

August 28, 2012

CERTIFICATE OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough, LLP, attorneys for ScanSource, Inc., do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by hand delivering a copy of the same to the following address(es):

Pleadings: NOTICE OF FILING SUPPLEMENTAL AFFIDAVIT OF DEAN GAIDA IN SUPPORT OF PETITION FOR RULE TO SHOW CAUSE AND MOTION FOR SANCTIONS

Counsel Served:

Brian Murphy, Esq.
Brian Murphy Law Firm, P.C.
514 Pettigru Street
Greenville, SC 29601

Karan DiGiacomo
Administrative Assistant

August 28, 2012

FILED CLERK OF COURT
GREENVILLE CO. S.C.
2012 AUG 28 P 2:33
PAUL B. WICKENSIMER

STATE OF SOUTH CAROLINA) COUNTY OF GREENVILLE)		IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT
Jeff Yelton, Plaintiff, vs. ScanSource, Inc., Defendant.	)	Civil Action No. 2012-CP-23-0314 **SUPPLEMENTAL AFFIDAVIT OF DEAN GAIDA**

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B WICKENSIMER
2012 AUG 28 P 2:33

I, Dean Gaida, swear, upon penalties of perjury, as follows:

1. My name is Dean Gaida, I am above the age of 18, and I have personal knowledge of and am competent to testify about the matters addressed herein.

2. On July 18, 2012, and July 26, 2012 I executed my original affidavit and a supplemental affidavit respectively regarding the results of the forensic investigation conducted by FTI Consulting Technology LLC ("FTI") of electronic information related to this case ("July 18 Affidavit", "July 26 Supplemental"). This supplemental affidavit relates to additional forensic investigation of similar and related information, and it is intended to supplement and be incorporated with my July 18, 2012 affidavit.

3. As evidenced in Exhibit B, of my July 18 Affidavit, FTI determined five electronic storage devices were connected to the ScanSource Laptop by USB during the period of December 9, 2011 to December 15, 2011, assigned drive letter E, that were not among the devices returned by Plaintiff Yelton pursuant to the Protocol. Among those five USB devices

was a Flash Disk USB Device, Serial No. 102002081627B702, first connected at 8:58 AM and later connected at 11:51 AM on December 12, 2011.

4. As described in ¶ 10, of the July 26 Supplemental, FTI determined that three of the five USB drives were also connected to Yelton's personal HP Laptop after December 15, 2011. Specifically this documented the Flash Disk USB Device, Serial No. 102002081627B702 was connected to Yelton's personal HP Laptop at 9:19 P.M. on January 17, 2012.

5. On August 20, 2012 and August 23, 2012, respectively FTI received a copy of Chris Spearman and Robbie Cox's work laptop hard drives for which the chain of custody is provided in Exhibit A. Using EnCase, an image was created for both of these machines and used during this forensic examination.

6. As before, FTI generated reports which detail the removable USB devices connected to these machines as recorded by Windows. Both of these devices were running Windows XP and the process followed was the same as described in the July 26 Supplemental Affidavit. The results of this effort are documented in Exhibit B.

7. In review of this information FTI found that both Chris Spearman and Robbie Cox's laptops had connected the above-identified Flash Disk USB device with the Serial No. 102002081627B702. By reviewing the records associated with this particular connection across all four of these USB reports provided we see the following timeline emerge on December 12, 2011:

a. At 8:58 AM the USB device was connected to Yelton's work laptop

b. At 9:00 AM the USB device was connected to Robbie Cox's work laptop

c. At 10:15 AM the USB device was connected to Chris Spearman's work laptop

d. At 11:51AM the USB device was connected again to Yelton's work laptop

This same device then is connected on January 17, 2012 to Yelton's personal HP laptop, at 9:19 P.M.

8. I conducted or oversaw the investigation and analysis for which the results are described in this supplemental affidavit. This supplemental report has been prepared based on information currently available to me. I reserve the right to amend this report or submit a supplemental report as additional, relevant information becomes available to me. As such, my opinions may be subject to change.

9. FTI is retained by Nelson Mullins Riley & Scarborough LLP to provide forensic investigation services related to this case.

FURTHER AFFIANT SAYETH NOT.

Dean Gaida

Dean Gaida

SWORN TO and subscribed before me this

28th day of August, 2012.

Laurie Anne Jerome

Notary Public for State of South Carolina

My Commission Expires: Oct. 18, 2014

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USB ANALYSIS ____ 5

Exhibit A

FTI

ELECTRONIC EVIDENCE CONSULTING
CHAIN OF CUSTODY RECORD

Date: 8/20/2012

FTI Matter: Reflection Number: 013461.0001

The evidence described herein has been transferred on this date:

From: Rick Burk (Name) Representing: Scansource (Organization)

To: Dean Galda (Name) Representing: FTI Consulting (Organization)

DESCRIPTION OF EVIDENCE

Identification (Serial No., etc)	Description
S/N: WX81A7IJ4663	One internal hard drive. • Chris Spearman's laptop hard drive • Make: Western Digital • Model WD3200BEKT • Size 320 gigabytes

Signature (from) Date: 8/17/12

Signature (to) Date: 8/20/12

F T I

ELECTRONIC EVIDENCE CONSULTING
CHAIN OF CUSTODY RECORD

Date: 8/21/2012

FTI Matter: Reflection Number: 013461.0001

The evidence described herein has been transferred on this date:

From: John Harvey (Name) Representing: Seansource (Organization)

To: Dean Gaida (Name) Representing: FTI Consulting (Organization)

DESCRIPTION OF EVIDENCE

Identification (Serial No. etc.)	Description
S/N: WX71A70U2490	One Internal hard drive. • Robbie Cox's laptop hard drive • Make: Western Digital • Model WD3200BEKT • Size 320 gigabytes

Signature (from) Date 8-23-12

Signature (to) Dean Gaida Date 8-23-12

Exhibit B

Project Reflections
Matter Number : 419428.0005
Description : Chris Spearmen - Removable Media Analysis

CUSTODIAN	EVIDENCE ID	Friendly Name of USB Device	Vendor/Product/Version	Serial #	Drive Letter Assigned	Volume GUID	User Linked to Device	First Time Plugged (EST) (Last Time Connected)	Last Time Plugged (EST) (Last Time Connected)	First Time Connected (EST) (Last time connected after first reboot)
Chris Spearmen	F016G4-2-RMS-E001	Flash Disk USB Device	/Flash_Disk/1.07	25439CC1&0	N/A	2b4d7a97-2ad5-11e1-8fe9-101f74ecc0f3	cspearmen	6/20/12 10:17 AM	6/20/12 12:17 AM	6/20/13 10:17 AM
Chris Spearmen	F016G4-2-RMS-E001	TomTom ONE	TomTom/ONE/	6EC41EB0074&0	E:	27e0ff94-d837-11e1-8f6e-101f74ecc0f3	cspearmen	7/17/12 2:57 PM	7/17/12 2:57 PM	7/17/13 2:57 PM

Project Reflections
Matter Number : 419428.0005
Description : Robbie Cox (F016G4-2-RMS-E002) - Removable Media Analysis

CUSTODIAN	EVIDENCE ID	Friendly Name of USB Device	Vendor/Product/Version	Serial #	Drive Letter Assigned	Volume GUID	User Linked to Device	First Time Plugged (EST) (Last Time Connected)	Last Time Plugged (EST) (Last Time Connected)	First Time Connected (EST) (Last time connected after first reboot)
Robbie Cox	F016G4-2-RMS-E002	Flash Disk USB Device	Flash_Disk/1.00	1491490016&0	E:	266ca4ce-b1cd-11e1-aed3-00265fcecb1f	rcox	6/13/13 9:59 AM	7/1/13 2:46 PM	7/1/13 2:44 PM
Robbie Cox	F016G4-2-RMS-E002	Flash Disk USB Device	Flash_Disk/1.00	1491490016&0	N:	9c0f5e61-2b29-11e1-b4d1-00265fcecb1f	rcox	12/17/11 8:00 AM	12/17/11 8:00 AM	12/17/11 8:00 AM
Robbie Cox	F016G4-2-RMS-E002	usb 2.0 USB Device	usb 2.0/5.00	CCCB1012101131011211856204&0	N/A	e2e67170-53e3-11e1-aee3-00265fcecb1f	rcox	2/16/12 2:42 PM	2/16/12 2:42 PM	2/16/13 2:43 PM
Robbie Cox	F016G4-2-RMS-E002	USB DISK USB Device	USB_DISK/PMAP	90360D00-FUF1692&0	N/A	1f780372-e535-11e1-ac44-00265fcecb1f	rcox	6/13/12 2:33 PM	6/13/12 2:33 PM	6/13/13 2:33 PM
Robbie Cox	F016G4-2-RMS-E002	USB DISK 2.0 USB Device	USB_DISK 2.0/PMAP	07111170057&0	N/A	da1fe356-f2ed-11e0-aea3-00265fcecb1f	rcox	7/7/11 1:25 PM	7/26/11 12:00 PM	7/26/11 12:00 PM
Robbie Cox	F016G4-2-RMS-E002	Generic Flash Disk USB Device	Generic/Flash Disk/1.07	1EF73677&0	N/A	e7da4509-87f3-11e1-aeef-00265fcecb1f	rcox	4/25/12 11:51 AM	5/1/12 6:05 AM	5/1/13 6:05 AM
Robbie Cox	F016G4-2-RMS-E002	Generic Flash Disk USB Device	Generic/Flash Disk/1.07	377EA200&0	N/A	26853f14-8d91-11e1-acb6-00265fcecb1f	rcox	1/30/12 5:24 PM	1/30/12 5:24 PM	1/30/13 5:24 PM
Robbie Cox	F016G4-2-RMS-E002	Generic Flash Disk USB Device	Generic/Flash Disk/1.07	F9FAEBD9&0	N/A	8b2815e1-b781-11e0-acb1-00265fcecb1f	rcox	7/26/11 8:37 PM	7/26/11 8:37 PM	7/26/12 8:37 PM
Robbie Cox	F016G4-2-RMS-E002	Palm Pilot USB Device	Palm Pilot/0000	9506f5e1abf8ed57faa6e3e133fcc7f4f5f56a1f&0	N/A	ead4fe05-e760-11df-ac92-00265fcecb1f	rcox	11/3/10 12:09 PM	10/21/11 9:46 AM	10/21/11 7:41 AM
Robbie Cox	F016G4-2-RMS-E002	Sony DSC USB Device	Sony DSC/1.00	0DAB0053950&0	F:	34e15898-2ed3-11e0-ac9e-00265fcecb1f	rcox	2/2/11 8:49 AM	2/2/11 8:49 AM	2/2/11 8:49 AM
Robbie Cox	F016G4-2-RMS-E002	ST94813A USB Device	ST94813A	5QF0A0015&0	N/A	10019538-e75e-11df-ac90-00265fcecb1f	rcox	11/3/10 11:21 AM	11/3/10 11:21 AM	11/3/2010 11:39
Robbie Cox	F016G4-2-RMS-E001	USB Flash Disk USB Device	USB Flash Disk/1.07	9410E237&0	N/A	8b2815e0-b781-11e0-acb1-00265fcecb1f	rcox	7/26/11 8:19 AM	2/22/12 10:19 AM	2/22/13 10:19 AM

Project Reflections
Matter Number : 419428.0005
Description : Jeff Yelton's Laptop (F016G4-1-IL6-E002) - Removable Media Analysis (selected record)

CUSTODIAN	EVIDENCE ID	Friendly Name of USB Device	Vendor/Product/Version	Serial #	Drive Letter Assigned	Volume GUID	User Linked to Device	First Time Plugged (EST) (Last Time Connected)	Last Time Plugged (EST) (Last Time Connected)	First Time Connected (EST) (Last time connected after first reboot)
Jeff Yelton	F016G4-1-IL6-E002	Flash Disk USB Device	Flash_Disk/1.00	1491490016277B7F2250	F:	52450307-8c05-11e0-9442-00265fcecb1f	jyelton	2/27/12 9:51 AM	2/27/12 9:51 AM	2/27/13 9:51 AM

EXHIBIT 5

Submitted under Seal Pursuant to Amended Confidentiality Order filed June 29, 2012

Gmail

A few notes to review before we meet

Jeff Yelton <jyelton215@gmail.com> Tue, Jan 3, 2012 at 4:08 PM
To: Penn Williams <Penn.P.Williams@gmail.com>

I wanted to give you some background on my thoughts before we meet this week. This should help you understand the basic business model for VarsGuide.

I've been thinking about the channel model for the AIDC industry for a long time and believe that the current model needs to be refreshed. Many of the long held beliefs in our industry are perpetuated by veterans that are resistant to accept change. Their reasons include:

1. Their financial model is not strong enough to weather a transition.
2. They are scared to be the first one to challenge the status quo.
3. Their business is good today and plan on riding the current model to the end of their career.
4. They don't want to accept that AIDC products are nearing commoditization.
6. They believe distributors drive demand and can influence reseller's purchasers.
7. They don't understand how the current technology trends will affect our industry.

I'm convinced that the AIDC channel can be changed to reflect the continued commoditization of products and the need for vertical based resellers. The new model would follow a two pronged approach:

1. Broad product availability for low value customers utilizing direct marketers and etailers with product acquisition costs set to ensure that manufacturer's control their ASP in the market.

In some cases, where minimum order quantities apply, DMAR's/etailers would become stocking customers with purchases made directly from the manufacturer. If they prefer to acquire from a distributor they would pay a higher price with savings determined based on efficiencies brought by the distributor.

2. Recruitment of vertical based solutions providers that are certified by the manufacturer and are exclusive to the manufacturer. In exchange for this exclusivity, the manufacturer would make deep investments in the reseller to help them transform into business process specialists, in their chosen vertical, utilizing the manufacturer's technology to bring documented ROI to the end user. In the first 24 months, the manufacturer would pick 2-3 per target industry and provide them with the following;

a. Vision and blue print of the business reseller future business model.

b. Future financial model and transitional strategies.

c. Professional services metrics, employee profiles,management training, estimating skills, collateral development, IP legal guidance, etc.

d. Marketing/Branding education and plans.

e. Vertical specific product development when warranted.

This move is supported by the technology trends affecting our market. These trends including the cloud, HTLM5, virtualization and service oriented architecture. For resellers to prosper in the future their business model will need to be built around 5 key technologies. They are:

1. Service Oriented Architecture
2. Resilient Networks
3. Applied Business Intelligence (Next step for BI/BA)
4. The device
5. Pervasive Media

Manufactures will need to set this new vision for the channel and build enablement programs to help the resellers built skills in these areas and help them make the transition to the new business model. In many cases, the current resellers will not be capable of transforming and a new set of partners will have to be built or identified.

In addition, I would re-evaluate the role of distribution to include:

1. The direct vs indirect mix.
2. Move primary marketing of the manufacturer's products back to the manufacturer and utilize distribution wide marketing.
3. Out source marketing for speed and efficiency but control programs and message to the market.
4. Do not pay distribution for marketing their own brand.
5. Pay rebates based on customer service level metrics and sale.

This approach would be funded by reductions in distribution margins and rebates, redirection of MDF dollars or a combination of of these items. Since you would ask them to do less, reducing their costs, they should be paid less.

I still believe that distribution is vital to the health of the AIDC industry but also believe that it's time to move to a model more in line with the maturity of the products.

Benefits to the manufacturer include:

1. More efficient use of the channel.
2. Control of the brand message.
3. Better visibility of the demand funnel.
4. Closer ties with the end user customer.
5. Tighter relationship with specific partners.
6. Vertical market brand association.

A VarsGuide would outsource the:

1. Education and marketing of this new model to VAR's
2. Develop the training program for the chosen, vertical VAR's
3. Product launch of new products
4. Marketing and demand generation at the end user level with lead warming. All qualified leads would be given to the manufacturer, or VAR for final closing and fulfillment.
5. End user education for end users.

This is obviously confidential between you and me. So please do not discuss this email with anyone else or forward to anyone else.

Thanks for your time and I look forward to discussing with you tomorrow.

Jeff

Gmail

Bi-optic scanner program

Jeff Yelton <jeff@varsguide.com> Mon, Jan 9, 2012 at 11:57 AM
To: Penn Williams <penn.p.williams@gmail.com>

Three things;

I've attached a bi-optic scanner marketing program that I'm going to present to Darius and John on Friday. Can you think of anything else I should add?

I also want to reverify that it's OK for me to say that you and I will work together on this project. Is it?

The second attachement is a product launch project plan. It's rough and needs some additional work but it's a start. Is there anything you would add?

Jeff

--
Jeff Yelton
President
VarsGuide Publications
864-270-7462
Email: Jeff@Varsguide.com
URL: www.VarsGuide.com

2 attachments

Honeywell Bioptic Scanner.doc
40K

Example 90 Day Product launch Plan.xls
570K

Penn Williams <penn.p.williams@gmail.com> Mon, Jan 9, 2012 at 12:57 PM
To: Jeff Yelton <jeff@varsguide.com>

Hi - I am driving back from the beach today, but will review all of this tomorrow morning and get back to you.

Thanks!

Penn

Sent from my iPhone
[Quoted text hidden]

<Honeywell Bioptic Scanner.doc>

<Example 90 Day Product launch Plan.xls>

Penn Williams <penn.p.williams@gmail.com> Tue, Jan 10, 2012 at 4:10 PM
To: Jeff Yelton <jeff@varsguide.com>

Hi Jeff - I think the Bi-optic Plan looks good. The only think I think we should make sure is in there is a very targeted VAR campaign, since we are fishing in a pretty small pond (and they know that). This may be a part of items 6 and 8 on your plan, not sure.

Yes, I would love to work on this one with you. We did not yet discuss hourly rate, but assuming we can figure that out, I am in :)

Give me until tomorrow to get back to you on the product launch plan, I want a little more time to think through that and digest it. Honeywell is very haphazard in their product launch plans (well, all vendors are), I want to make sure I give food feedback on this one.

Thanks,

Penn
[Quoted text hidden]

Jeff Yelton <jeff@varsguide.com> Wed, Jan 11, 2012 at 2:15 PM
To: Penn Williams <penn.p.williams@gmail.com>

I agree with you 100%. I covered the Var's in item 2, 4, 5, 6 and 8.

Jeff

[Quoted text hidden]

Penn Williams <penn.p.williams@gmail.com> Wed, Jan 11, 2012 at 3:43 PM
To: Brent Williams <brentwilliams@certusbank.com>

Hey, can you print these for me and bring them home?? Need the Excel one especially. Watch the pages it prints, I think it is formatted to print more pages than there is content.

Love you!!
[Quoted text hidden]

2 attachments

Honeywell Bioptic Scanner.doc
40K

Example 90 Day Product launch Plan.xls
570K

Penn Williams <penn.p.williams@gmail.com> Wed, Jan 11, 2012 at 3:55 PM
To: Jeff Yelton <jeff@varsguide.com>

Hi - OK, I am adding some thoughts to the Product Launch Plan - I think it is a good outline, and I know there will be some debate on timing (I am filling in some of the blanks on timing), but it is a great starting point. You may want to add an "owner" column beside each header - i.e. some vendors will use their own PR person, some may use us. Some will coordinate their own target list, some will want us to drive it. Etc. I think we should create generic go-to-market strategies that can be adapted to the product / niche (I will work one up one the next few days - unless you need it by Friday). And make sure we include demo product in the timeline - for VARs, mfr SEs, and distribution tech

support (and product management).

I look forward to hearing how Friday's meeting goes.

Thanks,
Penn

[Quoted text hidden]

Jeff Yelton <jeff@varsguide.com> Wed, Jan 11, 2012 at 4:35 PM
To: Penn Williams <penn.p.williams@gmail.com>

OK. Good points. I will add these items.

I think this plan is going to be a continuos work in progress. The more we use it the better it will become.

I'm excited and pumped. Let's just keep our fingers crossed that Friday goes well.

Jeff

[Quoted text hidden]

Varsguide <jeff@varsguide.com> Fri, Jan 13, 2012 at 5:51 PM
To: Penn Williams <penn.p.williams@gmail.com>

Got a verbal agreement to move forward with the plan . Will meet again in two weeks to decide scope of first phase.

Jeff

Sent from my iPhone
[Quoted text hidden]

Penn Williams <penn.p.williams@gmail.com> Fri, Jan 13, 2012 at 10:39 PM
To: Varsguide <jeff@varsguide.com>

Interesting. Curious to hear more.

Have a good weekend -

Penn

Sent from my iPhone
[Quoted text hidden]

EXHIBIT 6

Jeff Yelton v. ScanSource, Inc.

Civil Action No. 2012-CP-23-03[illegible]

Petition for Rule to Show Cause for Contempt and

Motion to Compel and For Sanctions

Nelson Mullins

Nelson Mullins Riley & Scarborough LLP

Introduction

- Willful disobedience of a Court order is grounds for contempt.

- Submitting false and misleading sworn testimony is ***both*** evidence of willful and intentional misconduct in violation of the TRO, and also separate grounds for contempt.

- Yelton has done both, and he *must* be held in contempt.

Introduction

- Yelton willfully violated the Court's Temporary Restraining Order.

  - Yelton has retained at least five devices that contain ScanSource Confidential information.
  - Three of the five were connected to his home computer after he left ScanSource.
  - One of these three includes the "QBR Flash Drive" that is the cornerstone of this action.

Introduction

- Yelton has submitted false testimony in his affidavit.

  - He **did not** leave the QBR Flash Drive in his office.
  - He **did** remove company documents and electronic files when he left.
  - He **did** destroy ScanSource documents and data via KillDisk.

Introduction

- ScanSource is a wholesale distributor of specialty technology products, providing value-added distribution sales to its network of resellers.

- ScanSource's confidential information is its most valued asset and the Company's "secret formula."

- ScanSource's reputation and success depend upon its ability to safeguard this information.

Introduction

- Yelton was President of POS and Barcoding, ScanSource's largest division.

- Yelton held a position of extreme trust and confidence.

- When ScanSource elected to terminate him, it afforded him the trust and deference befitting his position.

- Yelton has breached that trust.

Timeline

- December 9, 2011- Yelton informed of termination.
- December 15, 2011- Yelton's last full day of employment.
- December 16, 2011- Yelton cleans out office.
- December 30, 2011- Subordinates report their concerns.
- January 4, 2012- Yelton denies misconduct.
- January 4, 2012- Yelton texts Jeanne Aiken.

Nelson Mullins
Nelson Mullins Riley & Scarborough LLP

Yelton Text to Jeanne Aiken

Gmail

Jeanne Aiken <jmmaiken4840@gmail.com>

SMS with Yelton Jeff

3 messages

Yelton Jeff <8642707462@unknown.email> **Wed, Jan 4, 2012 at 4:20 PM**
To: jmmaiken4840@gmail.com

Would you send me the HP customer list from your home email or give it to me on a memory stick? Pretty please.

jmmaiken4840@gmail.com <jmmaiken4840@gmail.com> **Wed, Jan 4, 2012 at 4:25 PM**
To: Yelton Jeff <8642707462@unknown.email>

Jeff, I would love to help you. but I just can't do that, that type of stuff is ScanSource confidential now.

Yelton Jeff <8642707462@unknown.email> **Wed, Jan 4, 2012 at 4:25 PM**
To: jmmaiken4840@gmail.com

The HP stuff? Ok. Thanks. Still love you.

Timeline

- January 16, 2012- ScanSource demands Yelton return information.
- January 18, 2012- Yelton files Complaint.
- January 26, 2012- Yelton executes affidavit.
- January 27, 2012- TRO hearing.
- February 8, 2012- TRO issued.
- February 14, 2012- 13 of 14 devices produced.
- April 9, 2012- Protocol entered.

GROUNDS FOR CONTEMPT

TRO Order

2) Plaintiff must return to ScanSource any Confidential Information in his possession, custody, or control within the time period set by the Special Referee. Any disputes concerning the identity of Confidential Information or the form of its return shall be decided by the Special Referee.

3) Confidential Information or Trade Secrets ("Confidential Information") include but are not limited to information described in Plaintiff's Employment Agreement (attached as Exhibit A to ScanSource's Answer and Counterclaims), ScanSource's Business Ethics and Code of Conduct (attached as Exhibit D to ScanSource's Answer and Counterclaims), the S.C. Trade Secrets Act, and South Carolina law.

Preliminary Injunction

expired. It appears the parties have extended the TRO and the preliminary injunction. I'm concerned that if I were to step back into it at this point, it would cause some question about jurisdiction.

As to the issue of whether or not Mr. Yelton violated any preliminary order, that order would have been an order of the special referee by consent of the parties and by

B E F O R E:

the course of conduct. And, therefore, he would have to determine whether or not there's been some disobedience to the terms of the preliminary injunction.

Attorney for the Plaintiff

WILLIAM H. FOSTER, III, ESQ.
CARMEN H. THOMAS, ESQ.
Attorneys for the Defendant

Preliminary Injunction

STATE OF SOUTH CAROLINA	COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	2012-CP-23-00314
JEFF YELTON.	

about these details. He's in the best position as a practical matter to determine whether or not his order -- and it's his order now, not mine -- has been complied with.

B E F O R E:

THE HONORABLE D. GARRISON HILL, JUDGE.

A P P E A R A N C E S:

BRIAN P. MURPHY, ESQ.
Attorney for the Plaintiff

WILLIAM H. FOSTER, III, ESQ.
CARMEN H. THOMAS, ESQ.
Attorneys for the Defendant

Nelson Mullins.
Nelson Mullins Riley & Scarborough LLP

Preliminary Injunction

From: Brian Murphy [brian.murphy@mindspring.com]
Sent: Monday, May 07, 2012 8:39 AM
To: Quattlebaum, Derrick
Cc: brian@brianmurphylawfirm.com; Carmen Thomas; Bill Foster; Tonya Macaulay
Subject: Re: Scheduling Issues

Derrick -

I agree it stays in effect. Thank you.

On 5/7/2012 8:33 AM, Quattlebaum, Derrick wrote:
Counsel.

With the understanding that the TRO issued by Judge Hill has not expires and remains the law of the case until I rule on the preliminary injunction motion, I see no harm in extending the deadline to submit additional evidence and proposed orders. Please let me know when you are able to schedule the deposition of Scott Benbenek. If Plaintiff disagrees with the understanding that the TRO has not expired please let me know and I will respond accordingly.

Derrick

J. Derrick Quattlebaum
Direct Dial: 864-240-3249

Nelson Mullins
Nelson Mullins Riley & Scarborough LLP

TRO Violation

From: Brian Murphy [mailto:brian.murphy@mindspring.com]
Sent: Saturday, January 28, 2012 11:15 AM
To: Corky Harper; brian@brianmurphylawfirm.com; Brad Rustin
Cc: Carmen Thomas; Lisa Whitehurst
Subject: RE: Brad - are you in your office?

I don't want to debate whether I am under an obligation to produce anything this morning because I have serious concerns (that I hope we can resolve) with the proposed order). But I do have a flashdrive with some electronic files and some paper documents that are available for you at this time. I thought I would give some background and

The hardware that we have identified that Jeff used during the time of his employment and that he possesses consists of: (1) the HP laptop he has used regularly for the past 18 months or so (this is the one that had Dropbox); (2) an older HP laptop that he has started using again; (3) an even older Dell Inspiron 9100 laptop; (4) a desktop computer at home used for his photography hobby; (5) a black WD external hard drive (the one that backed up the Dropbox files we put on the flash drives you have); (6) a silver WD external hard drive that I understand backs up the photography computer; (7) the Cisco flash drive you have; (8) the Accubanker flash drive you have; (8) Three silver Epson/ScanSource flashdrives; (9) a Microsoft flashdrive; (10) a BMW flashdrive; and (11) an iPad 1. I wanted to let you know about all of this because you stated that you are consulting with forensic consultants. Again, if you have a draft proposed protocol to review, let me know. We don't oppose a forensic exam as long as protocols are in place so that I can assure beforehand that ScanSource is not provided any information not related to any claim or defense. We also need to have a protective order in place for the protection of both sides. I am fine with the District Court form if you want to use that. If you wanted to take a cheaper route than a full-blown forensic exam, I could sit down with you or one of your associates and, once a protective order is in place, we could review the flashdrives, external drives, and laptops together. Jeff does have a concern about disclosure of his proposals, but I think they can be resolved with the protective order. I understand why you might want to see them to determine whether he has used ScanSource confidential data and it might help calm folks down to show that this isn't the case. You can make your own call, but if the point of a forensic exam is to show that, at one time, there were ScanSource confidential documents on one or more of these pieces of hardware, we don't contest that notion.

Nelson Mullins
Nelson Mullins Riley & Scarborough LLP

TRO Violation

From: Brian Murphy [mailto:brian.murphy@mindspring.com]
Sent: Wednesday, February 08, 2012 8:41 AM
To: Corky Harper; 'The Honorable D. Garrison Hill'
Cc: 'Hill, D. Garrison Law Clerk (Lindsey Overby)'; brian@brianmurphylawfirm.com; Brad Rustin; Carmen Thomas
Subject: RE: Yelton v. ScanSource, Inc. C/A NO. 2012-CP-23-0314

Judge Hill:

My only concerns with this version are: (1) it does not address Plaintiff's right to delete their data (to avoid any

information, Plaintiff is admitting that it constitutes "confidential" data. We have made available and seeking to return any data, regardless of whether it is arguably "confidential" so that we move this along. As to the deletion of data we

and he must not delete it. I think Plaintiff should delete what he agrees is theirs and should consider any other claim they make, which may not be worth arguing about.

If Defendant is going to use Plaintiff's efforts to cooperate to claim that there is some admission that he breached his contract when he makes information available, we obviously have a problem with that.

Brian Murphy Law Firm, PC
514 Pettigru Street
Greenville, SC 29601
(864) 370-9400
(864) 241-1386 (fax)

brian@brianmurphylawfirm.com

Nelson Mullins

Nelson Mullins Riley & Scarborough LLP

TRO Violation

From: Brian Murphy [mailto:brian.murphy@mindspring.com]
Sent: Tuesday, April 03, 2012 12:49 PM
To: 'Quattlebaum, Derrick'; brian@brianmurphylawfirm.com; Bill Foster; Carmen Thomas
Cc: Tonya Macaulay
Subject: RE: Final Executed Protocol Document

My primary issues are:

1. An order granting their motion. I am willing to do an order binding the client to do certain things, but cannot consent to the notion that they are entitled to any injunctive relief. I have agreed with opposing counsel that

2. Paragraph 2 in the section on what is ordered leaves open this returning information issue and paragraph 3 incorporates language that is not precise as to what is confidential. That may be a big issue ultimately. The entire process of making everything available to Defendant and agreeing that they could take any document they wanted from the file was to avoid this thorny issue and allay any justifiable concern that Plaintiff was retaining information that is arguably confidential. These issues are already resolved by the voluntary disclosures and release of documents and this order. For this reason, I recommend that the paragraph preceeding the "THEREFORE, IT IS HEREBY ORDERED" paragraph should not have the inserted language in the they are free to raise that issue.

3. As to paragraph 4, if we can have the agreement the parties reached, I won't insist on a bond and any bond paid can be returned.

4. In paragraph 13, I disagree with the insertion "from Defendant's counsel" in both places. I would like the Referee to retain the right to rule on any request for an extension. My firm belief is that Bill would never deny me a needed extension, but I need some mechanism to resolve the issue if we can't agree.

5. Paragraph 16 – I disagree with the deletion of the 14 day period agreed to . We had negotiated for a time frame so the confidentiality order can be followed. I cannot agree that everything that turns up is presumptively confidential. I would assume that much of it will not be. Again, this issue of what is confidential is critical in a case such as this. I agree that they need protection for a reasonable interim so they can review the results and make their designation and, if the designation is disputed, the confidentiality protection continues per the consent confidentiality order.

Brian Murphy Law Firm, PC
514 Pettigrú Street

Confidential Information

11. Restrictions on Conduct of Executive.

(a) General. Executive agrees that as part of the services he will perform for the Company he will be exposed to, and help create and maintain, competitive advantages over other "Competitive Businesses," as well as good will with the Company's customers and suppliers. By virtue of the position Executive will hold, Executive is receiving, will receive, or will be provided access to the Company's: (1) customers; suppliers, advertisers, and vendors as well as pricing information, distribution channels, and other terms of those relationships; (2) "Confidential Information" and "Trade Secrets;" (3) the relationships and other elements that together comprise good will; and/or (4) institutional knowledge regarding product development, its engineering, product specification, material suppliers, material specifications, product suppliers, manufacturing knowledge, customer feedback, surveys, design-around information, research and development information, internal quality control tests, other quality control information, and other similar information. Executive agrees that the competitive

"Confidential Information" means any and all information of the Company that has value and is not generally known to the Company's competitors.

have the meanings assigned to them below, which definitions will apply to both the singular and the plural forms of these terms:

"Competitive Business" means any entity that distributes any goods or services in or to the point of sale, automatic identification, data capture, security, business telephony, or communications products and peripherals markets if such entity distributes any product that is the same or similar to any good or service offered by the Company, including reasonable alternatives, within the final two (2) years of Executive's employment with the Company. Executive agrees that Competitive Businesses include, but are not limited to, the following entities: Ingrum Micro, Tech Data, Avnet, BlueStar, Westcon, Arrow, Agilysis, and PC POS.

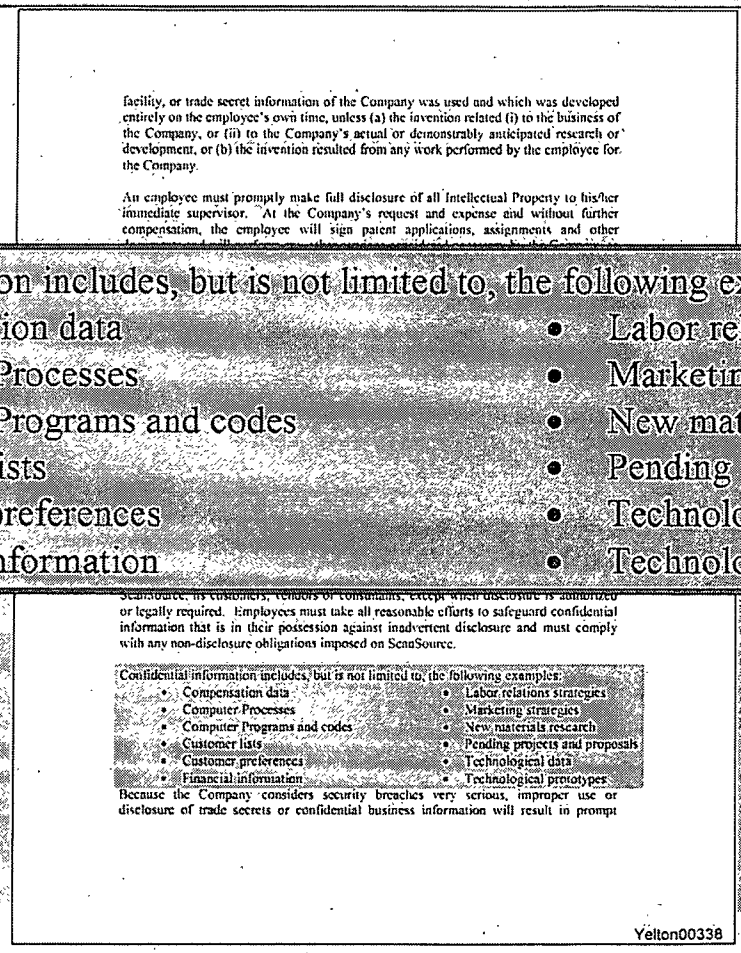
"Confidential Information" means any and all information of the Company that has value and is not generally known to the Company's competitors. This includes, but is not limited to, any information or documents about: the Company's accounting practices; financial data; financial plans and practices; the

Initials: _____

9

Nelson Mullins
Nelson Mullins Riley & Scarborough LLP

Confidential Information



facility, or trade secret information of the Company was used and which was developed entirely on the employee's own time, unless (a) the invention related (i) to the business of the Company, or (ii) to the Company's actual or demonstrably anticipated research or development, or (b) the invention resulted from any work performed by the employee for the Company.

An employee must promptly make full disclosure of all Intellectual Property to his/her immediate supervisor. At the Company's request and expense and without further compensation, the employee will sign patent applications, assignments and other

ScanSource, its customers, vendors or consultants, except when disclosure is authorized or legally required. Employees must take all reasonable efforts to safeguard confidential information that is in their possession against inadvertent disclosure and must comply with any non-disclosure obligations imposed on ScanSource.

Confidential information includes, but is not limited to, the following examples:

- Compensation data
- Computer Processes
- Computer Programs and codes
- Customer lists
- Customer preferences
- Financial information
- Labor relations strategies
- Marketing strategies
- New materials research
- Pending projects and proposals
- Technological data
- Technological prototypes

Because the Company considers security breaches very serious, improper use or disclosure of trade secrets or confidential business information will result in prompt

Yelton00338

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- Compensation data
- Computer Processes
- Computer Programs and codes
- Customer lists
- Customer preferences
- Financial information
- Labor relations strategies
- Marketing strategies
- New materials research
- Pending projects and proposals
- Technological data
- Technological prototypes

Confidential Information

State of South Carolina	)	IN THE COURT OF COMMON PLEAS
	)	
County of Greenville	)	2012-CP-23-0314
Jeff Yelton,	)	
Plaintiff,	)	
v.	)	Plaintiff's Affidavit In Opposition to Defendant's Motion for Temporary Restraining Order and Preliminary Injunction
ScanSource, Inc.,	)	
Defendant.	)	

Plaintiff is an adult over the age of 18 years and the following are true and correct

4. I agree that QBR (quarterly business review) documents contain information that ScanSource would not want to provide to a competitor and that, if given to a competitor, it could help them to the disadvantage of ScanSource.

4. I agree that QBR (quarterly business review) documents contain information that ScanSource would not want to provide to a competitor and that, if given to a competitor, it could help them to the disadvantage of ScanSource.

5. I do not have any QBR's in my possession of which I am aware and have not had any since I left the Company. I did not take any QBR's when I left. Defendant's suggestion that I took any documents is false. Prior to the termination of my

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20

Confidential Information

MR. MURPHY: My only concern is, Your Honor -- well, I think in conjunction, it has to be a little more specific than that. I know you can't give us a concrete list of what every document might constitute confidential information. I don't know what they're going to contend is confidential information down the road. I've agreed QBR's are.

Proof of Contempt

- FTI analyzes Yelton's ScanSource Laptop to identify five USB flash devices attached December 9th to 15th.
- Link File Analysis shows Confidential information opened on USB devices connected to ScanSource Laptop.
- Akerman identifies device serial numbers for all produced devices.
- **These five USB flash devices remain missing.**

USB Analysis

a. CBM Flash Disk USB Device, Serial No. 16145301AACCA911

b. Flash Disk USB Device, Serial No. 10200208162 7B702

c. FLASH Drive AU_USB20 USB Device, Serial No. J09040000000000017362

d. USB Flash Disk USB Device, Serial No. 20111106291553540012117107

e. USB2.0 Flash Disk USB Device, Serial No. 2009092806133745384

Link File Analysis

Missing USB Devices Connected to ScanSource Laptop in Period Between December 9, 2011 to December 16, 2011		
Serial Number	Description	Source
15. 16145301AACCA911	CBM Flash Disk USB Device	Gaida Affidavit at Part I.A, ¶ 8.
16. 1020020816270702	Flash Disk USB Device	Gaida Affidavit at Part I.A, ¶ 8
17. J0904000000000017362	FLASH Drive AU_USB20 USB Device	Gaida Affidavit at Part I.A, ¶ 8
18. 2011110629155350012117107	USB Flash Disk USB Device	Gaida Affidavit at Part I.A, ¶ 8
19. 20090928061337453843	USB2.0 Flash Disk USB Device	Gaida Affidavit at Part I.A, ¶ 8

Further, a Link File Analysis conducted by FTI shows that Yelton likely accessed confidential and proprietary ScanSource information from these missing devices during the critical timeframe of December 9, 2011 to December 16, 2011. (Gaida Affidavit at Part I.B. & Exhibit G.). Without the devices, the only logical conclusion is

1. New Distribution Model for Motorola.doc
2. Motorola_Public_Relations_Resources.zip[4]
3. New Distribution Model.doc
4. 2011-11 POS Barcode 6 Mos Comparative Income Statement.xls
5. POS Barcode – Sales by Product Line – Q1 FY12.xls
6. VDC SCSC 2012_Outlook_120611.pdf
7. SCSC_WAREHOUSE_TRENDS_110111.pdf

http://www.sos.sc.gov/index.asp?n=1&p=4&cs=1&corpofaefn=636000, and Two-Way Radio Center, About Us, *available at* http://twowayradiocenter.com/about-us/, both attached as Exhibit M.

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8. Copy of Worldwide Solution Areas 2011 ScanSource (4).xlsx
9. ScanSource_111021.pptx
10. FuturePathPOS11 (2).ppt
11. SCORE NA POSBC Sept11.pdf
12. SCORE Definitions 1-27-10.doc
13. InvPresent MarketSize nov11.xlsx
14. Registrants_11 30 11_FINAL.xls
15. ALL POS analysis Q3 11.xls
16. OpenTechRhoElementsOverviewNov2011.pptx
17. Source Guide update 9-2011.xlsx

to the order. He can present no viable explanation for why he did not produce them, especially given the short timeframe between when he left ScanSource—December 16, 2011—and when he knew ScanSource wanted him to return the information he took—January 16, 2012. He had even until April 9, 2012, when the Protocol was entered, to identify and produce any additional devices. His office was empty, save for personnel files, so they were not left in his ScanSource office. (Pharr Affidavit, at ¶ 5.) By not

16

Proof of Contempt

- FTI analyzes Yelton's Personal HP Laptop and establishes that **three of the five missing devices** were connected to the HP Laptop after Yelton left ScanSource.
- FTI analyzes subordinates' computers to establish that the **QBR Flash Drive** is one of these three devices.
- **The QBR Flash Drive was last connected to Yelton's Personal HP Laptop on January 17, 2012 at 9:19 PM.**

Proof of Contempt

7. Like the ScanSource Laptop, the Custom Desktop used the Windows 7 Operating

10. The analyses show that 3 of the 5 devices that were connected to the ScanSource Laptop by USB between December 9, 2011 to December 15, 2011, also were connected to the HP Laptop after December 15, 2011:

Devices Connected by USB to ScanSource Laptop, 12/9/11 to 12/15/11	HP Laptop Connection Information	
	First Connect	Last Connect
CBM Flash Disk USB Device, S/N 16145301AACCA911	Not Connected	Not Connected
Flash Disk USB Device, S/N 102002081627B702	1/17/12, 9:19 PM	1/17/12, 9:19 PM
FLASH Drive AU_USB20 USB Device, S/N J0904000000000017362	7/31/09, 4:37 PM	1/17/12, 9:13 PM
USB Flash Disk USB Device, S/N 20111106291553540012117107	Not Connected	Not Connected
USB2.0 Flash Disk USB Device, S/N 2009092806133745384	1/17/12, 9:15 PM	1/17/12, 9:16 PM

Proof of Contempt

7. In review of this information FTI found that both Chris Spearman and Robbie Cox's laptops had connected the above-identified Flash Disk USB device with the Serial No. 102002081627B702. By reviewing the records associated with this particular connection across all four of these USB reports provided we see the following timeline emerge on December 12, 2011:

a. At 8:58 AM the USB device was connected to Yelton's work laptop

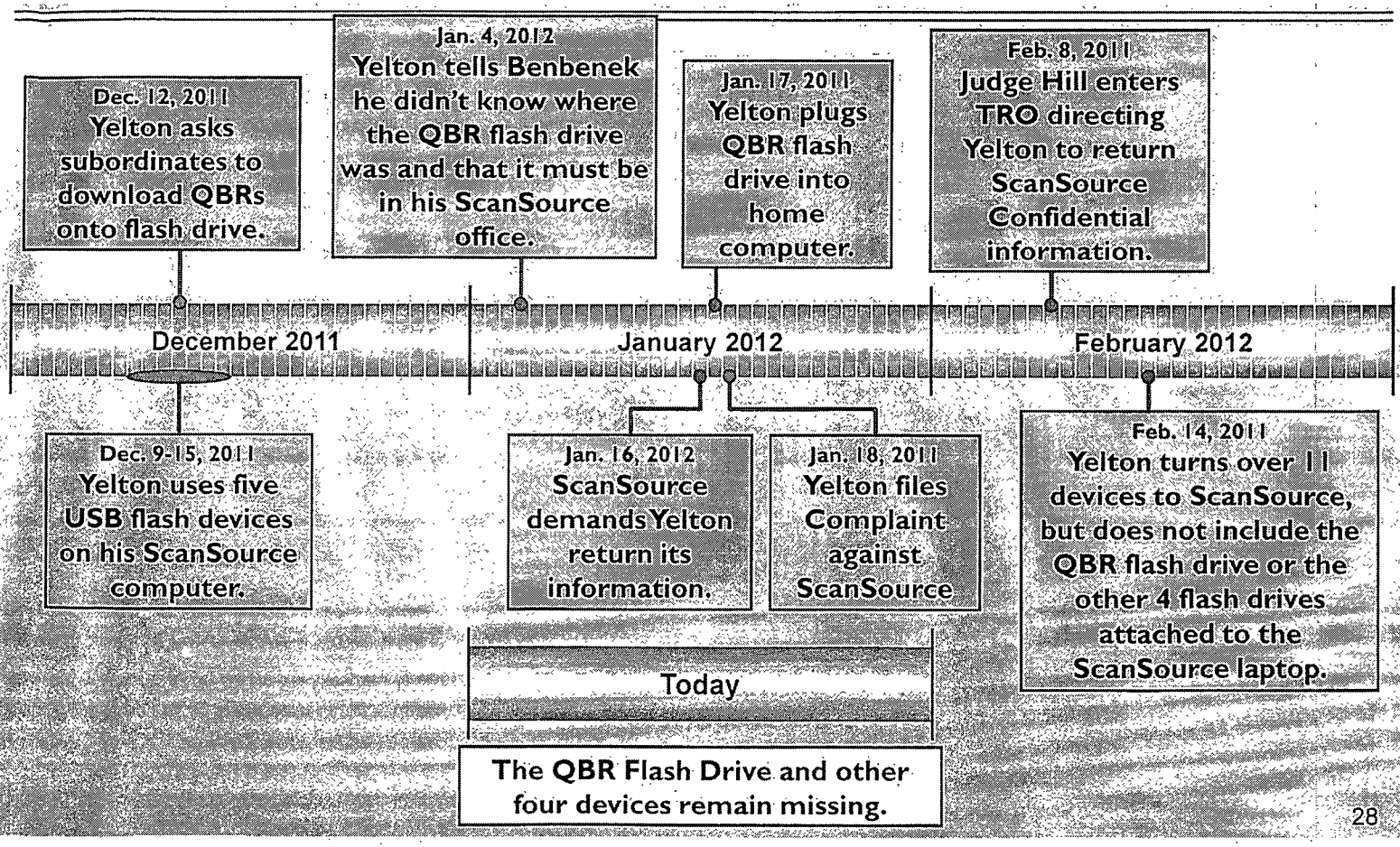
b. At 9:00 AM the USB device was connected to Robbie Cox's work laptop

c. At 10:15 AM the USB device was connected to Chris Spearman's work laptop

d. At 11:51AM the USB device was connected again to Yelton's work laptop

Nelson Mullins
Nelson Mullins Riley & Scarborough LLP

Timeline of TRO Violation



False Testimony

- Clear and convincing evidence shows Yelton has submitted false and misleading testimony.
- These falsities demonstrate his intentional and willful violation of the TRO.
- Yelton has made no effort to correct his testimony.
- The Court expressly put him on notice of the consequences.

False Testimony

I understand his affidavit. And I know he understands the consequences of signing an affidavit. And he may very well already be in compliance with that. But, to the extent he's not, he has 24 hours to be in compliance.

Nelson Mullins
Nelson Mullins Riley & Scarborough LLP

False Testimony

State of South Carolina	)	IN THE COURT OF COMMON PLEAS
	)	
County of Greenville	)	2012-CP-23-0314

Jeff Yelton,	)	
	)	
Plaintiff,	)	
v.	)	Plaintiff's Affidavit in Opposition to Defendant's Motion for Temporary Restraining Order and Preliminary Injunction
ScanSource, Inc.,	)	
	)	
Defendant.	)	

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1

False Testimony

12. I did not remove company documents or electronic files when I left. I did not remove from company premises hard copies of ScanSource reports and records or an external hard drive as claimed by ScanSource.

13. When I left the office the QBR documents were on a flash drive that was in my office. To the extent that drive "disappeared," I certainly have no knowledge as to how that would have happened since it was there when I left.

12. I did not remove company documents or electronic files when I left. I did not remove from company premises hard copies of ScanSource reports and records or an external hard drive as claimed by ScanSource.

however, aware that they are on those drives. In any event, any suggestion that either of the flash drives I have turned over is the same flash drive that was in my office would be incorrect.

15. I deleted data off of my laptop hard drive because I kept personal records on that computer. I did not destroy any company documents or data as it is all stored on ScanSource servers.

16. On January 4, I informed ScanSource of my plans to start a technology manufacturing outsourcer for education, marketing, and lead generation called

False Testimony

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4

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4

False Testimony

- Contrary to his sworn testimony, the evidence shows:

  - He **did not** leave the QBR Flash Drive in his office.
  - He **did** remove company documents and electronic files when he left.
  - He **did** destroy ScanSource documents and data via KillDisk.

Nelson Mullins
Nelson Mullins Riley & Scarborough LLP

False Testimony

You edited the file 8U'01 Forecasting Worksheet 04-2011 (2).xls.	1/4/2012 4:19 PM
You edited the file Bottom 1000 catalog recipients.xls.	1/4/2012 4:11 PM
You edited the file Bottom 1000 catalog recipients.xls.	1/4/2012 4:10 PM
You edited the file General Two Tier Distribution Pres.ppt.	1/3/2012 4:38 PM
You added 8D2005 Resource funding.xls and 862 more files.	12/15/2011 12:06 PM
You added Blog tools and 79 more folders.	12/15/2011 12:06 PM
You edited the file Financial Statements 101.ppt.	11/27/2011 2:05 PM
You added the file Revised VSR Optimization Summit 11-3-11 (2)[1].ppt.	11/2/2011 2:40 PM

False Testimony

Name	LastAccessed	FileCreated	LogicalSize	FullPath
killdisk.exe	12/16/11 7:42 AM	12/16/11 7:42 AM	613,592	C\Program Files\LSoft Technologies\Active KillDisk\DOS\killdisk.exe
KILLDISK.exe	12/16/11 7:42 AM	12/16/11 7:42 AM	5,560,440	C\Program Files\LSoft Technologies\Active KillDisk\KILLDISK.exe
KillDiskSuiteFree-Setup.exe	12/16/11 7:41 AM	12/16/11 7:41 AM	19,052,576	C\Users\jyelton\AppData\Local\Microsoft\Windows\Temporary Internet Files\Content.IE5\J6YPSVLI\KillDiskSuiteFree-Setup.exe

Contempt of Court

- Contempt is a "willful disobedience of an order of the court." *Miller.*

- Requires an act done "voluntarily and intentionally with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done." *Widman.*

Yelton Knew What He Was Doing

TEDx NewBedford
x = independently organized TED event

HOME | ABOUT | SPEAKERS | AGENDA | PARTNERS | MEDIA | TRAVEL & LODGIN

Jeff Yelton
President
Wired Fox Technologies

Jeff Yelton is a Barcoding, Mobility and Point-of-sale industry veteran with over 30 years of experience with manufacturer, reseller, ISV (Independent Software Vendor) and distributors in the IT Channel. His background includes sales, sales management, systems integration management, business development, merchandising management, Divisional President and CEO – as well as an accomplished entrepreneur.

Jeff has written three books for technology resellers providing guidance on small business issues in finance, legal and marketing.
Jeff is currently President of Wired Fox Technologies.
Wired Fox Technologies is a new company focused on developing and deploying ecommerce properties. The first two sites are www.TwoWayRadioCenter.com and www.VarsGuide.com. The company and its websites are designed based on the philosophy that future successful companies will be virtual with all employees and infrastructure outsourced to the most efficient provider of the task, proving that the world is truly flat.

Before Wired Fox Technologies, Jeff served as President of ScanSource, Inc.'s North American Point-of-sale and Barcoding Division, a Fortune 1,000 Company and value-added distributor of specialty technology products. Prior to ScanSource, Inc., Jeff held positions as Executive Vice President and CEO of Retalix North America, as well as various roles with ISM Corporation, and was an owner of Kyrus Corporation, a large retail technology value added reseller. Jeff is a graduate of the University of North Carolina at Chapel Hill and currently resides in Greenville, SC.

Contempt of Court

- Once the moving party has made a prima facie case for contempt, "'burden then shifts to the respondent to establish his or her defense and inability to comply with the order.'" *Miller.*
- "[C]ourts have the inherent power to punish for offenses that are calculated to obstruct, degrade, and undermine the administration of justice." *Brandt.*
- Perjury is grounds for contempt. *State v. Stanley*, 365 S.C. 24, 35, 615 S.E.2d 455, 461 (Ct. App. 2005).
- **Yelton should be held in civil & criminal contempt.**

Relief Requested

- An order directing Yelton to show cause why he should not be held in contempt for violation of this Court's TRO.

- A direction that Yelton return the Confidential Information that he has continued to withhold, and that any electronic devices on which the information resides shall be subject to a forensic inspection and any necessary actions be taken to return ScanSource's Confidential Information (e.g., seizure), all at Yelton's expense.

Relief Requested

- Dismissal of Yelton's Complaint with prejudice.

- An order granting ScanSource's motion for preliminary and permanent injunctive relief, including that Yelton not make use of any ScanSource Confidential information.

- An order granting ScanSource the relief it seeks in its counterclaim.

Relief Requested

- An award of all costs, fees, and expenses associated with this petition.

- Imposition of fines that this Court determines are an appropriate penalty.

The "reasons for not complying with the TRO were 'a great mysterious sequence of coincidences that strain credulity.'" *QZO*.

Benbenek's Testimony

SCOTT BENBENEK

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1 involved in, do you know how much the company
2 has spent on attorney's fees to date?
3 A. I have no idea.

13 Q. Subsequent to your discussions with Mr. Yelton
14 on January 4th, have you had to deal with any
15 Jeff Yelton related issues since January 4th
16 other than giving an affidavit in this case?
17 A. None come to mind, no.

16 other than giving an affidavit in this case?
17 A. None come to mind, no.
18 Q. Have there been any executives that have left
19 the company, say, in the last couple years who
20 have been paid their unvested deferred
21 compensation?
22 A. Not that I'm aware of.
23 Q. Who is Patrick Burn; do you know? I'm not
24 trying to suggest you do or not. Do you know
25 who Patrick Burn is? I asked it in a funny

GALLAGHER COURT REPORTING

864-234-5744 gcr@charter.net

P. 179

Benbenek's Testimony

SCOTT BENBENEK

1

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE CASE NO. 2012-CP-23-0314

Q. That is untrue. Did Jeff Yelton say anything to you on January 4th that you believe is not true?

A. I think so, yes. I mean, I think that he knows where that thumb drive -- I have no proof, but if you just ask me what I was feeling at the time, I think he had or has knowledge of where that thumb drive is. I'm not sure why anybody would get a thumb drive for information and keep it for two days and not take it with them, or why they would even want it knowing you're not going to be at the company anymore.

p. 158-59

Nelson Mullins
Nelson Mullins Riley & Scarborough LLP

Benbenek's Testimony

SCOTT BENBENEK

9	Q.	Well, Jeff Yelton didn't tell you he took the
10		thumb drive with him, did he?
11	A.	He said he didn't know where it was. He said,
12		I don't know where it is.
13	Q.	And you believe that's untrue?
14	A.	If I had to bet, yes. Like I say, I don't have
15		a videotape of that, but you're asking me, and
16		yes, I think he knows where that thumb drive is
17		or was or whatever.
18	Q.	And what do you base that on?
19	A.	Human nature.
20	Q.	Anything other than your understanding of human
21		nature?
22	A.	I don't know how to base many communications in
23		life other than that. There is logical steps,
24		and that's all I can go on here.

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Nelson Mullins
Nelson Mullins Riley & Scarborough LLP

Benbenek's Testimony

SCOTT BENBENEK

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
CASE NO. 2012-CP-23-0314

Q. Can you point to me any facts, any evidence, anything you can tell me that you know that leads you to believe that anything Jeff Yelton said on January 4 is untrue?

A. No, there is nothing I know that he said that day that is untrue. Underline know.

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514 Pettigru Street
Greenville, South Carolina

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Benbenek's Testimony

7	Q.	Right. Is there anything that Jeff Yelton says
8		here that you believe is not true?
9	A.	Not trying to be a wise aleck or whatever, I
10		think it's not true from the sense of this will
11		be noncompetitive with ScanSource. I think
12		that in some ways it's competing for the same
13		money, marketing money, at times that we do.
14		So vendors have discretionary marketing funds
15		that if their customers, and in our case we're
16		a distributor, come up with good ideas, they
17		will give you extra money in addition to their
18		contractual obligation with you for marketing
19		money. So my point is that could be
20		competitive, that could be competing with the
21		same dollars, and so that's the only statement
22		I'm making is in that sense it could be
23		competitive, but it's not obviously the same
24		business that we're in.

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Benbenek's Testimony

SCOTT BENBENEK

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STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
CASE NO. 2012-CP-23-0314

Q. Sure. The business venture as it's described in this e-mail to you, do you believe that engaging in this -- starting this company called VarsGuide and doing the things that are described in here would in any way violate Jeff Yelton's employment agreement?

A. Not from the e-mail or the description of the business, no.

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Nelson Mullins
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Benbenek's Testimony

SCOTT BENBENEK

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STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
CASE NO. 2012-CP-23-0314

11	Q.	The vendor QBR's, do they represent ScanSource
12		proprietary and confidential information?
13	A.	Definitely, yes.
14	Q.	Is a former employee of ScanSource entitled to
15		take ScanSource proprietary information with
16		him or her when she leaves?
17	A.	No.

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Greenville, South Carolina

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Benbenek's Testimony

Q. If Mr. Yelton had asked his subordinates to place Scansource proprietary information, QBR's, on a thumb drive, knowing he was already leaving, and had taken that thumb drive with him after he left Scansource not to return, would that be a violation of company policy?

MR. MURPHY:

Object to the form.

THE DEPONENT:

Yes.

EXAMINATION RESUMED BY MR. FOSTER:

Q. Would that be taking company property?

A. Yes.

Q. Those QBR's, that proprietary information, that's company property, correct?

A. Correct.

Q. No legitimate reason in your mind for a former employee to have that information, correct?

A. Correct.

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Benbenek's Testimony

SCOTT BENBENEK

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STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS

14 Q. Did you consider it to be unethical behavior
15 for Mr. Yelton to obtain these QBR's from his
16 subordinates in the manner they reported to you
17 he had done?
18 A. Yes.
19 Q. In essence, getting them before they knew he
20 was leaving?
21 A. Yes.
22 Q. That's unethical in your mind?
23 A. Yes, I do.

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Benbenek's Testimony

SCOTT BENBENEK

he had downloaded a software program on the Internet called KillDisk in order to wipe his hard drive and disable that computer?

A. No.

Q. Would you consider that to be unethical conduct by a ScanSource executive?

MR. MURPHY:

Object to the form.

THE DEPONENT:

Yes.

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Nelson Mullins
Nelson Mullins Riley & Scarborough LLP

Benbenek's Testimony

SCOTT BENBENEK

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS

17 Q. Would you consider that, in fact, to be willful
18 destruction of company property?
19 MR. MURPHY:
20 Object to the form.
21 THE DEPONENT:
22 Yes.

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Benbenek's Testimony

SCOTT BENBENEK

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7	Q.	If a ScanSource executive who knows that he's
8		leaving employment with the company were to use
9		Dropbox to remove or upload highly proprietary
10		ScanSource confidential information so they
11		could access it later after they've left
12		employment, would you consider that a violation
13		of company policy?
14	MR. MURPHY:	
15		Object to the form.
16	THE DEPONENT:	
17		Yes.

Benbenek's Testimony

SCOTT BENBENEK

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STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE CASE NO. 2012-CP-23-0314

10 Q. Would it be appropriate in your mind for Mr.
11 Yelton to start a business such as the business
12 described in Plaintiff's Exhibit 3, VarsGuide,
13 using ScanSource proprietary information?
14 A. No.

TIME ENDED: 6:33 p.m.

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Benbenek's Testimony

SCOTT BENBENEK

1

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS

15 Q. The business that's described as VarsGuide, if
16 you had the vendor QBR's and customer lists
17 that were ScanSource proprietary information,
18 you could use that information to solicit
19 business, correct?
20 MR. MURPHY:
21 Object to the form.
22 THE DEPONENT:
23 Correct.

Benbenek's Testimony

SCOTT BENBENEK

15	Q.	What policy did Jeff Yelton violate by
16		downloading KillDisk?
17	A.	What violation?
18	Q.	Yes, what policy did he violate? Is there a
19		policy or rule that he violated?
20	A.	I don't have anything on me. Anybody would
21		know if it's company property and you're -- I
22		would think any normal human would think wiping
23		something off of something that's not yours is
24		not the correct behavior.

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Benbenek's Testimony

SCOTT BENBENEK

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STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
CASE NO. 2012-CP-23-0314

24 Q. Then he didn't do anything wrong --
25 MR. FOSTER:

Defendant.

1 Object to the form.
2 REEXAMINATION RESUMED BY MR. MURPHY:
3 Q. -- if all he had on the --
4 A. Yes, it was wrong because it was not his.

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Benbenek's Testimony

Q. Isn't it accurate that not only does company policy forbid an employee to take ScanSource or vendor or customer proprietary information with them when they leave --

A. Yes.

Q. -- it's also our obligation to our customers, correct, to the Motorola to the Intermec to not let that information leave, correct?

MR. MURPHY:

Object to the form.

THE DEPONENT:

That's correct.

REEXAMINATION RESUMED BY MR. FOSTER:

Q. By contract?

A. Most of the time by contract, yes.

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Benbenek's Testimony

SCOTT BENBENEK

3	Q.	Do you know sitting here today whether or not
4		that statement Mr. Yelton made about the files
5		he removed from his office being industry
6		standard or not proprietary, do you know
7		whether or not that statement is true or not?
8	A.	I don't know, no.
9	Q.	If I stole your TV set and didn't watch it,
10		have I still stolen your TV set?
11	MR. MURPHY:	
12		Object to the form.
13	THE DEPONENT:	
14		Yes.

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Benbenek's Testimony

SCOTT BENBENEK

23	Q.	And you don't know where that thumb drive is
24		today, do you?
25	A.	No.

1	Q.	Does that create a risk to ScanSource that that
2		thumb drive that Mr. Yelton obtained is
3		somewhere unbeknownst to you?
4	A.	Yes, it can be a risk, yes, if it were to get
5		in the wrong hands.

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EXHIBIT 7

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
CASE NO. 2012-CP-23-0314

Jeff Yelton,
Plaintiff,
vs.
ScanSource, Inc.,
Defendant.

COPY

HEARING

DATE TAKEN: August 31, 2012
TIME BEGAN: 1:03 p.m.
TIME ENDED: 2:52 p.m.
LOCATION: Haynsworth Sinkler Boyd, P.A.
75 Beattie Place
Greenville, South Carolina

SPECIAL REFEREE: J. D. Quattlebaum, Esquire
Haynsworth Sinkler Boyd, P.A.
75 Beattie Place
Greenville, South Carolina

REPORTED BY: Debbie Gaddy, CVR
Notary Public for South Carolina

APPEARANCES:

BRIAN P. MURPHY, ESQUIRE
Brian Murphy Law Firm, PC
514 Pettigru Street
Greenville, South Carolina 29601
.....On behalf of the Plaintiff

WILLIAM H. FOSTER, III, ESQUIRE
CARMEN HARPER THOMAS, ESQUIRE
Nelson, Mullins, Riley & Scarborough
104 South Main Street, Suite 900
Post Office Box 10084
Greenville, South Carolina 29603
.....On behalf of the Defendant

ALSO ATTENDING: Jeff Yelton,
John Ellsworth
John Harvey
Dean Gaida (via telephone)

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SPECIAL REFEREE:

The first thing I want to do is to make sure we're in agreement on what we're doing here today with this hearing. There has been a TRO entered by Judge Hill in this case. It's my understanding, first of all, that the purpose of this hearing is to address the Defendant's Motion as to whether the Plaintiff has violated that TRO; is that correct?

MR. FOSTER:

Yes, sir.

SPECIAL REFEREE:

Okay. Is there any other purpose of this hearing today?

MR. FOSTER:

No, sir.

SPECIAL REFEREE:

And also I think in doing this I want to confirm and I've seen it in the transcript and I want to make sure we're all in agreement as to exactly what's going on. With regard to the TRO after I was appointed Referee, shortly after that, I expressed my opinion that because the TRO was issued after a full hearing on the merits, that the TRO would stay in place until either I ruled on the Motion for Preliminary Injunction or until the Defendants

withdrew that Motion for Preliminary Injunction. And so as of today and going forward the TRO is in place. Is everybody in agreement with that?

MR. MURPHY:

I am. I guess I would respond by also saying that the TRO required two things: one, that Mr. Yelton not contact --

SPECIAL REFEREE:

Well, the TRO speaks for itself. I don't want to get into what it says because it says what it says.

MR. MURPHY:

And in terms of what it says, I think it's a matter that's been completed. I don't know what part stays in effect.

SPECIAL REFEREE:

That's for another day.

MR. MURPHY:

Okay.

SPECIAL REFEREE:

The TRO has been signed and it hasn't ended as of today.

MR. MURPHY:

Okay.

SPECIAL REFEREE:

Do you disagree with that?

MR. MURPHY:
Certainly as to the one part I don't. It's the second part I don't know what else it requires. It required us to do something, we say we did it, they say we didn't, and that's why we're here.

SPECIAL REFEREE:
Right. I appreciate that. And I want to also make sure we're in agreement that the Motion for Preliminary Injunction is still pending. And I understand your position. To the extent it's the same thing, you think you may have already completed that.

MR. MURPHY:
And that's why Bill's email last night has me somewhat -- I should have spoke up when you said what the issue is. My position is that he can bring a Motion for Preliminary Injunction or ask for injunctive relief at any time he wants to.

SPECIAL REFEREE:
He can and he's done that. Do you agree he did that?

MR. MURPHY:
Let's see how it's styled.

SPECIAL REFEREE:
I'm talking about the first one back in January.

MR. MURPHY:
Yes. It's styled Temporary Restraining Order and Preliminary Injunction, Motion for --
SPECIAL REFEREE:
Judge Hill had a full hearing; is that correct?
MR. MURPHY:
He had a hearing. I think he was only addressing the TRO aspect.
SPECIAL REFEREE:
I agree with that. He entered a Temporary Restraining Order.
MR. MURPHY:
Yes.
SPECIAL REFEREE:
And it was referred to me.
MR. MURPHY:
Yes, yes, yes.
SPECIAL REFEREE:
And then the matter was referred to me.
MR. MURPHY:
Right.
SPECIAL REFEREE:
So we're in agreement there's a Temporary Restraining Order?
MR. MURPHY:

Right. Now, I guess to complete my thought, what threw me a little bit about -- and I didn't want to send more emails out and get more email dialogue going. But the pending Motion seeks injunctive relief, which --

SPECIAL REFEREE:

I don't disagree with that. I'm not talking about the pending Motion.

MR. MURPHY:

Well, to the extent -- and that's why I'm in total agreement with what you said in terms of the issue today is did we violate --

SPECIAL REFEREE:

The TRO.

MR. MURPHY:

Any Order.

SPECIAL REFEREE:

The TRO.

MR. MURPHY:

Okay. But to the extent they're going to get into injunctive relief, that -- you know, that's going to open up other issues.

SPECIAL REFEREE:

Well, let's wait and see if we get to that point.

MR. MURPHY:

But I agree with the issues of going backwards from 1/27, which is really the first Order, he gave an Order from the bench, and then he memorialized that February 8th. The stuff going backwards is the stuff that Judge Hill will be addressing.

SPECIAL REFEREE:

Yeah. I don't want to get into all that. I want to make sure we're all in agreement. Judge Hill issued a TRO on February 8th.

MR. MURPHY:

Right.

SPECIAL REFEREE:

And then we have a Consent Order for a protocol which ties in with the TRO. And you agree with that?

MR. MURPHY:

Yeah.

SPECIAL REFEREE:

Okay. And before we get started I'd like to get an update on where we are with the protocol because the protocol was entered in April. And as I understood what would be happening, I thought matters would be brought back to me after the devices were given to the Defendants. And nothing has been brought to me. And so I'd like to get an update on what has

happened under the protocol. And I'll just let him do it and you can fill in if you disagree with him.

MR. FOSTER:

Derrick, we were able to obviously get the images and all that that was necessary to begin the review. The snag we have hit is with respect to the manner in which this next step would occur. It was our understanding of the protocol that once the keyword search was run of the devices, a list of all the hits would be produced. And Mr. Murphy could review the list or he could review the actual files using a view platform. That's what the protocol says. One of the first devices that Brian and Mr. Yelton asked that we address was the iPad because Mr. Yelton had a need for it and really kind of wanted to get that back. And it seems likely that that would be the easiest. Unfortunately, the iPad, you can't run the keyword search to. So what FTI did was simply print an index of everything that was on the device and provided that to Brian. Brian felt that that was an improper search, but actually no search had transpired. So we had some back and forth about that. I think we've got that worked out. What's held us up is Brian would prefer to have the keyword hits produced to him in hard copies so he can review

them and have you review them and weigh in on any disputes. And we think that's, A, not called for by the protocol; and, B, interjects a level of delay and expense that we could easily avoid. The reviewing platform that we've provided is called Ringtail. We've asked Brian if he would take the training. It's about 30 minutes to an hour to sort of understand it. And once that happens, he can review the list that had been generated pursuant to the protocol, look at any documents he wants to look at. He can mark any documents that he thinks shouldn't be shared because they touch upon a privilege or for any reason. He can share that and you can go on that same platform and see exactly what he's talking about. If we do it in a different way, if we do it where we actually print out things, it really is going to be, and I understand from talking to FTI, sort of a laborious and inefficient process. It's not really contemplated by the protocol, at least in our view. And I don't want to be difficult. I just -- and make it harder on Brian. I just think that honestly it is the most -- A, it's what the protocol calls for, to do it either with the index or the review platform, but it's also going to be easier for all of us to move through

this review quickly so that we can release the devices, get them cleaned up, all that kind of stuff.

SPECIAL REFEREE:

I recall being copied on an exchange about that about a month ago.

MR. FOSTER:

Yes, sir.

SPECIAL REFEREE:

Has anything developed in that month?

MS. THOMAS:

I think the last thing was Brian agreeing that we needed to talk with you about it. And that was a couple of days ago.

SPECIAL REFEREE:

All right. So if I'm understanding, you all have captured information. You've got an electronic list of something a person with proper training would be able to look at, but Brian hasn't looked at it?

MR. FOSTER:

That's correct.

SPECIAL REFEREE:

And so you all don't have any documents?

MR. FOSTER:

We have no documents. Now, we do and I think --

Brian, I don't know if we've closed the loop on it, but as far as the iPad because, you know, it wasn't really -- you couldn't also look at it on Ringtail, you couldn't really run the keyword search, what they did is they ran the keyword search with Brian's agreement on the list that had been generated, came up with some hits. The only thing that was potentially an issue were certain customer contacts or from Mr. Yelton's perspective business contacts. And we think -- I think the next step we need to do is just to ask Dean or somebody at FTI that if you can reset the iPad without damaging any of his applications or anything, such that it would wipe off anything that arguably would be confidential, then we can release that device back to Mr. Yelton. But as far as the other devices, we're kind of in limbo.

SPECIAL REFEREE:

So the other devices have not been captured?

MR. FOSTER:

They've been captured. The keyword searches have been done. The reports have been generated and if I understand it correctly, they're sitting there waiting to be reviewed by Mr. Murphy once he's kind of on the Ringtail platform, and yourself as well.

SPECIAL REFEREE:

Have the devices been returned?

MR. FOSTER:

Brian has the devices, but they have not been returned to Mr. Yelton.

SPECIAL REFEREE:

Okay.

MR. MURPHY:

Do you want me to address that?

SPECIAL REFEREE:

Yeah. Do you have something to add?

MR. MURPHY:

Yeah, I do. On the iPad I don't think that should be an issue. I would not agree -- I mean they did effectively run a key search and it turned up a bunch of stuff. And I just sent the report over to Bill because there's nothing on there that was privileged. I mean there's very little actually on there. I won't agree that that contact information is confidential ScanSource information, but I'm fine with the reset. I mean we can just skip that issue. If we can reset and he can use the iPad, that's fine. It isn't worth fighting over. On the Ringtail, here's my concern about Ringtail. One, you can go through all these steps, you have to take

the Ringtail training too. But their system wouldn't comply with paragraph 16 of the Consent to Protocol. Here's what the protocol envisioned. I was going to get the hits. I was going to flag for you any concerns I have either because of privilege or doesn't relate to the case or we object. You were to rule on those. They'd get everything you rule they can get and all the uncontested stuff. Paragraph 16 specifically says a copy of all the stuff that's either not contested or that you overrule an objection to is provided to both parties. Well, that's not the Ringtail system. They're looking at it, but they're not giving me copies of it. So what we clearly anticipated was in discovery -- and what I anticipated we'd have notebooks of documents. I would just flip through them. If I saw anything on them, I'd put a flag on there. You can look at it and say yea or say nay, and then make a copy for each side and that's it because every other thing in this case has been produced in document or scanned PDF form, printed-out document form.

MR. FOSTER:

See, that's -- I'm sorry.

MR. MURPHY:

That's all right. But I just don't see how you can comply with paragraph 16 with this Ringtail which just allows us to view it and allows you to view it. And now they get a copy, but I don't get a copy. Paragraph 16 clearly says I get a copy of everything that goes to them.

SPECIAL REFEREE:

Do you have any idea how many document pages it would be if you printed it off?

MR. FOSTER:

I can only guess that it would be tens of thousands of pages. One of the problems with what Brian is suggesting -- you know, I mean if it were easy to do and efficient and would actually save everyone time and get the job done, then we wouldn't have any objection. We've got the viewing platform. We can use it and have all the access and efficiency we want. But I don't really think it turns out to be a workable process the way Brian has described it. And I don't think it's actually what paragraph 16 of the protocol envisions. And one problem that Brian and I had, and it's my fault more so than his, is when we produced documents to Brian before, you know, we did electronic review for privilege and marking them and all that good stuff. And then

copied them into PDF, and then produced them to Brian and Brian prints them out. Well, so many of these documents that we produced are huge spreadsheets that when you put it onto a PDF instead of producing it electronically, you just get hundreds of thousands of pages of, you know, one line that doesn't make any sense. And so Brian is trying to figure out what's the HP list, what's this list. And you can't really tell that way. But if you review it electronically as a single document, maybe 500 pages, but really it could be 500 pages a spreadsheet. So if you look at it electronically, you'll go, okay, that's a ScanSource document. I don't have to worry about that. That's not privileged from his perspective and he doesn't have to flag it. But if we produce everything, we might be backing a truck up that he's going to have to go through and it's just going to be a mess. And then we're going to have to be able to -- when he tells you, hey, Derrick, I think these are privileged, is he going to make a notebook for you and bring it over here and let you look at it? And then how are we going to identify those pages. It's just the Ringtail system, although it might take 30 minutes to an hour for all of us to learn it, that 30

minutes to an hour of learning it is going to save everybody hours upon hours of time. And if when we're doing whatever -- you know, in whatever form or format we have documents that we're allowed to have from these devices, I'll give that to Brian. I have no -- I want to make sure he gets everything he's entitled to. There's nothing to hide here. I'm just looking for the best, most efficient process for everybody in the case.

MR. MURPHY:

Can I address that?

SPECIAL REFEREE:

You're the last one. You've got three seconds.

MR. MURPHY:

Now, a couple of concerns. But, first of all, he's right, they produced a spreadsheet to me that takes up notebook after notebook. Some pages have one number in the middle of them. They could have just sent me the spreadsheet. They could have just sent me the Excel file. And they could do that here. If they find something with hits, just give me the Excel spreadsheet. If it's tens of thousands of pages I'd be surprised if it were. If it's tens of thousands, I'm going to have a very hard time and you're going to have a very hard time paging through

tens of thousands of documents on a laptop screen and trying to figure out what the hits are. That's unworkable and it's not, you know, what paragraph 16 envisioned either.

SPECIAL REFEREE:

Well, you all can bring it before me if you can't get it worked out.

MR. MURPHY:

Okay.

SPECIAL REFEREE:

All right. I'll hear you on the pending matter. And I think I told you all I'd give you 45 minutes each.

MR. MURPHY:

That's correct.

SPECIAL REFEREE:

Is that what I told you?

MR. FOSTER:

Yes, sir. I understand. I will be held to that.

SPECIAL REFEREE:

Hopefully you'll be shorter than that.

MR. FOSTER:

I'm going do my best.

(Off the Record Discussion)

MR. FOSTER:

I appreciate you accommodating us and putting up with our emails. And I know you're aware of how this ultimately or initially was referred to you. But, you know, I want to step aside from, you know, any claims of personal, you know, animus or bias or false indignation and focus on what we feel is a very serious matter. Before we filed this petition and knowing I was going to be filing a petition for contempt -- I've never done one -- I had trouble sleeping because I was worried that Brian would feel like I was accusing him of some sort of wrongdoing. And he's my friend and it bothered me. And, you know, I say all that because we wouldn't have brought this if we didn't feel that we had incontrovertible evidence that Mr. Yelton has violated the TRO that has been entered. And more importantly from our perspective, has put and is continuing to put our proprietary information at risk. And not only our proprietary information, but the proprietary information of our partners, the Motorolas, the Honeywells, the Intermecs of the world and the company's reputation for safeguarding that information. That's why we had to file this. As you know, willful disobedience of a court order is grounds for contempt. Submitting false and

misleading sworn testimony is both evidence of the willfulness of that misconduct, but also a separate grounds for contempt. And I know there's a question as to, you know, what the basis or what we're hearing today. We think that the evidence or the presentation of what we believe is some of the false and misleading testimony is indicative of willfulness. And I think whether or not this forum is appropriate for hearing perjury allegations is a matter that Your Honor can decide and I won't argue. However, Mr. Yelton has done both and we feel he has to be held in contempt here. Mr. Yelton has willfully violated the court's Temporary Restraining Order. Mr. Yelton obtained at least five devices that contain ScanSource proprietary and confidential information. The evidence that we've uncovered shows three of the five devices were actually connected to Mr. Yelton's computer after he left ScanSource. That includes the QBR flash drives, is what we'll call them. The flash drive that started everything, the flash drive that Mr. Yelton admits he went and got the QBR information, the quarterly business reviews for Honeywell, Intermec and another customers on a thumb drive. That's what started all this litigation. That thumb drive we can show was

hooked to his computer at home eight hours before or less than twelve hours before he filed this lawsuit.

SPECIAL REFEREE:

Is there any evidence that it was connected after the TRO was put in place?

MR. FOSTER:

No, sir.

SPECIAL REFEREE:

Okay.

SPECIAL REFEREE:

We also believe he submitted false testimony in his affidavit contrary to his rather conclusive affirmations he did not leave the QBR flash drive in his office. He did remove company documents, electronic files when he left ScanSource and he did destroy ScanSource documents and data via a software program he downloaded on the last day of his employment called KillDisk. As you know, ScanSource is a wholesale distributor of specialty technology products. Our proprietary information, what we gather, how we gather it, how we collate it, how we use it, that is ScanSource's secret formula. That is the value of this business. We don't manufacture anything. We don't have patents or anything like that. It's our information. Our reputation and

success depend on our ability to safeguard this information. We have contracts with companies like Motorola. NDA's and our operation contracts with these partners requires us to treat their information as confidential, proprietary and to make sure it doesn't leave our control, our custody and control. Mr. Yelton was the President of POS or point of sale --

(Dial tone from telephone.)

(Off the Record Discussion)

(Mr. Gaida no longer attending deposition.)

MR. FOSTER:

Point of sale and barcoding are ScanSource's largest division. Mr. Yelton was in a position of extreme trust and confidence. I mean he's at the very top of the food chain running our most important or largest and most profitable division. When ScanSource elected to terminate Mr. Yelton, it afforded him the trust and deference befitting his position. Nobody walked him out of the building. Nobody went and locked his computer up and changed his passwords while they took him out to lunch to tell him he was being fired. They treated him with dignity and respect. Unfortunately we feel he's betrayed that trust. I thought the time line of

events is critical to understand, and then overlay the analysis that we've been able to do since we last spoke to you. December 9th Mr. Yelton learned that he was being terminated. On December 15th, that was his last full day in the office. On December 16th, that morning of December 16th, Yelton cleans out his office. The testimony of Ms. Amy Farr is that there was nothing left in his office. On December 30th Mr. Yelton's subordinates report their concerns to Scott Benbenek, that he had come to them before they knew he was leaving and asked them to download these QBR's onto a thumb drive. On January 4th Mr. Benbenek has a conversation with Mr. Yelton in the afternoon. Mr. Yelton denies misconduct, denies having the QBR flash drive in his possession, says he left it in his office. Almost simultaneously with that conversation Mr. Yelton is texting Jeanne Aiken, one of his former subordinates and a current employee of ScanSource. At the very moment almost that he's denying to his former boss that he has a thumb drive or a flash drive with proprietary information on it, he's asking Jeanne Aiken to send him the HP customer list from his home email -- from her home email --

(Telephone rings.)

SPECIAL REFEREE:
Hold on just a second.
(Off the Record Discussion)
SPECIAL REFEREE:
I'm sorry. Go ahead.
MR. FOSTER:
Yes, sir. Almost simultaneously with his conversation with Mr. Benbenek when he first denies -- first indicates or says, hey, I was getting that information before I knew I was being terminated. Well, he admitted that. That's actually not true. At the same time he's denying having that thumb drive in his possession, he's texting his former subordinate, Jeanne Aiken, and asking her to give him proprietary ScanSource information from her home email on a thumb drive. There's no legitimate explanation for that conduct. And it's informative to the rest of --
SPECIAL REFEREE:
I'm sorry. I'm not understanding. I understand what you're saying about him having a thumb drive with information on it.
MR. FOSTER:
Yes, sir.
SPECIAL REFEREE:

And he's asking for other information. You're just saying that they're inconsistent?

MR. FOSTER:

Well, actually I'm saying they're -- it's inconsistent for him to be denying having taken a thumb drive with proprietary information on it. "I have no need for that information." While at the same time he's texting another employee and asking for proprietary information to be put on --

SPECIAL REFEREE:

Different?

MR. FOSTER:

Different, absolutely.

SPECIAL REFEREE:

All of this was before the TRO?

MR. FOSTER:

Yes, sir. On January 16 ScanSource's General Counsel, John Ellsworth, sends Mr. Yelton a detailed letter in essence demanding the return of all proprietary confidential information, including the thumb drive or the flash drive, QBR flash drive at issue. On January 18 Mr. Yelton responds by filing his complaint. January 26, Mr. Yelton executes an affidavit. January 27th is the TRO hearing. On February 8, 2012 the TRO was issued. On February 14

Mr. Yelton has returned 13 of 14 devices. I think the 14th device, if I'm correct, is the photo computer at home, and represents that all devices that could potentially have proprietary information have been returned. On April 9th after a good bit of negotiation, we all remember the protocol was entered. And the protocol deals with how those devices would be examined to ensure that all proprietary information has been returned. This is the original TRO and I don't know why we have this mustard color yellow. But in any event --

SPECIAL REFEREE:

It's in honor of a good game that Vanderbilt played last night.

MR. FOSTER:

Almost pulled it out. Plaintiff must return to ScanSource any confidential information in his possession, custody or control within the time period set by the Special Referee. Any disputes regarding the identity of confidential information or the form of its return shall be decided by the Special Referee. And that's February 8th. Here's the part of the hearing earlier this week where the Judge acknowledges that the parties have extended the TRO and Preliminary Injunction, and indicates

that he feels that the issue of whether or not Mr. Yelton has violated any Preliminary Order as an Order of the Special Referee by the consent of the parties and by the course of conduct. And, therefore, you would have to determine whether or not there's been some disobedience as to the terms of the Preliminary Injunction. And although I disagreed at the time with the Judge's ruling, I do think it makes a lot of sense because of your involvement in the efforts to secure these devices. Judge Hill notes that you would be in the best position as a practical matter to determine whether or not his order -- and it's his order now, not mine -- is being complied with. And this is just an indication from Brian, May 7th, 2012. We just pulled that where he agrees with the Special Referee that that Order is still in place. Your Honor, this is part of the process. This is two days after the hearing where Mr. Murphy is corresponding with my firm and indicating that he has all devices that could potentially be used or that were used by Mr. Yelton during his employment that could possess ScanSource proprietary information. He has secured them and he's identifying them here on January 28th, 2012. He's also indicating here, Your Honor, on

February 8th, 2012 that he has made available any data, regardless of whether or not it might have confidential information, he's turning the device in because any device that could potentially have information, I'm turning it in. When we were negotiating the protocol Brian objected to the incorporation of language requiring Mr. Yelton to turn over all devices. And the grounds that Mr. Murphy provided were that that's already been done. We've already provided those. All devices have been turned in. So to the extent that Mr. Yelton's argument is there's no deadline in the protocol of the TRO for me to turn devices in, it's open-ended, well, that's because he has represented to the Special Referee, now the Court, that that's been completed. And I think that's important, because to the extent he will argue either there's no specific Order that I'm violating, that argument is rotten because it's based on his representation that he has already complied and he would have removed or objected to a firm deadline based on his representation that he has completed the Court's demand. As to the nature of confidential information, Judge Hill took no chances and specifically held that it would be defined as the

parties had agreed in their contract and the policies of ScanSource. Confidential information means any and all information of the company that has value and is not generally known to the company's competitors. And, of course, we have a listing here in detail. With respect to the QBR flash drive that we're talking about, there is no dispute in this case that that is confidential information subject to the TRO.

SPECIAL REFEREE:

Can I get you to address that? One of the things that I got identified documents that were believed to be on these five flash drives. Now, how do they reach that conclusion?

MR. FOSTER:

I'll get to that, but we can show actually how that worked. And that's what I'm going to get to right now.

SPECIAL REFEREE:

All right.

MR. FOSTER:

The QBR flash drive or the QBR, the quarterly business reviews, Mr. Yelton admits is confidential information pursuant to his contractor's agreement with ScanSource and something that Mr. Murphy

acknowledged to Judge Hill at the initial hearing. He agreed that the QBR's are confidential information. Proving contempt. FTI is our forensic consultant, one of our forensic consultants. What they've done is they analyzed or first analyzed Mr. Yelton's ScanSource laptop looking at the last week of his employment, the 9th through the 15th, to identify -- and identified that five USB flash devices were hooked to that computer during that week, from the 9th to the 15th. There were also two external hard drives, but they couldn't really say with specificity that they were last hooked up during that time frame. So we didn't look at those or try to include those in our proof of contempt, but those are also missing. FTI analyzed that to identify these five USB flash devices. And the way they do that, Your Honor, these flash devices have serial numbers, USB serial numbers that are like fingerprints. And whenever I hook a flash drive or a device like that into a computer, it leaves a fingerprint there. And you know that that device with it's specific unique serial number was attached to that computer. And it'll give the date and time.

SPECIAL REFEREE:

Let me interrupt you there.

MR. FOSTER:
Yeah.
SPECIAL REFEREE:
Just so I'm understanding and maybe you'll get to this, but that's your computer there. You'll agree I could go stick a device into that?
MR. FOSTER:
That's correct.
SPECIAL REFEREE:
Do we have something that ties the five devices to Mr. Yelton?
MR. FOSTER:
I believe so, yes, sir.
MS. THOMAS:
They were logged in or they were plugged in under his user identity while he was logged in. When you log in, it knows, the computer knows that Derrick Quattlebaum is using the computer.
SPECIAL REFEREE:
Okay. So we know -- and you'll, I guess, get to this. You know that the computer was running while Mr. Yelton had logged in?
MS. THOMAS:
Yes.
SPECIAL REFEREE:

Okay.

SPECIAL REFEREE:

What's called a link file analysis was done to show what was being done on that computer on those drives at the time those devices were linked up. So it shows what information was being reviewed on those devices on that computer at that time. That's the link file analysis. Mr. Akerman identified the device serial numbers for all of the items that Mr. Yelton had turned in pursuant to the TRO to get their USB serial number. The five flash devices, the five USB flash devices that were hooked to Mr. Yelton's computer the last week of his employment, the 9th through the 15th, for which he was reviewing proprietary ScanSource information are missing, are not among the devices that were turned in. These are the five devices at issue. That's their serial or their USB fingerprint, if you will, their serial number. Here is from Mr. Gaida's affidavit, the link file analysis showing documents that were being reviewed on those flash devices during that time frame in question. FTI then analyzed Mr. Yelton's personal HP laptop, which he identifies in his affidavit as being used after he left ScanSource. And has established that three of the five missing

devices were connected to the HP laptop, Mr. Yelton's home laptop after he left ScanSource. FTI analyzed the subordinates' computers to establish that the QBR flash drive is one of these three devices. And what they did, Your Honor, we knew when roughly Mr. Yelton is alleged to have obtained those QBR's on the flash drive. So we went to the subordinates at issue and ran a USB serial port analysis for that 9th through the 15th to see what was linked up. And actually on Monday, the 12th, you'll see that the same USB flash drive was attached to those subordinates' computers that was later attached to Mr. Yelton's work computer, and then later attached to Mr. Yelton's home computer after he left ScanSource.

SPECIAL REFEREE:

You'll have to say that again. You lost me.

MR. FOSTER:

I know. Let me get to it in here and I'll hopefully do a little bit better job. FTI analyzed the subordinates, two of the three employees that Mr. Yelton obtained the QBR from, or QBR's from. They took a forensic image of their computers, and then looked to see what, if any, flash devices were hooked to their computers during the 9th through the

15th because we know -- and I don't think Mr. Yelton disputes this -- at some point during that week he went to them and got these QBR's. And so we looked to see, okay, what's the serial number of any USB hooked to the back of their computers when we look at the five missing devices that were the five USB devices hooked to Mr. Yelton's work computer that week to see if there's a match. Can we isolate the QBR flash drive? And we were able to do that because the same flash drive was hooked to both subordinates' computers in that same time frame that was then hooked to Mr. Yelton's computer, work computer, and then later hooked to his home computer.

SPECIAL REFEREE:

When was it hooked to his home computer?

MR. FOSTER:

The QBR flash drive was last connected to Mr. Yelton's personal HP laptop on January 17th, 2012 at 9:19 p.m. At 9:03 a.m. the next morning he sued us. About -- let's see -- ten days later he did an affidavit that said conclusively, I left the QBR flash drive in my office at ScanSource and anyone who says I took it with me is a liar. What he said in that affidavit, Your Honor, is impossible because

we know that the QBR flash drive was hooked to his home computer, the flash drive that has ScanSource proprietary information by Mr. Yelton's own admission was put in his home laptop less than 12 hours before he filed this lawsuit. Less than a day, roughly a day after Mr. Ellsworth emailed him a letter saying give it back, he's got the thumb drive hooked to the back of his home computer. This shows the analysis that was done on this computer -- excuse me -- Mr. Yelton's home computer showing the devices that were connected and when they were connected. And you'll see, if I can work this laser without blinding someone, you'll see the USB flash device at 9:19 p.m. Here's the review that was done of the subordinate employees, Chris Spearman and Robbie Cox's laptops. And a full confession in their affidavits that were provided to the court in support of the initial Motion for Temporary Restraining Order and Preliminary Injunction, these employees thought that it was on or about Tuesday or Wednesday. It turns out just looking at the actual cold hard evidence, the USB device was hooked up to their computers 8:58 a.m. and the USB device is connected to Yelton's work laptop. At nine a.m. that same USB device is connected to Mr. Cox's work

laptop. At 10:15 a.m. the same USB device was connected to Chris Spearman's work laptop. And then at 11:51 a.m. that same USB device was connected to Mr. Yelton's work laptop again. And that's the same USB device that was later on January 17 hooked to Mr. Yelton's home computer. And that's just a time line, Your Honor. I'll email this to you. We've got hard copies of the presentation as well. But that just shows you the entire time line of events. The QBR flash drive and the other four devices remain missing to this day. We think that the need for additional relief, the evidence that Mr. Yelton has failed to return all of the devices that could potentially have proprietary information. The circumstances under which all this occurred don't leave any doubt as to the intent, the willful violation of the court's Temporary Restraining Order. Briefly, false testimony, and I don't want to go beyond, you know, what Mr. -- excuse me -- what Judge Hill's referral is, but we think clear and convincing evidence shows that Mr. Yelton submitted false and misleading testimony. This demonstrates his intentional and willful violation of the TRO. He hasn't made any effort to correct his testimony. And the court obviously put him on

notice of the consequences of that. And that's just from the transcript. That's Judge Hill admonishing the parties, admonishing Mr. Yelton or just advising him of his obligations to provide truthful affidavits, truthful testimony and correct it in a timely fashion. He gave him 24 hours to comply. This is the affidavit January 26, Your Honor, nine days after that QBR flash drive was hooked to his computer at home at 9:19 p.m. This is his testimony, "I don't have any QBR's in my possession of which I'm aware. And I've not had any since I left the company. I did not take any QBR's when I left. Defendant's suggestion that I took any documents is false. I did not remove company documents or electronic files when I left. I did not remove from company premises hard copies of ScanSource reports or records, et cetera. When I left the office the QBR documents were on a flash drive that was in my office. To the extent that drive, quote/unquote, disappeared I certainly have no knowledge as to how that would have happened since it was there when I left." That's impossible. "I deleted data off my laptop hard drive because I kept personal records on the computer. I did not destroy any company documents or data as it's all

stored on ScanSource servers." Contrary to this former testimony, the evidence conclusively shows he did not leave the QBR flash drive in his office. He did remove company documents, electronic files when he left, and he did destroy ScanSource documents and data via KillDisk 8:45 a.m., the day he left. Your Honor, this is a screen shot from Mr. Yelton's original Dropbox account that shows on December 15th, the last day he was actually physically in the office, he uploaded 863 ScanSource files to Dropbox. Now, how you can do that and at the same time say that you've not removed any documents from ScanSource boggles the mind. I don't understand how that can be squared.

SPECIAL REFEREE:

I want to make sure I'm understanding this. It's my understanding we've already identified that Dropbox and they're making the Dropbox available to you all.

MR. FOSTER:

We have that. We have it.

MR. MURPHY:

And here's where I'm going to object to some --

MR. FOSTER:

Your Honor, this just shows the history. And this is covered in our brief and I won't belabor the

point. But on December 16th that morning before he left, he downloaded a software packaged called -- or a program called KillDisk and blew up his computer. And contrary to his testimony, you know, that destroyed all the documents on that computer, destroyed the metadata associated with that. And we have to have a forensic expert like FTI to retrieve that information. And, Your Honor, I don't -- you know, if the issue of whether or not he's submitted false testimony as a separate grounds for contempt, if that's not before you, I'm not trying to argue that it should be. That's your decision. That's your bailiwick. That's what I'm doing. But how can you say that this conduct is not willful when you look at what's transpired. "I didn't destroy anything when I left." But you did, you clearly did. You dropped a KillDisk on your work computer. This is not something that a senior executive at a publicly-traded company just does because he's worried he might have a couple of personal things on his computer. You do that when you're up to no good. You do that when you're covering your tracks. You do that when you're trying to take proprietary information that doesn't belong to you. Your Honor, contempt again is a willful disobedience of an order

of the court. It requires an act done voluntarily and intentionally with the specific intent to do something the law forbids or the specific intent to fail to do something the law requires to be done. You've looked at Mr. Murphy's demonstrative. I noticed that the other day. We need to show clear convincing evidence of the existence of a valid duty order or obligation or prohibition, knowledge of and a willful and voluntary or attempted violation of that valid duty order or obligation or prohibition. The TRO, Your Honor, your directives, negotiations that we were engaged in represented that all devices had been returned. We've proven that the device, the QBR flash drive that this case originates from, the wellspring for this entire case was not returned and has been withheld and more than likely disposed of, but it certainly hasn't been returned. Mr. Yelton is an expert in technology. He's given speeches at TED events on technology. He knew what he was doing. These activities are not accidental. He's not naive in the manipulation or the use of technology. We believe we've made, Your Honor, a prima facie case of contempt of court. The burden now shifts to Mr. Yelton to establish whether or not he has any defense or inability or a demonstrative

inability to comply with the court's order. The discretionary authority of the court is brought to punish offenses that are calculated to obstruct, to create or undermine the administration of justice. And I think that's what's happened here. Obviously perjury is grounds for contempt. That might be a matter for Judge Hill. We do believe that Mr. Yelton must be held in both civil and criminal contempt. We've asked for some strong relief. First, obviously an order directing Mr. Yelton to show cause why he should not be held in contempt for a violation of this court's TRO. A direction that Mr. Yelton return all confidential information that he has continued to withhold, and that any electronic devices on which the information resides should be subject to the court's review. Your Honor, Mr. Yelton needs to identify any electronic device he has now that he's been using since everything else has been turned in so that we can see, so that we can examine that, the court can examine it, that you can examine that to make sure that it doesn't have proprietary information. Where has it gone? Has it been used? You know, the access to the devices we have right now has been gummed up a little bit by the issues we're having

with Ringtail and what-not, but we need to make sure that this information is not out there. If that thumb drive has been hooked up to another laptop, a new laptop, then we might not be just talking about civil or criminal contempt anymore. But we've got to do that. That is -- we need the protection of the court, your protection to ensure that our proprietary information, the proprietary information of our partners that we are bound by contract and law to safeguard is safeguarded. And we think that this examination, this seizure by the court, if you will, should be at Mr. Yelton's expense because that heretofore all this has been at ours. We think a dismissal of Mr. Yelton's complaint with prejudice is called for. It's certainly supported in the case law, Your Honor. We've cited cases in which the courts have held that --

SPECIAL REFEREE:

I can tell you I'm not going to be going down that road.

MR. FOSTER:

Understood.

SPECIAL REFEREE:

I think that's for Judge Hill. I'm dealing only with --

MR. FOSTER:

Understood.

SPECIAL REFEREE:

-- the compliance with the TRO.

MR. FOSTER:

Understood. As an element of relief we believe that what you began to do before should be done now, granting our Motion for Preliminary Injunction and permanent injunctive relief, including the specific prohibition that apparently gave Mr. Yelton a pause before, which is don't use any confidential information. And I've never understood, I don't understand now where you've got an order that you agree remains in place and has remained in place since February 8 of 2012 saying don't have any of their information. Give it all back. The representation, the express representation that it's all been given back. All we ask is an order saying you can't use what you don't have. You can't use what you say you don't have any right to and don't have any need for and you've already returned. That's the only element of relief that would be at issue. And we think it was called for in our initial Motion for Permanent Injunction, which is not before you today, but we think it's an

appropriate element of relief for contempt. And we think it's a necessary element simply to protect ScanSource and its partners. Obviously an order granting ScanSource the relief it seeks in its counterclaim would be something for Judge Hill. And an award of costs and fees, expenses associated with this petition and the imposition of fines that you might deem an appropriate penalty for the misconduct. Your Honor, one thing that we wanted to bring to your attention and is part of the relief we've asked, that we be given access to -- that Mr. Yelton identify and that we be given access to, that you be given access to, any electronic storage or cloud storage platforms that he may be using. I know Mr. Yelton attached to his most recent submission of yesterday, just a snapshot of his current Dropbox. And I think it, rather than support his position, is rather chilling, I guess is the way I'd describe it.

SPECIAL REFEREE:

Rather what?

MR. FOSTER:

Rather chilling. On March 8th Mr. Yelton uploaded 912 folders. They're not identified, but he uploaded 912 folders to Dropbox. We don't know

where they came from. We don't know what they are. But having removed 863 ScanSource folders when he left, we're a little bit worried as to what those folders are. We need to know. But I'm more troubled by Mr. Yelton's apparent use of a current ScanSource employee to conduct his business. On February 1st of 2012 Jamie Mulligan (phonetic), who's a current ScanSource marketing employee is in Mr. Yelton's Dropbox deleting functional item, temp.jpg and two more files. On February the 1st again Jamie Mulligan deleted a JPG and two more files. On January 12th Jamie Mulligan invited two people to join the shared folder of Jeff. On January 12th Jamie Mulligan added productbrief.doc and 24 more files to Mr. Yelton's Dropbox. On January 12th at 8:57 a.m. during the workday, I would imagine -- I don't know that for a fact -- Jamie Mulligan added bus.doc and 11 more folders to Mr. Yelton's Dropbox. That's just one page. And one of the things that was ordered from the bench at the TRO hearing was don't have any contact with ScanSource employees asking for proprietary information. And on a document that he's submitted we see that Mr. Yelton is continuing to work with Jamie Mulligan to do something. We don't know. And

I don't know. This all could be completely innocent, but I think it demonstrates the need we have to have access to his current Dropbox and any other cloud storage platform he may be using. I'm sure I've probably taken up my time.

SPECIAL REFEREE:

No. I think you're --

MR. MURPHY:

You're a little short.

SPECIAL REFEREE:

You're right there. You might be a little short.

MR. FOSTER:

I reserve my additional time for follow-up.

SPECIAL REFEREE:

There's no --

MR. MURPHY:

No reserve. Can I have a break?

SPECIAL REFEREE:

You can.

(Short Break)

SPECIAL REFEREE:

Before you start and just for clarification because I was going to ask this when you got to it at the end, I'm under the impression there are two Dropboxes?

MR. MURPHY:
Yeah.
SPECIAL REFEREE:
Is there any issue about them getting in the second Dropbox?
MR. MURPHY:
We can respond in discovery, yeah. I mean I can tell you a little bit about what we think is in it right now, what we think those transactions are, but --
SPECIAL REFEREE:
Well, let's --
MR. MURPHY:
This is all after the devices and everything are gone. So it's not --
SPECIAL REFEREE:
I appreciate that, but --
MR. MURPHY:
We can probably access -- I don't know how much we can go back to April now to tell -- I think we can -- to tell what those files are, but we'll share that with them. They haven't asked for it.
SPECIAL REFEREE:
Well, I tell you what, you just go on and respond, and then maybe I'll talk to you more about that

Dropbox. I'm not understanding why that wouldn't be a part of all this.

MR. MURPHY:

Because there would be no connection to anything he's doing in March. If there's a suspicion, we can look at that. That's fine. They haven't -- I mean we've --

SPECIAL REFEREE:

Why don't you give your response because I'm not understanding why there wouldn't be a connection. I'll tell you I would think anything he has that could possibly have electronic information would be subject to them looking at it.

MR. MURPHY:

I'm not sure I oppose that.

SPECIAL REFEREE:

I mean I'm not saying you oppose it or not. I'm just saying it's there. It's already subject to it. They don't have to re-ask.

MR. MURPHY:

Well, there's stuff that has nothing to do with this case we can go through with you and you can rule on it. He's got some very personal data and stuff that he doesn't have to open absolutely everything up to them to look at. We'll respond. If there's

anything, you can look at it.

SPECIAL REFEREE:

Well, why don't you respond to them.

MR. MURPHY:

I want to start where you started. What are we really talking about here today? We're talking about compliance with the TRO. You saw the stuff about Jeanne Aiken, you saw the stuff about KillDisk. I may respond very, very briefly to those items. But they're not before you. Judge Hill already heard about KillDisk. Judge Hill already heard about Jeanne Aiken. He already heard our response to that. It was a full-blown hearing. And after hearing all of that, he didn't issue anything on those things. He didn't find anything on it. By their very nature that hearing was held on January 27th. It was all laid out on January 27. It couldn't be a matter of contempt. It couldn't have anything to do with what we did after 1/27. If you take a look at everything Bill Foster just alleged and you draw a line right there and you say how many things fall before the hearing, how many things fall after, what you'll see is absolutely zero fall after. Now, he's created the issue that I will address and probably the one that you have in your

mind is -- well, he's pointing to things that Jeff did before which could suggest he's still in breach today. And the only issue there that that would relate to is the flash drives and I'll get into that. But the TRO required us to do two things. And I'm going to walk through that very carefully. It required him to not contact employees for the purpose of soliciting confidential ScanSource information. And they're certainly entitled to do reasonable discovery to find out if we're in breach of that. But he said to the Dropbox, "We don't know what that's about." Well, clear and convincing isn't standing up here and saying we don't know what that's about. He needs to find out what it's about. Then he can bring an issue of contempt if he thinks -- I mean they've got Mr. Mulligan. They can ask what's this about. You know, they haven't done that. They either know what it's about and they're just throwing up innuendo or they haven't made any effort to find out. But neither is clear and convincing. There has been not any showing that we have done anything after January 27th other than exceed what the court required, which was two things, don't contact employees and to the extent there's any confidential information, turn it over

within 24 hours. Now, they agreed and I've got the emails, Corky Harper agreed on the 31st that that 24 hours, that all takes effect upon entry of the order. That's kind of a moot point I think as I understand it because between 1/27 and 2/8 there's alleged nothing happened. So I'm not trying to say, well, anything in here I can get away with because nothing here happened either. So what happened on the 27th. That's all we were ordered to do. And it wasn't days after. Ms. Harper took the position and provided a proposed order on the 27th that I had to turn everything over to Brad Rustin, who's an attorney at Nelson Mullins within 24 hours of the hearing. I said, I don't think it's 24 hours from the hearing. It would be 24 hours when his order takes effect. But nonetheless, we did it. And here's what we did. On the morning -- and this is their Exhibit J to their original motion.

SPECIAL REFEREE:

I've got it here. Oh, to the original motion.

MR. MURPHY:

The original. It's an email chain.

SPECIAL REFEREE:

I've got it here.

MR. MURPHY:

Do you need it?

MR. FOSTER:

Sure, if you don't mind.

MR. MURPHY:

If you start at the back of this -- and the reason I write this to Brad Rustin is this is what he's proposing. And what we did was late in the 27th and very early in the morning of the 28th Jeff Yelton and I got together and he brought in -- you saw it, Mr. Quattlebaum, when you came to my office. Do you remember those big boxes and boxes of stuff, and then we had all those devices sitting on the conference room table? That stuff was in my office the early morning hours of January 28th. January 28th is the day after the TRO hearing. And I emailed Brad, "Are you in the office? Ms. Harper says someone can be there if you're ready to comply with the court's oral order." And my response is over two pages long. And I detail in this over two pages what we did to try to -- to me the biggest issue at the time was avoiding this issue of what is confidential information. I still don't agree with broad concepts with vague definitions. But we're talking about compliance with an order here, so what do I try to do? Try to avoid that argument. And I

went through and in my first section I told her, here's the hardware that we found. We weren't ordered to disclose that. I said, here's what we found. She had mentioned the day before at the hearing she wanted to do forensic exams. We said at the hearing, we're fine with that. We know what they are. We know what they're going to turn up. And we said that's fine. We said we wanted some protections or confidentiality order, some protections on protocol, but we'll work with you. But they're here, they're in my -- you know, we have it all identified. And the only one I think I didn't have in my office at that time -- well, the photography computer, which was scanned later, and the laptop he was using at the time. We looked at email clients to see, you know, where there might be additional information. We found documents. There's two series of older laptops as you may remember that he had. We found documents on those. We took screen shots of the progression of the file order to show what the documents were and we provided that. We said, here, if you look on his electronic devices, you're going to see these files, ScanSource files on these devices. I said what I don't know how to do is search for deleted temp

files or temp files that don't have a file name that I can search for. So we said, here's what we have found. And I emailed that to her. And that's part of the exhibit. Office contents, we had these boxes. And I said, there's a lot of stuff here. This is the morning. Their motion says we didn't do this for sometime later. It's not true. That morning we had that stuff all available for them to go through. We did find some ScanSource documents, related documents in those boxes. But I didn't play needle in the haystack games with them. I told them in this email, guess what, I've found some ScanSource documents. Where's what they are. We don't need them. We don't want them. You can have them, but I want you to know that they're there and where to look for them. I said, and everything is here too if you want to search for it, do your own determination as to whether there are any ScanSource files. If they are, we're not going to fight about them. He doesn't need them. We went through the cloud Dropbox issue with them and we told them that we believe he's got -- he deleted everything off, but there is like a folder called research which I think is clean. I don't even think that's an issue for purposes of this motion. We did all of that. I

wrote all of that up by 11:15 the next morning and it was all there. Now, nothing happened, nobody came to look at any of this or came to see anything until February 14th, the day that you met with the parties in my conference room and you came over and you saw all that stuff that was sitting there. Then they started going through it. They asked for some of the documents. We gave them every document they asked for. The devices were in the manner that you directed, were handled by myself and Mr. Harvey, brought to your office. We came over together and we gave it to you. There's been full compliance with the TRO. In fact, at that point when you had the devices and everything, there is no way for us to violate the TRO unless we're not turning everything over. Now, let's talk about the evidence of that. Do you have a question?

SPECIAL REFEREE:

I was going to ask about they say you didn't turn everything over.

MR. MURPHY:

I know.

SPECIAL REFEREE:

I agree if they haven't found five other devices.

MR. MURPHY:

They didn't find five.

SPECIAL REFEREE:

Well, they identified five.

MR. MURPHY:

They talk about five, which you've got to --

SPECIAL REFEREE:

They've narrowed it down to one as I hear it.

MR. FOSTER:

Three.

MR. MURPHY:

Here's what they're saying as I understand it. There are five devices that they identify were plugged into his work computer at work. Two of them they don't have any evidence that they were plugged into his home computer. They have no evidence that those ever left the building.

SPECIAL REFEREE:

That's why I said one. So we've got one, as I understand it, that was plugged into his home computer in January.

MR. MURPHY:

In January. No, no. They're saying there were three that were plugged into his home computer in January. Okay. They're saying one is the QBR flash drive.

SPECIAL REFEREE:

Right.

MR. MURPHY:

Okay. Did you see any evidence of a QBR on any flash drive? Did you see any report that said that? No. There isn't one. There is no report of a QBR being on a flash drive. If I'm wrong, I'll yield the floor right now and tell me where it is in the report.

MS. THOMAS:

We don't have the flash drive. That's the whole point.

SPECIAL REFEREE:

Well, I'm going to probably give you time to get back to that.

MR. MURPHY:

They would know if it is. And here's how I can show that. Look at the analysis they did. You heard the assertion about the link file analysis. That's Exhibit G to Mr. Gaida's first affidavit. And what they're showing in there is these were the files that were opened on the computer at a time when the flash drive was plugged in. Their ability to do that analysis shows that they either know that their allegations about the QBR flash drive are false, or

that they can't prove it. And I'll tell you how that works. What they did to try to prove with these five flash drives, they did two analyses. So Let's look at two computers. There's actually more.

MR. FOSTER:

Derrick, I don't mean to interrupt him, but this may be a good time to have Dean on the phone so he can hear this. I think I understand where this is going.

SPECIAL REFEREE:

Well, let's see where it goes.

MR. FOSTER:

Yes, sir.

MR. MURPHY:

Exhibit B to Mr. Gaida's analysis is a report showing what flash drives were plugged in. It's that little list that says these five devices were plugged into the computer. So B is devices plugged in. Exhibit G is the files in use and links created while a device was plugged in. And it's very important to read that sidestep. Their brief is very close to the line, but it doesn't exactly say that Exhibit G shows you what files were on the drives. And if you read the Gaida affidavit, he never says that. He said by showing this analysis

it shows what files were likely on the drive. I'm not sure he can actually say what was on the drive. He was very careful, Mr. Gaida, in his affidavit. He never said this shows that these files were on the drive. But we got the work laptop and we got the Yelton laptop. What they've done is say, all right, we've given you a report on the work laptop, what devices were plugged in. Then we've given you on the work laptop this report showing you what files were in use while certain devices were plugged in and you have to match the times here with the times here. Exhibit G doesn't tell you what flash drive was plugged into the computer at any given time. What they're extrapolating is saying since this device was plugged in, assuming it was the only device and today now we've heard that we think there was more than one device plugged in at one time calling into further doubt the ability to use these two and match them up. But they're saying these documents were open while this device and possibly other devices were connected to the computer. Then we're going to give you this report from the Yelton laptop. And we want you to jump to the conclusion that since some of these match some of these, everything here must be on there later in time.

Now, how could they have closed the loop? They could have given you this report. They never gave you this report. They never told you, well, these devices were plugged into the Yelton laptop later in January, 2012. Here's the files that were used. They have that drive.

MR. FOSTER:

We did not allow a protocol to access it. All we've done is a serial port --

MR. MURPHY:

No. They're entitled to do all the forensics. They're not doing the file search, but they can do the forensics. They can show that this file -- they can do Exhibit G with the Yelton laptop all day long. And, frankly, I don't believe they have it. But let's say they have it. Let's take their word at it. They can't show clear and convincing anything of what was on the flash drive in January of 2012. They haven't even shown in December that the QBR was on any of these drives. Let me show you what they have shown. Let's go to -- because they've left us some clues if we're going to use their analysis. The QBR flash drive, we're going to go to the serial number analysis list. The serial number for that is a long number. When I looked at

this and did a review, I looked at the last three numbers. So let's just call what Mr. Foster is gratuitously referring to as the QBR flash drive, flash drive number 702. Are we in agreement, Bill, that's what you refer to as the QBR flash drive, 702?

MR. FOSTER:

Yes, sir.

MR. MURPHY:

Okay. The only indication we have of what not was, but might have been on that flash drive on the morning of December 12th is Mr. Gaida's Exhibit G. If you look at Exhibit G, you will find that during the pertinent time there was some device plugged in.

MR. FOSTER:

Which affidavit are you looking at now?

MR. MURPHY:

The very first one.

MR. FOSTER:

Okay. We've got it.

SPECIAL REFEREE:

All right.

MR. MURPHY:

Do you see the table there?

SPECIAL REFEREE:

I'm looking at what I assume is Exhibit G, his affidavit.

MR. MURPHY:

Can I check it?

SPECIAL REFEREE:

Please do. That's the same one.

MR. MURPHY:

Yes, it is. Okay. If you look at the top line, the top line is an entry on 12/13. That's not 12/12. And I don't know why that one is out of order. If you study this, you will see the rest of it is chronological more or less. Some of the times are a little out, but they go by dates. The next one, two, three, four, five, six, seven, eight, nine lines are December 12th. They tell you what files were opened on December 12th on the Yelton laptop, work laptop while these devices were plugged in. You don't see QBR on there. But what they're saying is the QBR flash drive was plugged into his laptop at nine o'clock. The only document -- and you'll see there's multiple entries for each document. Now, I don't fully understand this. What I understand from the Gaida affidavit is -- if I'm wrong about this, somebody correct me. And LNK is a link file created to that document when it's open.

It's created on that device.

MR. FOSTER:

You've got to open it.

MR. MURPHY:

Excuse me?

MR. FOSTER:

It wouldn't happen if you just copied it. That's the --

MR. MURPHY:

If the document is opened? I think that's right. I think that's what he said. But the only one that's opened around this time is new distribution model.doc and it's also by title new distribution model for Motorola. That's not a QBR. We've told you what that is in the affidavit. New distribution model was a document that -- we've given it to you. It's the document that Mr. Yelton was using to send to Motorola, to send to Honeywell. He had different versions that he changed to seek employment or some kind of business relationship with them. If you look at the whole thing, you will not find a QBR on there anywhere. So the point here is while Mr. Foster will sit there and say that we have the QBR document, we have the QBR document being plugged into his computer, he hasn't begun to show that any

device plugged into the Yelton laptop in December had the QBR's on it. But that wouldn't even be the issue of contempt. The issue of contempt, he would have to show that -- the other thing about this is they're trying to use it both ways. We acknowledge and agree and I think it's entirely proper that he was deleting files when he found the ScanSource data throughout January. I think that's what he should do. If he came across files and they were work related, the proper thing to do is get rid of them. I don't completely dismiss the notion that in January they haven't shown this -- and that's not incumbent upon me to show. In January he deleted those QBR's he's talking about. There were other QBR documents that he found that he did delete, that show up in the Dropbox deletion files. All of that predates January 27th, all of it. So even if they could establish there was a QBR flash drive that left the premises and if it could establish that the QBR was still on it in his flash drive and it was still on it when he plugged it into his home computer, they can't prove it was still there or hadn't been deleted by January 27th. There can be no contempt. And there hasn't been any showing of lying either. We have always said throughout the

case in the very first filing he used Dropbox, he deleted files. That's not lying. We admitted and discussed why he used KillDisk. That's not lying. But what Judge Hill said on January 27th is if you have any confidential information, you've got 24 hours to turn it over. And I took that very seriously. That is why, Mr. Quattlebaum, on January 28th, that morning, I'm drafting an email not just saying I've got stuff if you want to look at it, I'm saying we found some stuff. I don't want to argue about whether it's confidential. I want all hands on the table. I want to be completely upfront about this. We could go through an analysis of each of these three flash drives and we can talk about them all day long, but it doesn't appear there's any contempt allegation except with respect to 702. What else do we know about 702? The other documents on it was a document called book, something that says meek or mook (phonetic), a PowerPoint, and Motorola Public Relations Resources, which is a zip file. Now, you can google that document and it will take you to a Motorola site where Motorola offers documents on its websites on public relations. So we could go -- and I'm prepared to if there's a question. I can go flash drive by flash drive

matching up the times of those five devices when they were plugged in and when they were disconnected. And I can show you which ones match up to which documents. But here's the thing at the end of the day, what is our standard here? Clear and convincing evidence of a willful violation. What were we ordered to do? Return confidential information. Has Mr. Foster shown you what the content of any document on Exhibit G is? No. He's not established that even the stuff he accessed at work was confidential. He certainly hasn't established we had anything on January 27th, 2012 that's confidential. The only thing he has is our agreement that as far as we know the QBR's do contain confidential information. We assume they haven't disclosed it to anybody outside. We'll agree, QBR's are confidential. Any evidence that we violated the TRO? No. As to any other document, he's not putting any evidence of any confidential information that's been retained in violation of the TRO. He refers to these flash drives interestingly as devices that, quote, potentially contain the company's trade secrets and/or proprietary information. That's their motion to expedite -- for an expedited hearing at page two. Potentially

contain the company's trade secrets. Well, first of all, he hasn't proven that we have any devices. Second of all, even if he proved that we have devices, they merely potentially contain trade secrets. That's not clear and convincing evidence. That's a potential situation. His Motion for Contempt states, "It is impossible to determine whether Yelton deleted or removed files. Impossible to determine." That's their Motion on page six. That's not contempt. That's neither clear, that's neither convincing, and it certainly isn't both. As I mentioned before, the Gaida affidavit only goes so far as to say, with respect to that link file analysis that they found so conclusive, that it's only likely that certain documents were opened while that device, and possibly others now we've learned, were plugged in at the same time. The other thing I'll note about that link file analysis, while their report -- and this isn't necessarily an inconsistency, I think it just supports my reading of it. Their own report, and correct me if I'm wrong, doesn't show any activity at nine o'clock. In other words, it was plugged in, unplugged, plugged into somebody else's, unplugged, plugged into somebody else's, unplugged, plugged back into

mine. When it was plugged back into mine the only document they've got showing is his document that he's emailing out trying to get a job, no QBR. So I don't think they've established that the one that was put in Spearman and Cox's computer had a QBR. Now, when I argued about the Hewlett Packard laptop, Mr. Foster just made the argument that he didn't believe that they were entitled to look at the drive yet and determine -- do a link file analysis on it. That's not true under the Order.

MR. FOSTER:

That's clearly true under the Order. We would have to do a report. We would have to get data off that device that you're supposed to see first.

MR. MURPHY:

Not to do the link file analysis. But is there any restriction on them doing that report on the Cox computer? No. It's their computer. How about Spearman's computer? If they wanted to prove that the QBR is what was being passed around that day, they could have done that analysis on Mr. Spearman's computer. They either did and it doesn't support their case or they're not doing it. Either way they don't have clear and convincing evidence of anything. So when you hear this QBR flash drive,

there is absolutely no foundation for calling any device a QBR flash drive. We don't deny that there was a flash drive passed around, maybe more than one flash drive passed around in the open area at the office when he asked people for a flash drive for the QBR's. We don't deny it. But is there any showing that as of January 27, 2012 we had it and we just gave the proverbial finger to Judge Hill and said we're not going to reveal that? No, because it wouldn't have been a violation of anything. We turned over devices with confidential data on it. And when we had files that were arguably confidential information, we could have just shredded them. Nobody would have ever known. What did we do? We flagged it. It would have been the easiest get-out-of-jail card anybody could have ever had. So why would we do it? Why would we lie? There's no reason to. He's not in the business. He has no reason to use the QBR's. They've had access to their vendors, the Honeywells and the Motorolas. And we're planning on taking their deposition. He never disclosed anything to anybody with confidential information from another company. In fact, I've asked we get into this because he continues to ask for things like injunctions. The

only real fact witness they have on any of this that they've listed so far is Mr. Benbenek. And I asked him in his deposition, he testified -- you may have read this from the last transcript -- that Mr. Benbenek does not believe that Mr. Yelton broke any company rule or violated any policy. Did he violate any provision of his employee contract? He has no reason to believe Mr. Yelton has disclosed any confidential information to ScanSource. No one has told him Mr. Yelton has done that. He's not read anything to believe that Mr. Yelton has done that. No one has told him that Mr. Yelton used any information. He's not read anything to indicate that Mr. Yelton has used any confidential information. He has no reason to believe Mr. Yelton ever attempted to access information he's not entitled to access. He has no reason to believe that Mr. Yelton tried to compete with the company, that he's tried to get anybody to stop doing business with the company, that he's sought to get anything to reduce their business with the company. I asked him, this is on page 176 of his deposition, "Has Jeff Yelton done anything to cause your company damages in any way?" Now, the answer is "I'm not aware of any." Question, "Has Mr. Yelton ever

threatened to do anything against the interest of ScanSource to the best of your knowledge?" Answer, "To the best of my knowledge, no." Question, "Has Jeff Yelton done anything to benefit either himself or another company to the detriment of ScanSource?" Answer, "Not that I know of." "Has anybody told you that they believe he's done anything to benefit himself or a company to the detriment of ScanSource?" "None that I can think of, no," is the answer. So all they can really stand on in terms of this TRO compliance hearing are two things. What evidence they have that we've done anything wrong after January 27th, the answer is nothing. He wants to raise issues about what we did prior to January 27, you know, with respect to KillDisk that's already been heard by the court, with respect to Dropbox which has already been heard by the court, or anything else, that we lied in an affidavit, and we didn't. And we can go through that if you're worried about it. But he can address that to Judge Hill. The issue today is when Judge Hill said you've got 24 hours to turn everything over, did we fail to do so. They can't tell you that something is in our possession January 27th and they can't tell you the contents of anything in January on

those computers. They have the means to back up some of their statements and they've chosen not to do so. So there hasn't been clear and convincing evidence of anything in that regard. I'll address the Dropbox issue. You know, you can argue does it support our side, does it support their side. Well, we can work on disclosing that to them. That's not -- again, they have access to Mr. Mulligan. They can ask him.

SPECIAL REFEREE:

Let me ask this just so I understand where you all are coming from. And I understand your position, but I'm reading it. The TRO requires you to return all confidential information.

MR. MURPHY:

Correct.

SPECIAL REFEREE:

With regard to these five devices, I guess really three, and maybe really one, I have gathered from the affidavits and from your argument that you are saying you all looked for any devices that you could possibly find and you turned them over.

MR. MURPHY:

Absolutely.

SPECIAL REFEREE:

There are no devices that you withheld on the basis of we looked and there's not confidential information and, therefore, we're just not going to turn it over?

MR. MURPHY:

That's correct. In fact, we turned over like one is a BMW flash drive he was almost certain had nothing to do with work. We turned that over anyway. And I think their analysis shows that there's nothing on there. It hasn't been accessed, I think, since 2009. Yeah. We didn't withhold any flash drive or external hard drive -- we turned those over too -- on the grounds that we looked at them and there was nothing there. We disclosed everything we could find.

SPECIAL REFEREE:

Knowing that the hearing was on the 28th and the order was not entered until the 8th, when did you all look for these devices?

MR. MURPHY:

The 27th and the early morning hours of the 28th. I think it was all done by the evening of the 27th.

SPECIAL REFEREE:

You all remind me of when that device went into his home computer.

MR. FOSTER:

January 17th at 9:19.

MR. MURPHY:

And what I proposed -- I mean I'll be honest. I thought this was in the protocol. And when I went to look for it, I must be thinking of another case. What I propose today because we're not trying to say, well, since -- and your question about the TRO being in effect was aimed at this. I am certainly not trying to take the position that after that 24 hours if we find something, we shouldn't be disclosing it. That was never my intention. In fact, an issue has come up that I don't think is an issue or a problem whatsoever. When there was a possible issue, I did notify Mr. Foster of something. I'll continue to do so. So what I have proposed is language not -- it's not an injunction because they haven't begun to show any grounds for an injunction. But my thought, you know, the company has a legitimate interest in saying, well, if our stuff is out there, you know, if there's a flash drive he comes across -- one of these he found in the back of his closet. You know, I was telling -- you know, the other day I was up in my kids' playroom and I found two of my flash drives in the

back of an X-Box. That's apparently how they expand memory. They went in my desk, they took it, stuck it in an X-Box. If we come across something, we're going to turn it over. So what my suggestion was, if we want to have something binding, that's binding on us, there hasn't been any showing of a violation, but we're certainly amenable to a provision of the protocol which says if anything else comes to light, I tell Bill Foster, I make it available to him and we can work it out. If somehow we can't work it out, you retain jurisdiction to rule on it. That will protect any interest the company has to making sure that, you know, to the extent there's something out there, there's a binding obligation on Mr. Yelton to make it known and to disclose it. And I think that's reasonable. Like I said, I thought we had that provision in there, but we didn't. But it's a reasonable one. I can agree to it. I'll address any other issue. I don't want to go into all the allegations of lying. I'm not going to go into Jeanne Aiken. It's already been heard by the court. I'm not going to go into KillDisk since we disclosed KillDisk from the very beginning. It predates even a lawsuit. They can sue us if they want. They can try to tell it to the jury. Mr.

Benbenek says there are no damages, no harm. They can tell it to the jury. If we start that clock at 1/27 there has been no failure to comply on the part of Mr. Yelton.

SPECIAL REFEREE:

Tell me what -- there's a footnote that says he has a business called Wired Fox Technologies, Inc.

MR. MURPHY:

We addressed that in his affidavit. He's selling two-way radios, Wired Fox.

SPECIAL REFEREE:

Where does the name, Wired Fox, come from; do you know?

MR. YELTON:

Just made it up.

SPECIAL REFEREE:

All right.

MR. FOSTER:

Thank you, Your Honor.

SPECIAL REFEREE:

And you've got to stop calling me Your Honor.

MR. FOSTER:

I'm trying to do it.

SPECIAL REFEREE:

I assume that it's just habit, but --

MR. FOSTER:
It is. And I'm taking it seriously. And I apologize. It's like going on a date and calling her ma'am.
SPECIAL REFEREE:
I understand.
MR. FOSTER:
You know, I don't know if -- and it is complicated. Dean gave his affidavits and the technology here is complicated. I will presume Brian doesn't understand and is not trying to be cute and argue between the lines. But the fact of the matter is we're being blamed for not being able to tell you what's on a device that hasn't been produced to us. We're being blamed for not conducting an analysis that's absolutely unequivocally inappropriate for us to do on his HP laptop until we go through the protocol that he won't let us go through because he won't sign up for Ringtail and let us produce the report. That reports shows all the files that are on that home laptop. He's proposing we could go ahead and do that without his knowledge. We can't do that without his knowledge. We can't do that. We can look at the external USB ports and tell it's been hooked up, but we can't go in that and look at

documents or files or produce reports to ourself to show what's on that HP laptop that's subject to the protocol and that's clear. He knows that. So to argue that we somehow could prove it, but we haven't tried is clearly false. You know what else is false is saying that Scott Benbenek is our only fact witness. We've listed no further than 12 different fact witnesses. What Mr. Benbenek actually testified is after he hung up the phone with Mr. Yelton on January 4th and Jeanne Aiken came in with that text, he reported it to his boss, Mr. Baur and that's the last he had to do with it. He wasn't involved in the investigation and what had occurred. He hasn't been involved in this case. He wasn't involved in the decision to characterize the termination as one for cause. He's had no involvement. His testimony actually, if you look at it though. "Subsequent to your discussions with Mr. Yelton on January 4th have you had to deal with any Jeff Yelton related issues since January 4th other than giving an affidavit?" "No, none come to mind." "Did Jeff Yelton say anything to you on January 4th you believe is not true?" "I think so. I have no proof." But he's asking, "I'm not sure why anybody would get a thumb drive for information, keep it for

two days and then not take it with them, or why would they even want it knowing you're not going to be with the company anymore." "Do you believe that's untrue?" "If I had to bet, yes. Like I said, I don't have a videotape of that, but you're asking me and, yes, I think he knows where that thumb drive is or was or whatever." "Anything other than your understanding of human nature?" "I don't know how to base many communications other than that. There is logical steps and that's all I can go on here." Mr. Benbenek testified that he didn't know that he had done anything or said anything that was untrue. He suspected it, but he didn't know. So my point is that could be competitive, what he's doing, but it could be competitive with the same dollars. Well, Mr. Yelton tells you today, Mr. Murphy tells you today that he's not competing. He's submitted to you a letter that he sent to one of our biggest customers, our biggest partners before he left that talks about taking business away from ScanSource on page two, this letter to Honeywell. He wants to help you so that you do not pay distribution for marketing their own brand. That's what we do. That's how we make our money. And that's what he wants to do. He acts as if

customer lists for all of the customers of ScanSource, thousands of them, is somehow not helpful to someone who wants to market themself as those same people that take away marketing dollars from us. That's not competitive? That information is not useful? That's in his -- he wrote a letter even before he's out the door to one of our customers suggesting, hey, I can help you take away business from ScanSource, money from ScanSource. Your Honor, what's missing in this chart that Brian did -- and, you know, Brian is one of the smartest guys I know. I'll call him up and try to bounce stuff off of him when we're not against each other, but I think he knows this. And I think you know it if you look at Dean Gaida's affidavit, paragraph eight, I believe, where he says a link file means -- and Microsoft will tell you this -- means that you open the document, you access the document. So if I copy a QBR onto a thumb drive, there's not going to be any link to it. I just copied it. It's only if I open it on the thumb drive it establishes the link. So the fact that there's no link file analysis for the two subordinate employees that shows the QBR being reviewed on their thumb drive, that just means what they told you is true. And

what he told you he did is true. I had them copy the QBR onto a thumb drive, copied it, not opened it, not reviewed it, not looked at it, not manipulated it, I copied it. So there's no link file. What we've done is we've shown -- if you look at the submissions of Mr. Gaida in his most recent affidavit, you can see the USB serial port analysis for the two subordinate employees for the entire week of December 9th through the 15th. There's only one USB flash drive, only one USB device plugged to either one of those computers that whole week and it's 207, it's the QBR --

MR. MURPHY:

702.

MR. FOSTER:

702. Thank you. I got it backwards. It's 702. That's the only thing hooked to their computers all week. What do we know happened that week by Mr. Yelton's own testimony? He went to them with a thumb drive and said, put the QBR on there. So we know now that 702 is the QBR flash drive because that's the only flash drive hooked to those two employees' computers that week at all. It's also hooked the same day to Mr. Yelton's work computer. And it's also hooked to Mr. Yelton's computer 12

hours after he gets a letter from John Ellsworth saying give us our stuff back. Mr. Yelton is hooking that same flash drive into the back of his home computer at 9:19 p.m. At 9:03 a.m. he sues us. Eight days later, seven days later he signs an affidavit conclusively testifying to the fact that the QBR flash drive, I left that in my office. And if you say I took it with me, you're a liar. There's no equivocation. There's no I gave everything I knew I had. I don't have it. I left it there. That's what he said in his affidavit and he hasn't changed it since. So you go from an absolute certainty to concrete evidence that that certainty is false to I don't know, I did everything -- I've given you everything I know I have. Look at the supplemental affidavit and look at how carefully he words things. I don't know anything about two of the USB flash devices that were hooked to my home computer. Well, there were three hooked to his home computer. Five flash devices total hooked to his work computer the last week of his employment screams of proprietary information is being reviewed on them. That's the link file analysis. Dean Gaida is being careful because it's a sworn affidavit. I can't say for sure what's on those flash drives.

You know why? Because I don't have them. They're missing. So I can't testify under oath what's on them. I can tell you what was being looked at on them during that time period in question. And so I can say with a fairly good bit of certainty what was on them, but I can't tell you exactly what was on them. So we know those five were hooked to Mr. Yelton's work computer. Three of those same devices have their fingerprints on his home computer as being opened during the time frame in question, January 17th, 2012, more than a month after he left ScanSource. January 26th he testifies I don't have that device. It's not in my possession. I don't know what else we could do. I don't know how much more proof we could provide that Mr. Yelton has not complied with the TRO. Mr. Yelton or Mr. Murphy doesn't contest that the TRO remains in effect. He doesn't contest that it requires him to turn over everything. We've shown you that the fountainhead of this case, the flash drive that Mr. Yelton obtained the QBR's which everyone in this room agrees are highly proprietary and confidential, that flash drive has been identified and that flash drive was hooked to the back of his computer less than 12 hours before this lawsuit began. Where is it?

Without the intervention of the court at this point we're going to continue to have to rely on fair play from Mr. Yelton when we don't think we've seen it thus far. Our proprietary information and that of our partners, our reputation as a publicly-traded company is at risk, is at stake here and we need the intervention. We need the relief requested in our petition in order to safeguard that. I don't think we could do more to show what's at stake. I don't think we could do more to show that we've acted appropriately. We've provided the analysis at every turn that's necessary to prove by clear and compelling evidence that Mr. Yelton has in contempt of the TRO and we would ask for your assistance.

SPECIAL REFEREE:

Do you all know -- well, never mind. Forget that. All right. Thank you. I'm obviously not going to rule right here. The Motion for Preliminary Injunction, I'd like to deal with it. Not today. We agreed we wouldn't do that today. I don't know if that's something -- I've gathered that you all perhaps want to have further submissions on that or I mean I'm asking you all.

MR. MURPHY:

I think that would be helpful because I'm not

exactly sure what is being requested in terms of preliminary injunctive relief, what they're seeking. We don't have the devices. We don't -- I mean the issue of contacting employees to solicit confidential information, that's not an issue. We don't have the devices. He's not in the business. He's --

SPECIAL REFEREE:

Well, I don't want to argue it right here. They've asked for it. We need to address it.

MR. MURPHY:

I would ask for further clarification of what's been asked for.

MR. FOSTER:

I'll be happy to do that.

SPECIAL REFEREE:

Why don't we do that. What amount of time would you all need to get that to me? And I want to rule on it. I'll rule on it as quickly as you all want to, unless you all are trying to expand it here. You know, I've always been of the opinion there's a Retraining Order in place that at least with regard to the initial Preliminary Injunction just carries forth what you all are asking for.

MR. MURPHY:

Is there something more you want?
MR. FOSTER:
Well, I mean the separate issue of relief requested today, we'd hoped to get that resolved before --
SPECIAL REFEREE:
I understand that's --
MR. FOSTER:
But in terms of the Preliminary Injunction, I agree. I think the only -- it's the same discussion we had months ago about, you know, leaving the provisions of the TRO that continued in place and adding a use restriction. That's the only additional relief we would ask for. We think that's within the scope of the initial request which includes other and further --
SPECIAL REFEREE:
Right. To continue it through the time of trial?
MR. FOSTER:
Correct.
SPECIAL REFEREE:
So why don't you all --
MR. FOSTER:
Come up with a briefing schedule?
SPECIAL REFEREE:
Right. Well, I don't think we need a -- you tell us

what you all are seeking, and then let me know if you all need to have a hearing. And then you can submit -- and he may see what you've proposed. And I see that as completely separate from what we're dealing with here.

MR. FOSTER:

Yes, sir.

SPECIAL REFEREE:

Brian, I don't think this has happened a lot so far, but he might look at it and just say, okay, I agree, just enter that.

MR. MURPHY:

I mean I'll tell you my position on it.

SPECIAL REFEREE:

You can do that next time.

MR. MURPHY:

We'll do it next time then.

SPECIAL REFEREE:

Okay. Thank you.

(Concluded at 2:52 p.m.)

CERTIFICATE

I, the undersigned, Deborah P. Gaddy, Notary Public in and for the State of South Carolina, do hereby certify that the foregoing hearing was taken on August 31, 2012;

That the foregoing is an accurate transcription of the hearing;

That all exhibits entered herein are attached hereto (if requested by counsel) and made a part of this hereof.

I further certify that I am neither counsel nor solicitor to any of the parties in said suit, nor interested in the event of the cause.

In witness whereof, I have hereunto set my hand and seal this 5th day of September, 2012.

Deborah P. Gaddy

Deborah P. Gaddy, CVR
Notary Public for South Carolina
My Commission Expires: 8/15/22

State of South Carolina	)	**IN THE COURT OF COMMON PLEAS**
	)	
County of Greenville	)	**2012-CP-23-0314**
	)	
Jeff Yelton,	)	
	)	
Plaintiff,	)	
v.	)	**Plaintiff's Second Affidavit in Opposition to Defendant's Motion**
	)	**Injunctive Relief**
ScanSource, Inc.,	)	
	)	
Defendant.	)	
	)	

Plaintiff is an adult over the age of 18 years and the following are true and correct facts personally known to Plaintiff and are within his personal knowledge:

1. As I stated in my affidavit of August 27, 2012 filed in conjunction with Defendant's Motion for Contempt, my best recollection of the bottom 1000 catalog recipient documents contains a list of VARS. It does not contain product information or anything that would relate to end users.
2. The reference to "low value customers" in the New Distribution Model document is to end users of point-of-sale and bar coding products – not distributors or VARS. Paragraph 1, which contains the phrase "low value customers," addresses "broad product availability" and "utilizing direct marketers." An interpretation that "customers" means VARS makes no sense because VARS would not utilize direct marketers in almost every case because that would be a two-step distribution, which is not allowed by most vendors. End users purchase from direct marketers.

3. The product we were looking to assist in marketing with Honeywell is a flat-bed bar code scanner, similar to the one you see in the checkout line of a grocery store. I am only aware of two manufacturers of these scanners prior to Honeywell introducing its product. They are NCR and Datalogic.

4. The QBR's for Intermec, Honeywell, and Motorola would contain no information that one could use to compete with NCR or Datalogic with respect to flat-bed bar code scanners.

5. The statement in my New Distribution Model about making statements with trepidation relates to proposing new methods for the industry after being in the point of sale and bar coding industry for over thirty years.

6. As the emails produced by Penn Williams show, we intended to create a database for the industry by purchasing contact information from a third-party vendor (Jim Roddy). (See attached) I bought access to a database of retail end users from Chain Store Guide. I also have corresponded with SK&A about end user data related to healthcare. Attached also are documents showing these transactions.

Respectfully submitted this 21st day of September, 2012.

Jeff Yelton

Sworn to and subscribed before me
this 21st day of September, 2012

Notary Public - South Carolina
my commission expires 9/11/14

Gmail

Fwd: Question

Jeff Yelton <jeff@varsguide.com> Fri, Jan 6, 2012 at 11:04 AM
To: Penn Williams <penn.p.williams@gmail.com>

FYI. See attached information from Jim Roddy.

I have also purchased the mailing list of contacts at all Grocery stores in the US. I hope to use this with Honeywell on a bioptic scanner campagin. It includes all executives, email addresses, mailing addresses, phone numbers and detailed information about the technology each store uses.

I'm waiting for the same information on US Hospitals.

Jim's information is on VAR's the other two are end users.

Jeff

---------- Forwarded message ----------
From: **Jeff Yelton** <jeff@varsguide.com>
Date: Fri, Jan 6, 2012 at 10:59 AM
Subject: Re: Question
To: Jim Roddy <jim.roddy@jamesonpublishing.com>

Thank you. This is exactly what I was looking for.

Talk to you soon.

Jeff

On Fri, Jan 6, 2012 at 10:45 AM, Jim Roddy <jim.roddy@jamesonpublishing.com> wrote:

Hi Jeff:

Good to hear from you. Yes, we do sell access to our subscribers. Here are the basics of that. I'd be happy to talk with you to provide more details and answer questions you might have:

- We do not sell names directly to another company or individual per our privacy policy with our subscribers. But we do rent names through a third party called ePost.
- As far as selecting who you'd want on the list, we do break down subscribers into very detailed categories. For every detail you select for a list rental, it costs and extra $15 (which is worth it). For most of our names we can break them down by primary business activity, title, applications, and vertical markets. Click on this BSM subscription form link that will show you how detailed the information is that we capture. http://sub.bsminfo.com/sub.cfm

- The cost for a mailing list is $250 per thousand. Of course you'd then have to pay to produce the materials plus postage.

- The cost for renting an email list is $400 per thousand. You would send your materials you want emailed to ePost and they would send it to the list.

And I'll say this is a friend (not as someone trying to sell you something): If you want detailed VAR lists, our are the best in the industry. They aren't perfect because there's always some turnover at companies and response to list rental is almost always under 10%, but our lists are cleaner than anyone else in the channel. We've invested millions of dollars and lots of brain power maintaining/improving our circulation. There are a lot of crappy lists out there and I'd feel bad if you got stuck with one.

Is that the info you were looking for? Again I'd be happy to provide more details and, if you're interested, help you move forward on this.

Thanks,

Jim

BSM is proud to win back-to-back [illegible] from the RSPA membership. Thanks for your support!

Jim Roddy
President & GM, Jameson Publishing & Business Solutions Magazine
RSPA Board Member & Chairperson of the RSPA Vendor Working Group

(814) 897-9000, ext. 201 Mobile (814) 450-9748

* Follow me on Twitter: www.twitter.com/Jim_Roddy

From: Jeff Yelton [mailto:jeff@varsguide.com]
Sent: Thursday, January 05, 2012 4:37 PM
To: Jim Roddy
Subject: Question

Do you sell access to your subscribers? If so, how do you charge for it? Do you have detailed information on each contact? (ie industry focus, technology focus. etc)

Brian Murphy

From: Varsguide <jeff@varsguide.com>
Sent: Friday, September 21, 2012 1:24 PM
To: brian.murphy@mindspring.com
Subject: Fwd: Chain Store Guide Receipt

Sent from my iPhone

Begin forwarded message:

From: "webmaster@chainstoreguide.com" <webmaster@chainstoreguide.com>
Date: January 5, 2012, 3:16:02 PM EST
To: "jeff@varsguide.com" <jeff@varsguide.com>
Subject: Chain Store Guide Receipt

Chain Store Guide Receipt

*** PLEASE PRINT RECEIPT OUT AND RETAIN IT FOR FUTURE REFERENCE ***

Order Number	101204
Customer ID	145593
Order Date	1/5/2012 3:14:37 PM

Bill To:
Jeff Yelton
VarsGuide
716 Brixton Cirlce
Simpsonville, SC 29681
United States
864-270-7462
jeff@varsguide.com

Order Date:	1/5/2012 3:14:37 PM	Locale/Currency:	en-US / USD
Payment Method:	CREDITCARD	Name On Card:	Jeff Yelton
Card Type:	VISA	Card Number:	****3460

SKU:	Product	Quantity	Price	Ext. Price
EPGP	Supermarket, Grocery & Convenience Store Chains-Plus No Shipping Required	1	$1,475.00	$1,475.00

Order Notes:
None

SubTotal:	$1,475.00
Shipping:	$0.00
Tax:	$0.00

Total: $1,475.00

Brian Murphy

From: Varsguide <jeff@varsguide.com>
Sent: Friday, September 21, 2012 1:25 PM
To: brian.murphy@mindspring.com
Subject: Fwd: Good Morning Jeff....

Sent from my iPhone

Begin forwarded message:

> **From:** DE FER Christopher <Chris.DeFer@cegedim.com>
> **Date:** January 5, 2012, 6:33:56 PM EST
> **To:** Jeff Yelton <jeff@varsguide.com>
> **Subject: RE: Good Morning Jeff....**
>
> No problem Jeff I will be working on it today did you want all the USA by the way?
>
> **Chris J. De Fer**
> Account Manager
> Tel: (800) 752-5478 ext.1229 Fax: (949) 271-5715
> Christopher.DeFer@cegedim.com
> www.skainfo.com
>
> **SK&A's online search tool gives you instant access to 2 million healthcare contacts**
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> A Cegedim Company
>
> **Stay Connected! Find SK&A on social networks.**
>
> **Subscribe to our blog and get updates by email or mobile alert.**

From: Jeff Yelton [mailto:jeff@varsguide.com]
Sent: Thursday, January 05, 2012 12:03 PM
To: DE FER Christopher
Subject: Re: Good Morning Jeff....

Sorry for the late reply but I was traveling.

I'm looking for a the following fields of data for the US Healthcare Industry:

Hospital Name
IT manager or equivilent position

email address
phone number
mailing address
zip code

Thanks,
Jeff

On Tue, Jan 3, 2012 at 12:26 PM, DE FER Christopher <Chris.DeFer@cegedim.com> wrote:

Hey Jeff, Happy New Year. Just got back in from vacation hope yours was great I was just wondering if you could reiterate what your needs were? Emails, locations, phone numbers...etc, I should be able to pull the counts today and have a price for you. Also what was the specific geography you were looking for? Thank you kindly sir,

Chris J. De Fer

Account Manager

Tel: (800) 752-5478 ext.1229 Fax: (949) 271-5715

Christopher.DeFer@cegedim.com

www.skainfo.com

SK&A's online search tool gives you instant access to 2 million healthcare contacts

Start your 14-day trial here

Stay Connected! Find SK&A on social networks.

Subscribe to our blog and get updates by email or mobile alert.

From: Jeff [mailto:jeff@varsguide.com]
Sent: Friday, December 30, 2011 5:07 AM

To: DE FER Christopher
Subject: Re: Hello Jeff....

Thank you.

Sent from my iPad

On Dec 29, 2011, at 6:43 PM, DE FER Christopher <Chris.DeFer@cegedim.com> wrote:

> I noticed our count came to roughly around 7100 I'm still working on it however. I will be back in the office and give you a better count then and a follow up call. Hope you have a great holiday and speak to you soon Jeff.
>
> -
>
> **Chris J. De Fer**
>
> Account Manager
>
> Tel: (800) 752-5478 ext.1229 Fax: (949) 271-5715
>
> Christopher.DeFer@cegedim.com
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> **SK&A's online search tool gives you instant access to 2 million healthcare contacts**
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Jeff Yelton
President
VarsGuide Publications
864-270-7462
Email: Jeff@Varsguide.com
URL: www.VarsGuide.com

-

State of South Carolina	) **IN THE COURT OF COMMON PLEAS**
County of Greenville	) **2012-CP-23-0314**
Jeff Yelton,	)
Plaintiff,	) **Plaintiff's Response to Defendant's**
v.	) **Submission Regarding Preliminary**
ScanSource, Inc.,	) **Injunctive Relief Dated 9/17/12**
Defendant.	)

FILED CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2012 SEP 24 P 4:02

I. Introduction

On September 17, 2012, Defendant submitted a five-page letter in support of its request for injunctive relief, and Plaintiff filed his Opposition as well. On September 18, 2012, the Special Referee provided the parties until September 24 to file responses. Plaintiff now responds to Defendant's September 17, 2012 submission.

II. Argument

A. Defendant's Submission Raises Issues Beyond The Scope of the Pending Request

Defendant's submission simply further shows that Defendant's nebulous requests for injunctive relief continue to pose a moving target in this case. Defendant earlier limited the issues (see Pl. Opp. at 4), only to then expand them again with its submission.

As with its 63-page powerpoint presentation on contempt, which Defendant submits again,[1] Defendant simply reiterates all of its allegations – many or most of which lack any

[1] In the interest of not burdening this Record any further, Plaintiff incorporates herein the materials submitted in opposition to Defendant's Motion for Contempt, as well as the arguments regarding that Motion that are part of the Record.

evidentiary support – even when those allegations have nothing to do with whether injunctive relief is proper in September, 2012. This is simply a transparent effort to prejudice the Special Referee by discussing things that have nothing to do with the situation at hand.

Defendant even goes so far as to reiterate its arguments that Plaintiff is in contempt, even though it has never proven any such thing. The question here is not, for example, whether Defendant can later complain to the jury about actions Plaintiff took in December 2011 that pose no threat of imminent harm today. Rather, the question here is whether Defendant has met its present burden of showing: (1) it would suffer irreparable harm if the injunction is not granted; (2) it will likely succeed on the merits of the litigation; and (3) there is an inadequate remedy at law. Scratch Golf Co. v. Dunes W. Residential Golf Properties, Inc., 361 S.C. 117, 121, 603 S.E.2d 905, 907-08 (2004) (citations omitted).

B. Defendant's Additional Requests Are Meritless

1. Defendant's Effort To Keep Plaintiff Out of The Barcoding POS Industry Are Improper

In Defendant's second request, it seeks to bar Plaintiff from obtaining information from vendors or customers. Defendant has made no showing that Plaintiff ever sought to obtain trade secrets belonging to ScanSource from a customer or vendor. Nonetheless, the request itself highlights a more fundamental flaw in Defendant's requests: If a vendor or customer provides its information to Plaintiff, that information cannot be Defendant's trade secret.

So what is this request really about? At this point, one might ask him or herself why Defendant expends so much money, time, and judicial resources when Plaintiff has not

event threatened to do it harm. The actual motive here is to keep Plaintiff out of the industry and to effectively obtain through the Court a restriction against working in the industry that Defendant failed to negotiate.

Attached to Defendant's affidavit of Scott Benbenek is an email exchange between Benbenek and Plaintiff in which Benbenek conditioned payment of deferred compensation on Plaintiff's agreement to not work for certain companies, including Motorola. Plaintiff would not agree. Benbenek testified candidly that ScanSource does not want Plaintiff working for vendors because Plaintiff knows how Defendant operates. (Benbenek Dep. at 83-85 (Exh. 1)).[2]

It is now clear that Defendant has been actively contacting individuals in the industry in an effort to impugn Plaintiff (which is what this case really is about). Defendant's CEO, Mike Baur, sent copies of Defendant's TRO filings (including the disclosed trade secrets) and even encouraged recipients to share with their management teams. (Exh. 2; see also Yelton9026-27 and 9153 (submitted en camera because Defendant has stamped them "confidential"). Baur went so far as to tell Motorola – a company Plaintiff would not agree to not work for – that he wanted to talk to them if they had any plans to work with Plaintiff, which, of course, Defendant knew Plaintiff wanted to do. (Exh. 2 at Yelton9230). There can be no doubt what Baur was telling those in the industry. In an internal email, a manager informed Mr. Benbenek that Baur spoke to Zebra – a company with which Plaintiff has every right to work. The manager informed Benbenek that she instructed her

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[2] Plaintiff redacts part of the Benbenek deposition because there is a disputed issue before the Court regarding scope as to information to be deemed "confidential" under the terms of the Amended Consent Confidentiality Order. Plaintiff does not agree that the information is confidential.

employee that, if the vendor asked what to do, the employee should tell Zebra to do what Baur instructed: "[I]gnore him for now." (Exh. 3; see also Benbenek Dep. at 210-11 (Exh. 1)). Benbenek's response is equally revealing as to what Baur was telling those in the industry: "It is kind of weird because Moto[rola] and Honeywell both said they were going to try something with Jeff even after Mike talked to them." (Exh. 3).

Defendant's efforts have been so spiteful and petty that it even chastised a reporter in the industry when he had the audacity to write a piece on Jeff Yelton ("What I've Learned From Jeff Yelton") that says nothing disparaging about ScanSource. (Exh. 4). Yet, Defendant protested in such a drastic manner that the author felt compelled to apologize to Baur personally. (Exh. 5).

Defendant's and Mr. Baur's personal liability for these actions is not before the Court at this time. Plaintiff raises this now to show the impropriety of and motive behind Defendant's efforts to obtain an injunction that would do nothing more than create a future stream of contempt motions for Plaintiff exercising his right to work in the industry.

2. Defendant's Third Request Is Unsupported By Any Showing That Plaintiff Has Anything Defendant Has Not Allowed Him to Have.

Defendant's request for the return of information fails because Defendant has completely failed to make any showing that Plaintiff possesses any information not already made available through the Consent Protocol. Defendant's request also is improper because Defendant is well aware that it permitted Plaintiff to retain information. (See Exh. 6).

3. Defendant's Fifth Request Fails to Advise as to What is Being Sought and Any Such Relief Would Violate Due Process.

Defendant's catch-all request for relief fails to advise as to what specifically is being sought. The purpose of the regimented injunction process is to provide due process and to permit one who is the subject of a request for injunctive relief to rebut any argument. (See infra note 5). Without notice of what is even being requested, any such relief would be improper.

C. Defendant's Efforts To Distance Itself From Mr. Benbenek's Testimony Simply Highlights its Inability to Meet its Heavy Burden Here.

If even a scintilla of Defendant's hysterics regarding "urgen[cy]" had merit, one would think that the man running the company would be at least vaguely aware of any actual or threatened harm. However, Defendant's response essentially concedes that Mr. Benbenek is not aware of any harm or threatened harm, and that he has no actual knowledge of any wrongdoing.

Defendant seeks to explain away Benbenek's testimony in footnote to a comment that raises an interesting point. After stating in a conclusory fashion that "evidence has grown" (without specifying what or how), Defendant posits: "Plaintiff can produce no evidence or argument to suggest the requested relief is not appropriate." (Def. Submission at 2). While that statement is ludicrous on its face, it ignores the fact that Plaintiff is not the one with the heavy burden here. The fact that Plaintiff is the only party that submitted actual supporting evidence does not mean that he bore any burden to do so. The question to Defendant would be: If Mr. Benbenek is not somehow the witness with the knowledge of the impending doom, then who is? Defendant never identified any such witness in

discovery, and should be foreclosed from offering any more argument or evidence in support of its eight-month-old Motion at this late juncture.

D. Defendant Must Know That its Insinuations About Plaintiff's "New Distribution Model" Are False.

1. The "Bottom 1000 List" and "Low Value Customers Allegation

Defendant notes that, in Defendant's discussion of new models for the industry, he makes reference to "low value customers." Defendant then improperly attempts to juxtapose that term with a document that Plaintiff possessed at one time called the "Bottom 1000 catalog recipients." (Def. Submission at 4). Defendant seeks to have the Special Referee speculate that the "low value customers" referred to in the e-mail "likely correlates to the same customers identified in the 'Bottom 1000 Catalog Recipients.xls." (Id.) Putting aside the fact that injunctive relief cannot be based on speculation, the documents are referring to two different things. "Customers" as used in the e-mail can only be fairly read as to refer to end users, as Plaintiff explains in some detail. (Pl. Second Aff. ¶ 2 (Exh. 7)). Plaintiff already has explained that his recollection of the catalog recipients document is that it contained a list of VARS – a completely different type of organization. (Id. ¶ 1). Since Plaintiff made this statement in conjunction with the Motion for Contempt, Defendant has yet to show that it is incorrect. In any event, a request for injunctive relief must be based on more than speculation in a lawyer's argument. Defendant must carry a significant burden of showing real facts. It simply has not done so.

2. The Trepdiation Comment

Defendant again strains credulity by inferring some wrongdoing by Plaintiff's statement in the New Model e-mail. In the document – which Plaintiff disclosed in

conjunction with the contempt Motion – Plaintiff discusses his vision for the future of the industry. In conclusion, he states: "I'm sure this has left you with many questions and I'm sure you can't believe I'm taking this position. I can assure you I wrote this with a lot of trepidation but I thought you should know my thoughts."

Defendant asserts that this shows "Yelton knew he was treading on thin ice by reaching out like this to ScanSource vendors," and that the aforementioned quote is an "admi[ssion]." (Def. Submission at 4).[3] The only fair reading of the e-mail is that Plaintiff – a veteran of the industry – is proposing new ways of doing business that are different from what he had and everyone else in the industry had done in the past. (Pl. Second Aff. ¶ 5 (Exh. 7). Defendant's grassy-knoll approach to this Motion simply is unavailing and it highlights the absence of any real facts upon which injunction findings could be based.

E. Defendant's Representations Regarding Plaintiff's Work With Penn Williams Are Intentionally Misleading and Unsupported By Any Evidence.

Defendant suggests, without explanation, that Plaintiff's work with Penn Williams is somehow evidence of something (although it is not clear what). The marketing activity Plaintiff sought to do for Honeywell with respect to its scanner is precisely the kind of activity that Plaintiff has said from the beginning was the focus of VarsGuide.

Defendant contends that the emails prove that "Plaintiff will rely on resources he took from ScanSource" (Def. Submission at 4) when Defendant knows full well that the emails it obtained from Penn Williams prove the opposite. Rather than using any database

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[3] Apparently, Defendant urges that the Special Referree believe that Plaintiff meant: "You can't believe I am taking this position *because I am stealing trade secrets from ScanSource.*" and that "I can assure you I wrote this with a lot of trepidation *because it is all based on trade secrets stolen from ScanSource.*" The email, of course, does not mention any ScanSource confidential information.

from ScanSource, Plaintiff was seeking to purchase contact lists from a third-party vendor. (Pl. Second Aff. ¶ 6 & attachment)). Of course, notwithstanding its duty of candor, Defendant fails to mention this.[4]

The issue Defendant raises, without explaining, serves an important purpose. While Defendant wants the Special Referee to simply jump to conclusions, logic and facts establish a serious disconnect between Defendant's claim of misappropriation and the reality of what Plaintiff has been doing. For example, Defendant continues to accuse Plaintiff of stealing and retaining QBR's for Honeywell, Motorola, and Intermec. The Honeywell product Plaintiff was seeking to assist in marketing with Honeywell is a flat-bed bar code scanner, similar to the one you see in the checkout line of a grocery store. There were only two manufacturers of these scanners prior to Honeywell introducing its product of which Plaintiff is aware: NCR and Datalogic. (Pl. Second Aff. ¶ 3 (Exh. 7)). QBR's for Intermec, Honeywell, and Motorola would contain no information that one could use to compete with NCR or Datalogic with respect to flat-bed bar code scanners. (Id. ¶ 4).

F. Plaintiff Has Every Right To Work in the POS Barcoding Industry And Defendant's Suggestion That He Has "Attempted To" Are Disingenuous.

In perhaps its most bizarre assertion, Defendant claims to be alarmed by the fact that Plaintiff has attempted to work in the industry – just as he said he would. Defendant's efforts to disparage Plaintiff in the industry may have been successful because Plaintiff was not successful in obtaining work with Honeywell. Plaintiff truthfully stated in his prior affidavit that he has not done work in the industry, which, for some reason, led Defendant

---

[4] In fact, Plaintiff was utilizing other vendors to create the customer lists necessary to market the product (which would not be names on the Bottom 1000 list). (Id.)

to argue that, if he had, then "his August 30 affidavit would be false." (Def. Submission at 4). The point being, apparently, that Plaintiff's statement is not false.

Defendant then accuses Plaintiff of "toeing as closely as he dares to the line, if not going over it without our knowledge." (Id.) Defendant's rhetoric notwithstanding, even this argument admits that Defendant has no evidence that Plaintiff has done anything actionable, and certainly not enjoinable.

While Defendant may celebrate its apparent success in disparaging Plaintiff in the industry and frustrating his ability to work, Plaintiff has every right to seek work in this industry. Defendant's efforts to seek injunctive relief to keep him out are grossly improper. The only legitimate interest Defendant would have is that Plaintiff not use its trade secrets. Defendant's baseless arguments simply illustrate that it has failed to make the showing required under Scratch Golf for any such relief.

G. Defendant's Continued Refusal To Specify The Information at Issue Renders Inappropriate Further Injunctive Relief

As noted in Plaintiff's Opposition, Defendant has refused to specify the information at issue (other than with respect to three QBR's). That leaves the Special Referee with no basis to specify information at issue even if injunctive relief was proper. Rule 65 precludes the approach advocated here, i.e. that the Special Referee simply refer to other documents. Rule 65(d) mandates that any injunction "shall be specific in terms" and that it "shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained." S.C. R. Civ. P. 65(d) (emphasis added). "This is more than a technical requirement; its purpose is to give notice of the acts

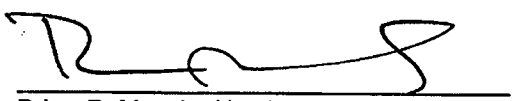
prohibited." Thomas v. Brock, 810 F.2d 448, 450 (4th Cir. 1987).[5] These mandates "must be followed in every instance." CPC Int'l, Inc. v. Skippy Inc., 214 F.3d 456, 459 (4th Cir. 2000) (emphasis added); see Plaintiff's Opposition at 10-12. Because the approach Defendant advocates would violate these mandates, its requested relief must be rejected.

III. Conclusion

For the reasons set forth in Plaintiff's initial opposition to the Motion for a Temporary Restraining Order, the reasons set forth in Plaintiff's opposition to Defendant's Motion for Contempt, the reasons set forth in Plaintiff's Opposition to Defendant's request for preliminary injunctive relief, as well as those set forth above, Defendant's Motion should be denied.

Respectfully submitted this 24th day of September, 2012.

For the Plaintiff:



Brian P. Murphy No. 6770

Brian Murphy Law Firm, PC
514 Pettigru Street
Greenville, SC 29601
(864) 370-9400
(864) 241-1386 (fax)

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[5] This specificity requirement is a mandatory aspect of due process. United States v. McAndrew, 480 F. Supp. 1189, 1192 (E.D. Va. 1979) (citations omitted). "'The Rule was designed to prevent uncertainty and confusion on the part of those faced with injunctive orders, and to avoid the possible founding of a contempt citation on a decree too vague to be understood.'" CPC Int'l, Inc. v. Skippy Inc., 214 F.3d 456, 459 (4th Cir. 2000) (quoting Schmidt v. Lessard, 414 U.S. 473, 476 (1974)). "The drafting standard established by Rule 65(d) is that an ordinary person reading the court's order should be able to ascertain from the document itself exactly what conduct is proscribed." Fed. Prac. & Proc. Civ., § 2955 Form and Scope of Injunctions or Restraining Orders, 11A Fed. Prac. & Proc. Civ. § 2955 (2d ed.).

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
CASE NO. 2012-CP-23-0314

Jeff Yelton,
Plaintiff,
vs.
ScanSource, Inc.,
Defendant.

DEPOSITION OF SCOTT BENBENEK

DATE TAKEN:	August 8, 2012
TIME BEGAN:	9:24 a.m.
TIME ENDED:	6:33 p.m.
LOCATION:	Brian Murphy Law Firm, PC 514 Pettigru Street Greenville, South Carolina
REPORTED BY:	Traci L. Barr, RPR GALLAGHER COURT REPORTING 864-234-5744

APPEARANCES:

BRIAN MURPHY, ESQUIRE
Brian Murphy Law Firm, PC
514 Pettigru Street
Greenville, SC 29601
.....On behalf of the Plaintiff

WILLIAM H. FOSTER, III, ESQUIRE
Nelson, Mullins, Riley & Scarborough, LLP
Suite 900
104 South Main Street
Greenville, SC 29603
.....On behalf of the Defendant

ALSO ATTENDING: Jeff Yelton, John Ellsworth

STIPULATIONS: The within deposition was taken pursuant to the South Carolina Rules of Civil Procedure.
NON-WAIVER: Examination and reading of the deposition are not hereby waived by the witness and the parties.

subsequent to December 31st was his bonus -- I mean, his variable pay that was earned for the period October through December. I mean, I approved that to be paid.

Q. What were you offering Jeff to do with respect to the company contributions in exchange for some kind of non-compete related to vendors?

A. Well, keep in mind this was the Friday when we were first having the conversation. This was no guarantee but an idea, because it was $90,000 or something like that from my recollection. I said, the company would need something in exchange but I might could sell that or I might could go back to the company and get that done, and I said, one idea would be maybe a few of our key largest vendors to say that you wouldn't work there. And he said, well, I probably won't be interested in that. I said, okay, well, tell me what is important to you, come back on Monday and tell me what those are. So we didn't -- other than just to mention that that was a possibility.

Then he came back on Monday -- we can get into that in specific questions later, but he -- we talked again about that, and he said he wasn't

interested in that, is the short story.
Q. Why did you not want Jeff going to work for certain vendors?
A. Well, he knows a lot about the way we work and he knows -- he had people all the time that vendors would try to hire, and he knows when they would ask is it okay if we talk to somebody on his staff that he would say, well, we're not going to allow that person to work with ScanSource, so if you think you're getting a benefit by hiring somebody away from us, because we have an internal policy that says we don't hire people from vendors or from customers. So we are faced quite often with people maybe a vendor is going to pay more money and people leave to go to work for our vendors and sometimes our customers, and Jeff's had those conversations with vendors himself that, don't think it's going to be an advantage to you, in fact we won't allow that person to work on our account.
As a distributor, we don't make anything. We don't have any patents. We don't have any -- our only secret sauce, so to speak, are the behind-the-scenes services that we do, the way

we do them, and our customer lists and stuff like that. Through the years he learned a lot about ScanSource, so I wouldn't want him going to work for one of our major vendors to either help another distributor, not purposefully or not intentionally. So in exchange for money, that was an idea.

Q. What vendors did you not want Jeff to go to work for?

A. Well, the three largest in our company, two of which didn't -- he wasn't even associated with.

[redacted]

back and said, I'd like to have my vested money, one of the things I thought over the weekend I'd like to have my vested money. When I came back and said, okay, in order to get your vested money you'd have to agree not to work for this, this, or this, he chose to not do that.

Q. And when you were speaking of vested money --

A. I mean, unvested money, the company contribution. I said that wrong. Unvested money.

From:	Mike Baur
To:	Mark Moon
Sent:	1/24/2012 3:00:52 PM
Subject:	Fwd: ScanSource TRO Filing Against Jeff Yelton
Attachments:	ATT00001.htm; Yelton TRO, 1-24-12.pdf

Mark,

I am sending you a copy of this filing we have made today in response to Jeff Yelton filing a lawsuit against us last week.

I think you would want to be aware of these circumstances.

As this is a public filing I am Ok with your sharing with your management team.

Feel free to call me to discuss.

Regards,

Mike

Begin forwarded message:

From: John Ellsworth <john.ellsworth@scansource.com>
Date: January 24, 2012 2:09:20 PM EST
To: Mike Baur <mike.baur@scansource.com>
Subject: ScanSource TRO Filing Against Jeff Yelton

From: Mike Baur
To: Mark Moon (mark.moon@motorola.com)
Sent: 12/16/2011 5:35:42 PM
Subject: Yelton

Hey Mark,

How are you?

I know you were traveling but I wanted to give you the heads up that Jeff has resigned and has left the company. If you or your team has any plans that might include him, I would like to know early on.

Le'ts get together soon and catch up. I will be on vacation the next two weeks but I am available to chat on my mobile anytime 864-313-4802.

Merry Christmas!

Mike

From:	Mike Baur
To:	Mark Moon
Sent:	1/24/2012 3:00:52 PM
Subject:	Fwd: ScanSource TRO Filing Against Jeff Yelton
Attachments:	ATT00001.htm; Yelton TRO, 1-24-12.pdf

Mark,

I am sending you a copy of this filing we have made today in response to Jeff Yelton filing a lawsuit against us last week.

I think you would want to be aware of these circumstances.

As this is a public filing I am Ok with your sharing with your management team.

Feel free to call me to discuss.

Regards,

Mike

Begin forwarded message:

From: John Ellsworth <john.ellsworth@scansource.com<mailto:john.ellsworth@scansource.com>>
Date: January 24, 2012 2:09:20 PM EST
To: Mike Baur <mike.baur@scansource.com<mailto:mike.baur@scansource.com>>
Subject: ScanSource TRO Filing Against Jeff Yelton

From:	Mike Baur
To:	'pat.byrne@intermec.com'
Sent:	1/24/2012 4:57:57 PM
Subject:	FW: ScanSource TRO Filing Against Jeff Yelton
Attachments:	Yelton TRO, 1-24-12.pdf

Pat,

I want you to get this from me first as we filed this answer to a Lawsuit from Jeff Yelton. Intermec is mentioned in this publicly available document. I am OK if you share with your management team.

Please give me a call to discuss further or we can discuss on our call next week.

Regards,

Mike

From:	Mike Baur
To:	Mike Terzich (mterzich@zebra.com)
Sent:	1/24/2012 5:51:12 PM
Subject:	FW: ScanSource TRO Filing Against Jeff Yelton
Attachments:	Yelton TRO, 1-24-12.pdf

Mike,

I need to send this Legal filing to you regarding Jeff Yelton. This is a public document.

I will be glad to discuss this with you.

It's a disturbing development.

Regards,

Mike

From:	Mark Olson
To:	Mike Baur
Sent:	1/24/2012 7:51:49 PM
Subject:	RE: ScanSource TRO Filing Against Jeff Yelton

Thanks

Mark

From: Mike Baur [mailto:mike.baur@scansource.com]
Sent: Tuesday, January 24, 2012 4:31 PM
To: Mark Olson
Subject: FW: ScanSource TRO Filing Against Jeff Yelton

Mark,

This is the filing we discussed.

Mike

From:	Peterson, Tom (MDI Retail)
To:	Mike Baur
CC:	Petrosino, Sharon L
Sent:	1/25/2012 8:34:15 AM
Subject:	RE: ScanSource TRO Filing Against Jeff Yelton

Thanks Mike...I appreciate the notification...we will handle this as appropriate. Sorry we couldn't connect in NY at NRF...also sorry about your Packers...hope to have better luck on both fronts next January!

Sharon...I will call you on this.

Thomas E. Peterson
Executive Director, Retail Industry, Americas
Hewlett-Packard Company
952-944-1460 - office
612-384-9899 - mobile
thomas.peterson@hp.com

Executive Assistant: Kathy Giannott
631-665-7590 - office
kathy.giannott@hp.com

From: Mike Baur [mailto:mike.baur@scansource.com]
Sent: Tuesday, January 24, 2012 5:42 PM
To: Peterson, Tom (MDI Retail)
Subject: FW: ScanSource TRO Filing Against Jeff Yelton

Hi Tom,

We separated from Jeff Yelton recently as you may know. We are in a dispute with Jeff and I wanted you to be aware of our legal, public filing I believe you and your management team would want to know in case this issue comes up.

I have attached our legal answer to a lawsuit filed by Jeff last week. Our response includes mention of a confidential HP customer list that Jeff was requesting from one of our employees AFTER he left our company. We did not send it to him as you can see in this document.

Anyway, please feel free to call me if you like to discuss further, 864-313-4802 mobile.

Best regards,

Mike Baur

From: Scott Benbenek
To: Paul Constantine
Sent: 1/25/2012 3:50:19 PM
Subject: RE: In ER

I don't know how it works exactly. It is 60+ pages.

-----Original Message-----
From: Paul Constantine
Sent: Wednesday, January 25, 2012 3:48 PM
To: Scott Benbenek
Subject: Re: In ER

Wow.

Does the restraining order just apply to customers?

Sent from my iPhone

On Jan 25, 2012, at 3:25 PM, "Scott Benbenek" <scott.benbenek@scansource.com> wrote:

> It is kind of weird because Moto and Honeywell both said they were going to try something with Jeff even after Mike talked to them.
>
> -----Original Message-----
> From: Paul Constantine
> Sent: Wednesday, January 25, 2012 2:27 PM
> To: Scott Benbenek
> Subject: Re: In ER
>
> Yep they know.
>
> Lisa M told me Rick brought up the Jeff situation with her, apparently Mike reached out to Mike Terzich, and Jim McDonnell asked Lisa what he should tell his team to do in case Jeff contacts them. I told her to advise them to follow the same advice he gave us...to ignore him for now.
>
> Sent from my iPhone
>
> On Jan 25, 2012, at 11:26 AM, "Scott Benbenek" <scott.benbenek@scansource.com> wrote:
>
>> OK, good. I assume you let Intermec team know you can't come?
>>

BusinessSolutions
Growth Strategies For The IT Channel

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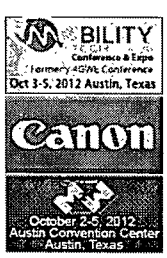
Search

Resource Centers
Access Control
Data Collection
Enterprise Content Management
General Computing
Managed Services
Network Security
Networking
Payment Processing
Physical Security
Point of Sale
Power Protection
RFID
Storage
Video Surveillance
VoIP
Wireless & Mobility

News & Community
Industry White Papers & Case Studies
Product Showcase
Newsletter Archive
Webinars
Business Solutions Suppliers
Industry Associations
Event Calendar

Magazine
Current Issue
Past Issues
Request Media Kit
Editorial Calendar
BPA
Ad Specifications
Subscribe/Renew
Change Subscription Address
Cancel Subscription
Article Reprints
List Rentals
Meet the Team
Contact BSMinfo.com

Annual Buyer's Guides
Integrator's Guide To Security 2012
Partner Program Insider
Guide To POS & Payment Processing



From The Editor

ShareThis RSS

What I've Learned From Jeff Yelton

January 19, 2012

by Jim Roddy, president, Business Solutions magazine & Jameson Publishing

Jeff Yelton's recent resignation as President of ScanSource's POS and Barcoding division gave me an opportunity to reflect on his contributions to our channel. If you've never heard Jeff present or read his writings, you're missing out on vital channel information. (At the bottom of this page, I've linked to some content produced by Yelton.)

I've been fortunate to have the opportunity to spend one-on-one time with Jeff – whether it was a sweltering van ride to take a tour of the Zappos headquarters in Las Vegas or walking in freezing downtown Minneapolis after a Vikings/Cowboys playoff game – and have really valued his perspective on our channel. I've taken away several specific data points and lessons from those conversations that we've applied at BSM.

An overarching leadership lesson I've learned interacting with Jeff is the importance of making sure you, as a business leader, set aside time to study your business climate by consuming as much vital information as you can and then apply those lessons as appropriate. Your business needs you to see around corners to know what's next. The only way you're going to have vision into the future is to look beyond your office walls. Be curious. Read up on studies. Listen to podcasts. Watch videos. Dig into magazine articles. Ask questions when you interact with other channel executives. Follow blogs. Engage in social media. Attend panel discussions. Ask more questions.

The information is out there. You need to take the initiative to consume that data plus build relationships with folks whose perspective will provide you with additional important information. If you don't set aside time to do this on an ongoing basis, your company won't be a channel leader.

I think (and hope) Jeff will stay active in our channel just because he's so darn passionate about it. Wherever he lands, it will be a gain not only for his new employer but for all of us who have the opportunity to learn from his studies of our channel.

As promised, here are links to content produced by Jeff that I think you'll find helpful for your channel business. These will help you in your quest to become a better student of our industry.

Economic Forecast For The Retail Channel

ScanSource's Yelton Talks All-In-One POS

Jeff's Yelton's VAR Blog

A VAR's Guide To Finance

A VAR's Guide To Legal Requirements

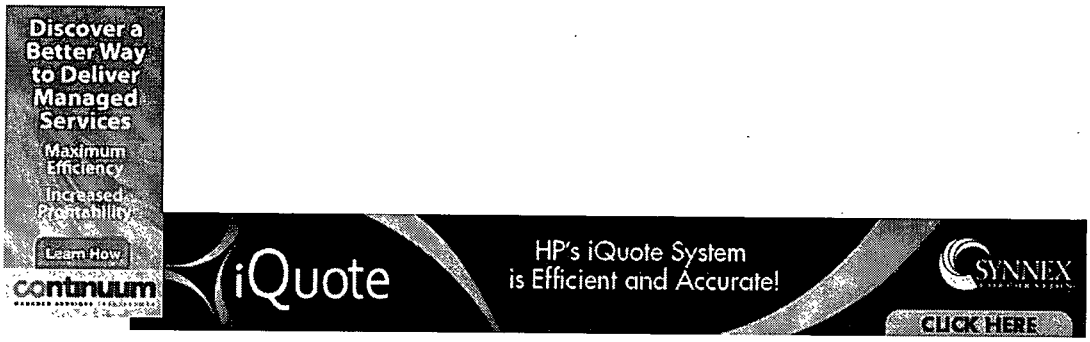
Yelton Cautions VARs On Two Trends

Free Business Solutions Newsletter

Most Popular

1,000 Reseller Attendees Expected At D&H's Mid-Atlantic Summer 2012 Tech Show 6/21
Why You Need To Know About The 3 Kinds Of VDI
Ordering Reprints Of Business Solutions Articles
Tear Up Your Contracts & Sell Mobile POS
Dell Completes Acquisition Of Cloud Client Computing Leader Wyse Technology
more...

Need Help Finding Solutions?



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From: Mike Baur
To: Jim Roddy
Sent: 1/26/2012 12:14:26 PM
Subject: Re: Please Accept My Apology

Jim,

Thanks for the email. I appreciate your understanding of our concern as this is a sensitive employee matter that is now a legal matter as well.

Mike

On Jan 24, 2012, at 10:49 AM, "Jim Roddy" <jim.roddy@jamesonpublishing.com> wrote:

Hi Mike:

I just finished a conversation with Bobby McLain and wanted to apologize that my article on Jeff caused disruption at your company. It wasn't my intent to do that or to put ScanSource in a bad light.

As I told Bobby, the relationship between our companies is the model we set for all our customers. We know each other very well throughout our organizations and share our candid thoughts with each other – it's a true partnership. I'm sorry if I harmed that relationship.

Please accept my apology.

Thank you,
Jim

BSM is proud to win back-to-back Gold Vendor Excellence Awards from the RSPA membership. Thanks for your support!
Jim Roddy
President & GM, Jameson Publishing & Business Solutions Magazine
RSPA Board Member & Chairperson of the RSPA Vendor Working Group
(814) 897-9000, ext. 201 Mobile (814) 450-9748
* Follow me on Twitter: www.twitter.com/Jim_Roddy
<image001.jpg>

Brian Murphy

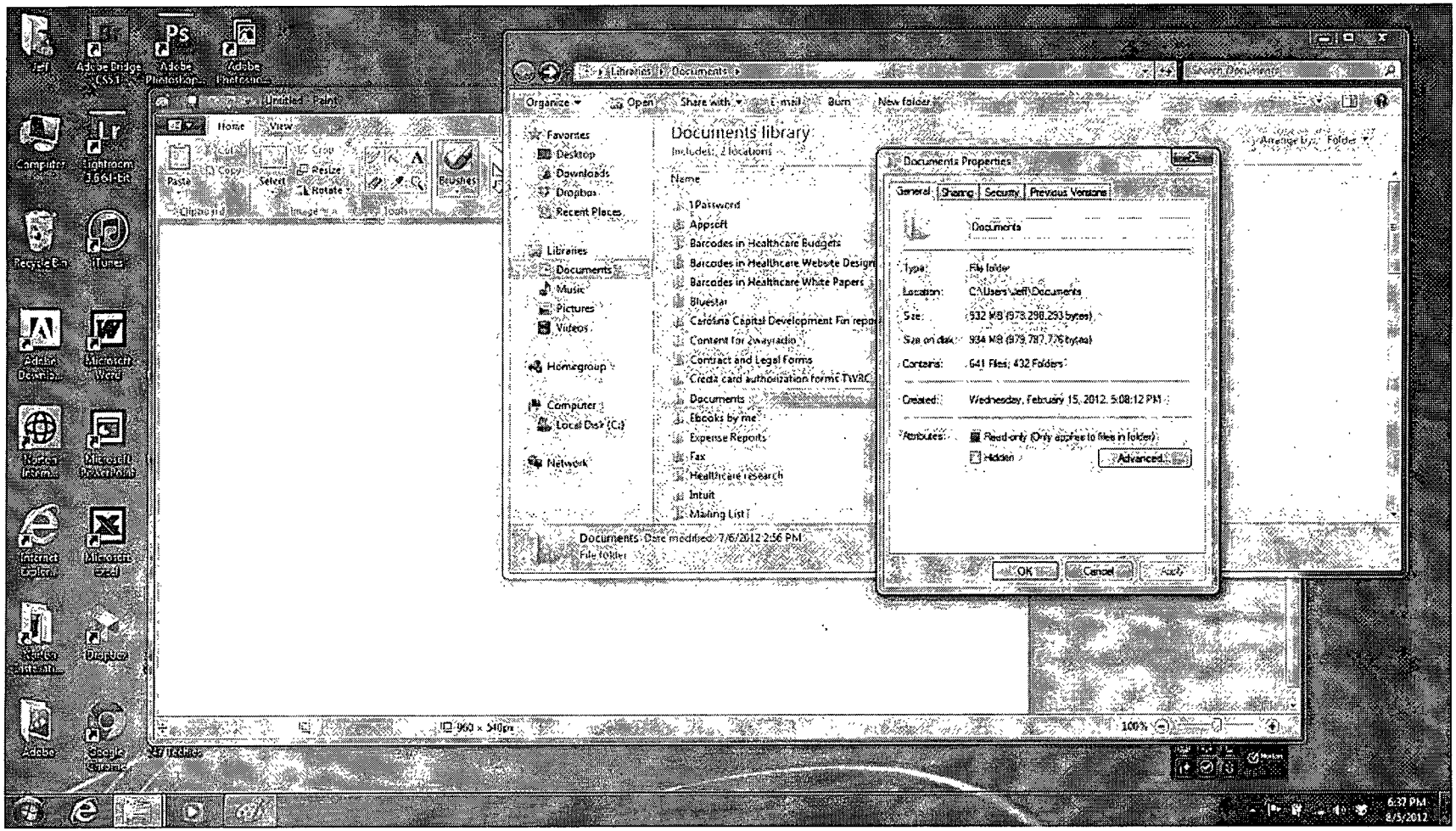
From: Brian Murphy <brian.murphy@mindspring.com>
Sent: Monday, August 27, 2012 1:54 PM
To: Bill Foster (bill.foster@nelsonmullins.com)
Subject: Emailing: Documents folder, Dropbox contents, Dropbox Folder, Research file contents
Attachments: Documents folder.jpg; Dropbox contents.jpg; Dropbox Folder.jpg; Research file contents.jpg

This is how it showed up on the new hard drive. Same contents, but it is no longer under My Documents. I have copies of the docs themselves that are in this folder if you want to review. Nothing privileged in there.

Your message is ready to be sent with the following file or link attachments:

Documents folder
Dropbox contents
Dropbox Folder
Research file contents

Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled.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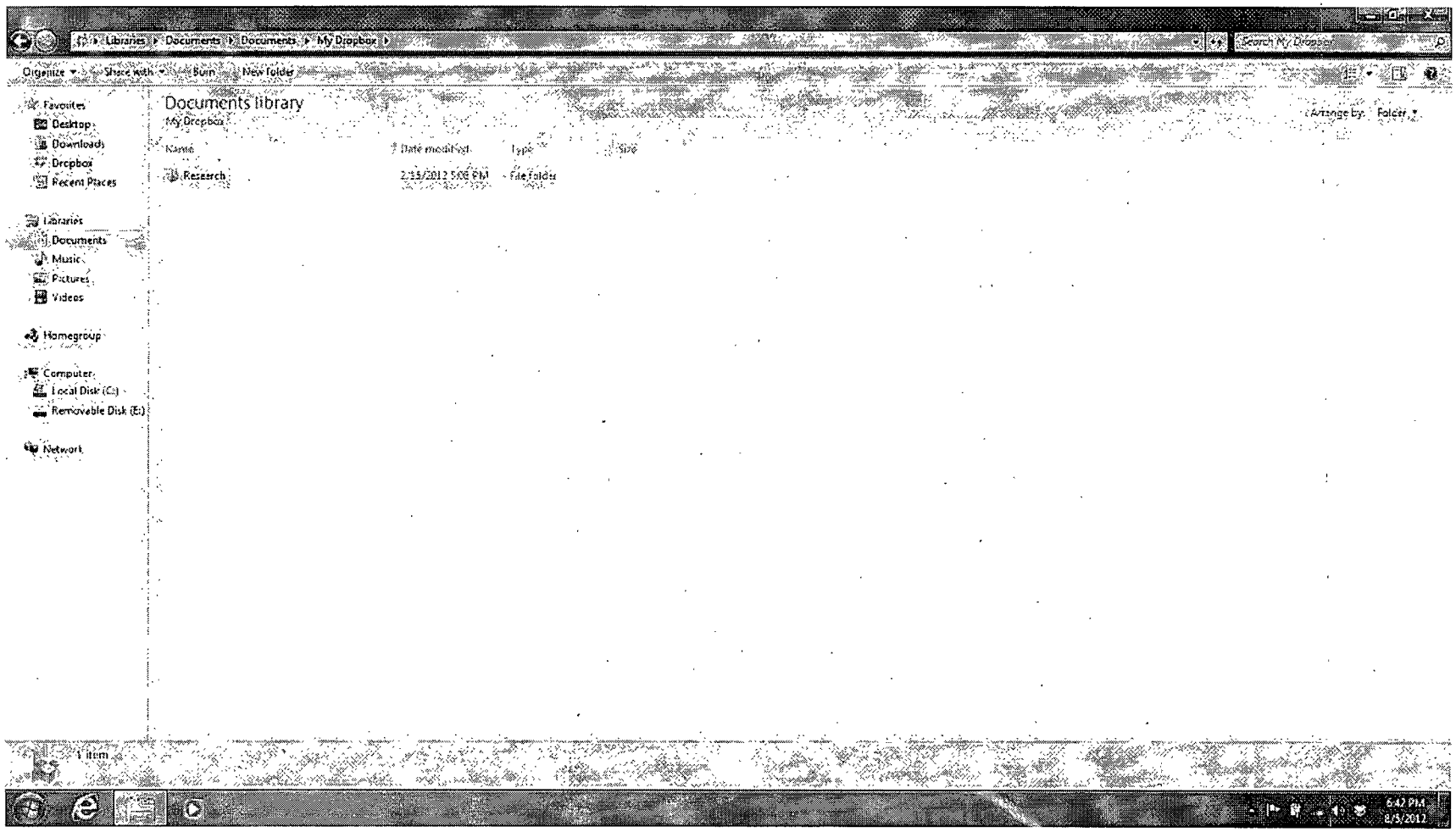
Includes: 2 locations
Documents Properties
General
Sharing
Security
Previous Versions
Documents
Type: File folder
Location: C:\Users\Jeff\Documents
Size: 932 MB (973,298,253 bytes)
Size on disk: 934 MB (979,787,776 bytes)
Contains: 641 Files, 432 Folders
Created: Wednesday, February 15, 2012, 5:08:12 PM
Attributes: Read-only (Only applies to files in folder)
Hidden
Advanced...
OK
Cancel
Apply
Documents Date modified: 7/6/2012 2:56 PM
File folder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Search My Dropbox
Organize
Share with
Burn
New folder
Favorites
Desktop
Downloads
Dropbox
Recent Places
Libraries
Documents
Music
Pictures
Videos
Homegroup
Computer
Local Disk (C:)
Removable Disk (E:)
Network
Documents library
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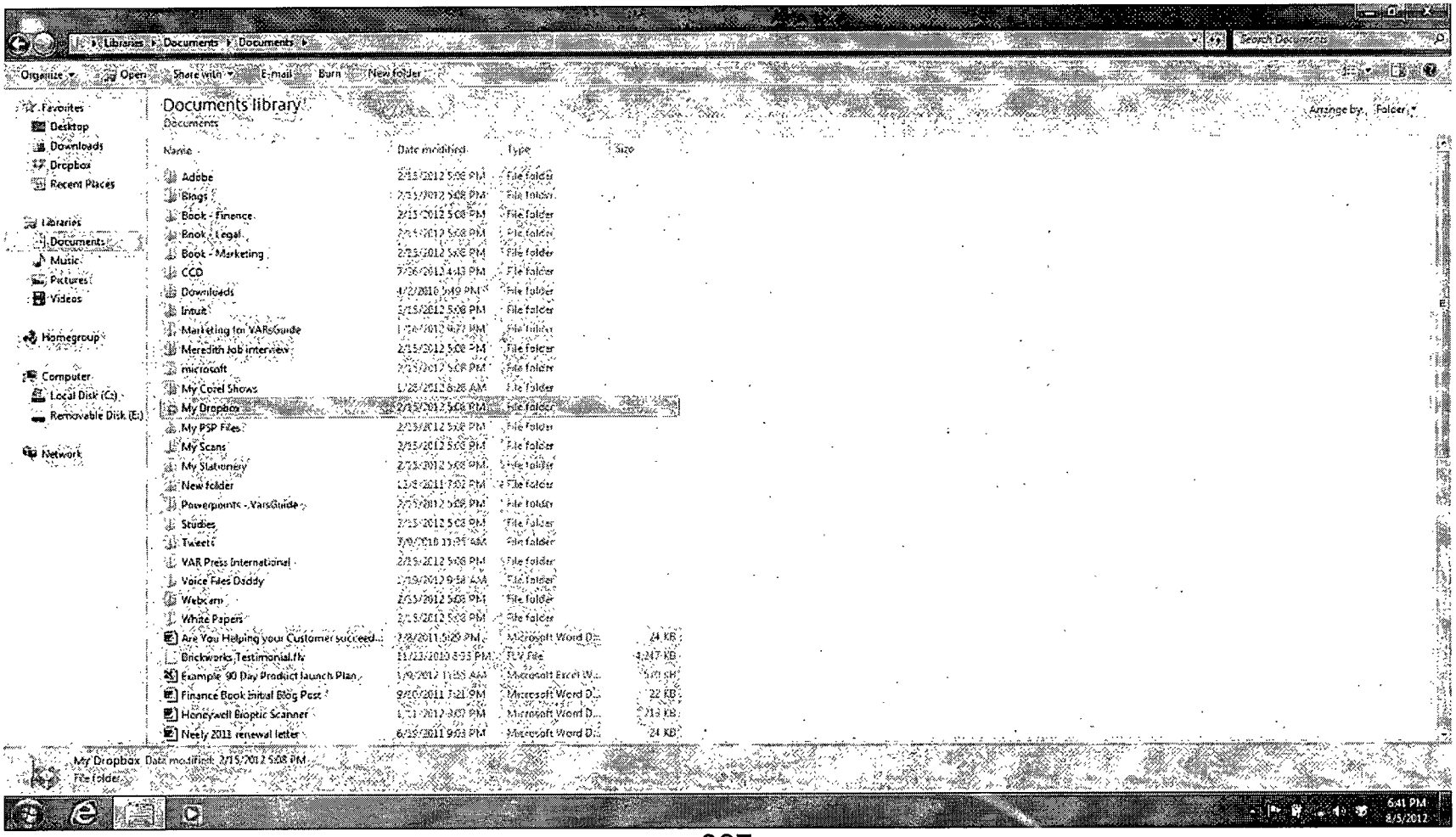
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Burn
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Favorites
Desktop
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Music
Pictures
Videos
Homegroup
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Removable Disk (E:)
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My Scans 2/15/2012 5:08 PM File folder
My Stationery 2/15/2012 5:08 PM File folder
New folder 12/8/2011 7:02 PM File folder
Powerpoints - VarsGuide 2/15/2012 5:08 PM File folder
Studies 2/15/2012 5:08 PM File folder
Tweets 7/9/2010 11:31 AM File folder
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Voice Files Daddy 1/29/2012 9:58 AM File folder
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White Papers 2/15/2012 5:08 PM File folder
Are You Helping your Customer succeed... 7/8/2011 5:29 PM Microsoft Word D... 24 KB
Brickworks Testimonial.flv 11/23/2010 8:53 PM FLV File 4,247 KB
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Honeywell Bioptic Scanner 1/31/2012 3:07 PM Microsoft Word D... 713 KB
Neely 2011 renewal letter 6/15/2011 9:03 PM Microsoft Word D... 24 KB
My Dropbox Date modified: 2/15/2012 5:08 PM
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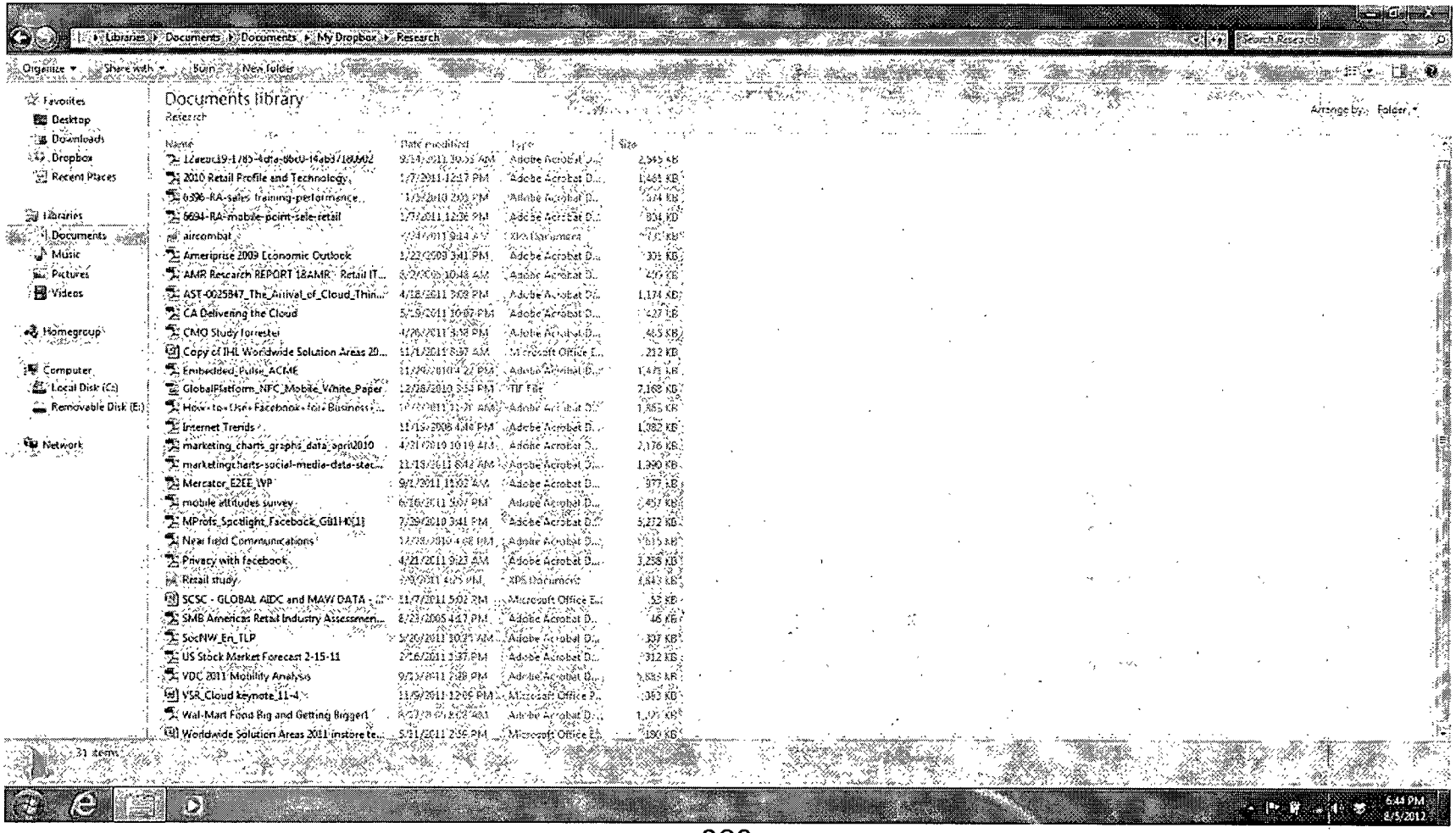
6:41 PM
8/5/2012


Libraries ▸ Documents ▸ Documents ▸ My Dropbox ▸ Research
Search Research
Organize ▾ Share with ▾ Burn New folder
Favorites
Desktop
Downloads
Dropbox
Recent Places
Libraries
Documents
Music
Pictures
Videos
Homegroup
Computer
Local Disk (C:)
Removable Disk (E:)
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Embedded_Pulse_ACME
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mobile attitudes survey
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Near Field Communications
Privacy with facebook
Retail study
SCSC - GLOBAL AIDC and MAV DATA - ...
SMB Americas Retail Industry Assessmen...
SocNW_En_TLP
US Stock Market Forecast 2-15-11
VDC 2011 Mobility Analysis
VSR_Cloud keynote_11-4
Wal-Mart Food Big and Getting Bigger!
Worldwide Solution Areas 2011 instore te...
31 items
6:44 PM
4/5/2012

Nelson Mullins

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William H. Foster
Tel: 864.250.2222
Fax: 864.250.2383
bill.foster@nelsonmullins.com

September 24, 2012

Via Electronic and U.S. Mail

Derrick Quattlebaum, Esq.
75 Beattie Place, 11th Floor
Greenville, SC 29601-2119

RE: Jeff Yelton v. ScanSource Inc.
C/A No. 2012-CP-23-00314
Our File No. 18309/05002

Dear Derrick:

Attached please find Defendant ScanSource, Inc.'s Reply to Plaintiff's Memorandum in Opposition to Preliminary Injunction. We are contemporaneously serving Plaintiff and the Clerk with copies of this Reply.

With best regards, I am

Very truly yours,

William H. Foster

Enclosure
cc: Brian Murphy, Esq.
Hon. Paul B. Wickensimer

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	JUDICIAL CIRCUIT
Jeff Yelton,	)	Civil Action No. 2012-CP-23-0314
Plaintiff,	)	
vs.	)	**REPLY TO PLAINTIFF'S MEMORANDUM IN OPPOSITION TO PRELIMINARY INJUNCTION**
ScanSource, Inc.,	)	
Defendant.	)	

INTRODUCTION

In his brief opposing preliminary injunctive relief that would prevent him from using or disclosing proprietary information of a publicly traded company—information that he swears he does not possess, that he has no right to use or disclose, and for which he professes no need or interest—Plaintiff Yelton bases his argument on ScanSource's alleged lack of proof of any *actual* harm or proof that Yelton intends to harm ScanSource. Plaintiff's argument ignores the reality of this case, the overwhelming and uncontroverted evidence before this Court, and the law.

Contrary to Plaintiff's arguments, the issue before this Court is not whether ScanSource can now prove that he has *actually used* its Confidential Information (although the evidence certainly suggests he has), but whether the use or disclosure of that information would cause the Company irreparable harm.[1] Because the very "purpose of an injunction is to preserve the status

[1] ScanSource would note the irony of Plaintiff's argument. The evidence of whether Plaintiff has actually used ScanSource information most likely will be found on the devices the Court originally forced him to return. Plaintiff continues to block ScanSource's examination of those devices by objecting to the review procedure the parties agreed to after two months of negotiating the Consent Protocol. (*See* Consent Protocol ¶ 9.) Regardless, proof of

quo and to avoid *possible* irreparable injury to a party pending litigation," *Peek v. Reg'l Healthcare Sys.*, 367 S.C. 450, 454, 626 S.E.2d 34, 38 (Ct. App. 2005) (emphasis added), the answer to that question obviously is "Yes," and ScanSource is entitled to the relief requested.

ScanSource has proven without challenge that the "Confidential Information" at issue is secret, proprietary, and worthy of protection under the law.[2] ScanSource has proven without challenge that the use or disclosure of this Confidential Information would cause the Company irreparable harm. ScanSource has proven that Plaintiff took Confidential Information when he departed the Company, that he continued to seek Confidential Information from employees post-departure, and that he tried to conceal his actions by destroying his hard drive with KillDisk. More recently, ScanSource has demonstrated that despite his sworn testimony to the contrary, Plaintiff has at best "misplaced" no fewer than five (5) external hard drives containing Confidential Information (including the "QBR Flash Drive" at the literal ***heart*** of the case) and, at worst, that he has willfully violated the TRO by failing to return these devices and lying about their whereabouts.

Against this backdrop, the question before the Court is simple: Is ScanSource entitled to a preliminary injunction to prevent the solicitation, possession, use, or disclosure of its Confidential Information by Plaintiff pending a trial on the merits? The answer mandated by the evidence, the law, and fundamental fairness is, again, unequivocally "***Yes.***"

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actual use is one of the ultimate issues in this case, *not* the standard of proof for granting preliminary injunctive relief.

[2] Contrary to Plaintiff's arguments, Judge Hill long ago removed any confusion as to what Constitutes "Confidential Information" in the context of this case and the instant Motion. Judge Hill defined protected information as "information described in Plaintiff's Employment Agreement ..., ScanSource's Business Ethics and Code of Conduct ..., the S.C. Trade Secrets Act, and South Carolina law." (TRO at 2.) The parties have been operating within this definition throughout the case, and Plaintiff has testified under oath that he has complied with obligations that are based on this definition. He also has not contested that the QBRs and other information are trade secrets; he contests the specificity of the injunction language. (Pl.'s Mem. at 10-12.) It is disingenuous for Plaintiff to now contend there is any uncertainty or confusion as to the scope of relief requested.

ARGUMENT

I. CONTRARY TO PLAINTIFF'S ARGUMENT, *THREATENED* IRREPARABLE HARM SUPPORTS A PRELIMINARY INJUNCTION.

Plaintiff contends that ScanSource is not entitled to injunctive relief because it has failed to proffer any evidence demonstrating that Plaintiff has disclosed or used ScanSource's Confidential information. (Pl. Mem. Opp'n Prelim. Inj. 2-3, 7-8 (hereinafter "Pl.'s Mem.").) Plaintiff's argument plainly misconstrues the standard for injunctive relief under South Carolina law.[3]

The party to be enjoined need not have *actually* harmed the movant; immediate and irreparable harm need only be *threatened*. *See HHHunt Corp. v. Town of Lexington*, 389 S.C. 623, 639, 699 S.E.2d 699, 707 (Ct. App. 2010) ("An injunction may be granted where some irreparable injury is *threatened* for which the parties have no adequate remedy at law." (emphasis added)). An injunction is intended to avoid injury ***before*** it happens, to preserve the status quo. *Peek*, 367 S.C. at 454, 626 S.E.2d at 38; *see also Allegro, Inc. v. Scully*, Case No. 4997, 2012 WL 2819375, at *6 (S.C. Ct. App. July 11, 2012) ("The purpose of a temporary injunction is to preserve the status quo and *prevent* irreparable harm to the party requesting it." (emphasis added)).

As the South Carolina Supreme Court has explained, an employer "doesn't have to wait for the inevitable. Irreparable injury is impending and threatening." *Standard Register Co. Kerrigan*, 238 S.C. 54, 64 119 S.E.2d 533, 538 (1961). ScanSource, therefore, need only demonstrate a ***threat*** of irreparable harm, not actual harm, to obtain injunctive relief preserving

[3] Plaintiff's argument also is almost entirely based on a rather transparent misrepresentation of Scott Benbenek's deposition testimony. (Pl.'s Mem. at 4-6.) As discussed more fully below, Mr. Benbenek's testimony actually ***supports*** ScanSource's request for injunctive relief.

the status quo. ScanSource has clearly met this burden. Indeed, this was Judge Hill's conclusion at the very outset of this case:

> ScanSource has no adequate remedy at law, given that once ScanSource's confidential information or trade secrets are disclosed, it will be difficult if not impossible to rectify the loss by monetary damages. Irreparable harm is present where an injunction "is reasonably necessary to protect the legal rights of the plaintiff pending the litigation."

(Order, pp. 1-2) (*citing Transcontinental Gas Pipeline Corp. v. Porter*, 252 S.C. 478, 481, 167 S.E.2d 313, 315 (1969) (internal quotation marks omitted).) Plaintiff has offered no evidence sufficient to challenge Judge Hill's initial conclusion and, in contrast, ScanSource has provided overwhelming evidence to show that the Company faces irreparable harm if Plaintiff is not enjoined.

II. PLAINTIFF'S ACTIONS AND HIS POSSESSION OF SCANSOURCE'S INFORMATION THREATEN IRREPARABLE HARM TO SCANSOURCE.

As expected, Plaintiff has his own view of the evidence. His view does not comport with the law of South Carolina, the record before the Court or common sense.

A. SCANSOURCE HAS SHOWN EVIDENCE OF ACTUAL AND THREATENED SOLICITATION, POSSESSION, AND USE OF ITS INFORMATION.

The evidence showing that Plaintiff actually solicited ScanSource's Confidential information and actually possesses ScanSource's Confidential information, especially in devices that have not been turned over or cloud accounts that have not been shared, is overwhelming and has been presented in prior filings. In addition to preventing Plaintiff from soliciting, possessing, or disclosing its Confidential, trade secret, or proprietary information, ScanSource also seeks to enjoin Plaintiff's use of information that he should not have and in which he clearly has no rights. This injunction against use apparently has enflamed Plaintiff's response. The protestations against this injunction reach disturbing levels considering that Plaintiff already has

been ordered to return all of ScanSource's Confidential information in the February 8, 2012 TRO. He is not allowed to possess the information, so it defies logic as to how he lawfully could use it (or even genuinely object to such relief).

Plaintiff's primary arguments that ScanSource has not shown he actually used its information are first, that ScanSource's President of Worldwide Operations, Scott Benbenek, is "unaware" of "cataclysmic harm" to ScanSource (Pl.'s Mem. at 4). Second, Plaintiff argues that ScanSource's discovery responses admitted that at the time, ScanSource "presently lacks further information demonstrating that Plaintiff has used any ScanSource trade secret." (*Id.* at 9.) Both of these are red herrings.

1. Mr. Benbenek's deposition testimony supports the finding that Plaintiff's actions will cause irreparable harm to ScanSource.

First, as noted above, the question presently before the Court is not whether Plaintiff has actually used ScanSource's Confidential Information, but whether the *threatened* use of this information would cause irreparable harm. Further, Plaintiff has selected excerpts of Mr. Benbenek's deposition that clearly misrepresent the complete testimony of his knowledge.[4] A fuller and more accurate picture of his deposition responses is contained in the excerpts presented to the Special Referee in the August 31, 2012 hearing. (*See* Presentation, attached as Exhibit 6 to ScanSource's Response Supporting the Motion for Preliminary Injunction.) For example:

- Did Jeff Yelton say anything untrue on January 4th? "I think so, Yes. I mean, I think that he knows where that thumb drive—I have no proof, but if you just ask me what I was feeling at the time, I think he had or has knowledge where that thumb drive is.

[4] It is worth noting that Plaintiff misrepresents Mr. Benbenek as having been somehow presented by ScanSource as a witness to the issue of Plaintiff's supposed actual use of Confidential Information. (Aug. 31, 2012 Hearing Transcript at 70:25-71:2.). This claim is simply false. Plaintiff sought to depose Mr. Benbenek as a fact witness. Mr. Benbenek ultimately testified that once he reported his concerns about Plaintiff's apparent theft of Confidential Information on January 4, he actually had little to no involvement in the Company's resulting investigation or the prosecution of this case. (*See* Benbenek Dep. 179:13-17) (Have you dealt with any Yelton issues since January 4th, other than your affidavit? "None come to mind, No.")

I'm not sure why anybody would get a thumb drive for information and keep it for two days and not take it with them, or why they would even want it knowing you're not going to be at the company anymore." *Id.* at 158:22-159:8.

- Was Jeff Yelton untrue when he said he did not know where the QBR thumb drive was? "If I had to bet, Yes. Like I say, I don't have a videotape of that, but you're asking me, and yes, I think he knows where that thumb drive is or was or whatever." *Id.* at 159:14-17.

- What evidence shows that Jeff Yelton was not truthful on January 4th? "No, there is nothing that I know that he said that day that is untrue. Underline know." *Id.* at 160:5-10.

- Are QBRs Confidential? "Definitely, yes." *Id.* at 225:11-13.

- Was Plaintiff allowed to take QBRs when he left? "No." *Id.* at 225:14-17.

- There is no legitimate reason for a former employee to have QBRs? "Correct." *Id.* at 226:6-11.

- Was it unethical for Plaintiff to download KillDisk on his ScanSource laptop to wipe his hard drive and disable the computer? "Yes." *Id.* at 228:6-15.

- "Q. Would it be appropriate in your mind for Mr. Yelton to start a business such as the business described in Plaintiff's Exhibit 3, Varsguide, using ScanSource proprietary information?" "No." *Id.* at 233:10-14.

- "Q. The business that's described as VarsGuide, if you had the vendor QBR's and customer lists that were ScanSource proprietary information, you could use that information to solicit business, correct?" "Mr. Murphy: Object to the form." "The Deponent: Correct." *Id.* at 233:15-23.

- "Q. And you don't know where that thumb drive is today, do you?" "A. No." "Q. Does that create a risk to ScanSource that that thumb drive that Mr. Yelton obtained is somewhere unbeknownst to you?" "A. Yes, it can be a risk, yes, if it were to get in the wrong hands." *Id.* at 254:23-255:5.

Thus, contrary to Plaintiff's representation of Mr. Benbenek's testimony (upon which Plaintiff's opposition almost entirely depends), Mr. Benbenek ***actually*** testified that he thinks Plaintiff still has the QBR Flash Drive, that he has lied about that fact and the whereabouts of this information, that the information is highly confidential and sensitive, and that Plaintiff's misconduct poses the very real threat of irreparable harm to ScanSource.

Further, the excerpts relied upon by Plaintiff support the distinction Mr. Benbenek articulated between having absolute certainty and having some awareness and personal belief as to Plaintiff's actions and the consequences of those actions. Because someone is literally "not aware" of a fact does not mean that the fact is not true and does not speak to their personal belief. And because someone does not *know* something with absolute certainty does not mean that he is comfortable with Plaintiff's actions or that he *thinks* Plaintiff has engaged in wrongdoing. Accordingly, Plaintiff's reliance on Mr. Benbenek's testimony is not only misplaced, it is disingenuous and manipulative.

2. Plaintiff gives undue attention to the discovery responses, especially in light of Plaintiff's role in hampering ScanSource's investigation.

In addition to focusing on selective portions of Mr. Benbenek's testimony, Plaintiff also makes great hay of his consternation with ScanSource's discovery responses. The long-running negotiations over supplementing those responses are the result of Plaintiff's clinging to flimsy arguments in the face of overwhelming evidence of his wrongdoing. Further, although Plaintiff refers to the hearing and discussion before Judge Welmaker, he leaves out Judge Welmaker's comments about the nature of the dispute: "Do I need to have a tea party?" (Transcript of June 19, 2012 Hearing Before the Honorable G. Edward Welmaker at 22:19) and the fact that Judge Welmaker refused to issue any order finding ScanSource's responses were inappropriate.

As the transcript shows, Plaintiff was dissatisfied with ScanSource referring to the existing and detailed affidavits of Chris Spearman and Robbie Cox affidavits as evidence that Plaintiff misappropriated trade secrets. (*Id.* at 17:4-20:24.) Instead of referring to the affidavits, Plaintiff wanted ScanSource to restate the facts explained in the affidavits in its written responses. (*Id.*) Plaintiff also wanted ScanSource to identify the additional information upon which ScanSource may rely, saying, "I'm entitled to know." (*Id.* at 17:22-18:4.) ScanSource

also is entitled to know. However, the additional information that could not be stated in the written responses depends primarily on the results of the investigation into the information on Plaintiff's devices and cloud accounts, ***which Plaintiff has thus far prevented ScanSource from accessing.***

Plaintiff would fault ScanSource for not showing proof of actual use (which, again, perverts the *actual* issue before the Court) or actual irreparable harm, yet Plaintiff has stood in the way of that proof. Since the action was filed on January 18th, ScanSource has moved steadily to protect its interest and remedy Plaintiff's wrongdoing. (*See* Timeline, attached hereto as Exhibit A.) In spite of Plaintiff's efforts to hamper ScanSource's case, ScanSource has clearly provided more than sufficient evidence to demonstrate the threat of irreparable harm, and just as Judge Hill originally held, there is no legitimate question that ***any*** use of ScanSource's Confidential Information poses irreparable harm. (Jan. 27, 2012 Transcript at 29-30.)

3. Uncontroverted evidence shows that Plaintiff actually has solicited, possessed, and used ScanSource's information.

At great expense of time and effort, ScanSource has demonstrated with forensic certainty that Plaintiff has failed to turn over at least five (5) electronic storage devices that were attached to his ScanSource laptop during his last week of work, including three (3) that were attached to his home computer the day *after* ScanSource demanded he return its information. (Letter from Bill Foster to Derrick Quattlebaum at 3 (Sept. 17, 2012), hereinafter "September 17th Letter.") This includes the oft-mentioned QBR Flash Drive that Plaintiff has sworn unequivocally that he left in his office on December 16, 2011. (*Id.*) That device was hooked to Plaintiff's home computer roughly 12 hours before he sued ScanSource, proving that regardless of intent, Plaintiff's testimony regarding what he has done with this device is false and that this incredibly proprietary information remains at risk. (*Id.*)

ScanSource also has shown that Plaintiff uploaded 863 files to his Dropbox account the day before he left ScanSource (in spite of his sworn testimony that he didn't remove anything upon his departure) (*Id.*), and now he has another Dropbox account that he has not made available for this investigation. (Aug. 31, 2012 Hearing Transcript at 45:14-46:4.) He shared a business idea with Motorola and Honeywell—two of ScanSource's biggest customers—that will utilize ScanSource information. (Pl.'s Mem at 6.) He disputes that he could be using ScanSource's information now because his current business of selling two-way radios is not in the point-of-sale industry. But he ignores that he was implementing a business plan for the point-of-sale industry in early January, even going so far as to present a marketing proposal for bi-optic scanners to Honeywell, just before ScanSource wrote him on January 16th and he filed this action on January 18th. (September 17th Letter at 4.) He knew it was suspicious to proceed with Varsguide while this case was pending, so he found something else to do. It is not inappropriate to suggest that Plaintiff is simply biding his time until he is not under the Court's authority so that he can go forward with Varsguide. He also ignores that the information he took contains customer lists that could be valuable to someone selling two-way radios. An injunction against use of ScanSource's information is absolutely necessary to prevent ScanSource's valuable business assets from being co-opted by Plaintiff. This is inescapably true when the risk of irreparable harm is viewed in balance with the utter lack of harm to Plaintiff such relief would cause.

Plaintiff's arguments against an injunction prohibiting use of the information defy logic. Common sense dictates that if he possesses the information, he is going to use it. Otherwise, he

would not fight the injunction with such vehemence.[5] ScanSource has *not* "conceded the lack of any threat of use," contrary to Plaintiff's assertion. (Pl.'s Mem. at 7.) Over and over, and even more so as the investigation continues, ScanSource has shown evidence of actual and threatened solicitation, possession, and use of its information, and an injunction is necessary to prevent Plaintiff from going further than he already has gone.

B. IRREPARABLE HARM IS THREATENED BY SOLICITATION, POSSESSION, AND USE OF SCANSOURCE'S CONFIDENTIAL INFORMATION.

Plaintiff says that ScanSource has not put forth a cohesive theory of harm and that ScanSource has imagined a "bizarre scenario." (Pl.'s Mem. at 15.) For someone who worked at ScanSource for seven years, Plaintiff acts as if he had no idea of the importance of this information to ScanSource, its value to others, and the tremendous risk to ScanSource's business and reputation posed by its misuse or disclosure.

As ScanSource's employees have testified by affidavit, the "QBRs contain detailed background information on purchases made by each ScanSource customer over at least twelve (12) quarters; this information includes sales, margin, profit, revenue, market share, long term plans, etc." (Affidavit of Chris Spearman ¶ 6; *see also* Affidavit of Robbie Cox ¶ 5.) "Were this information to fall into the hands of a competitor, it would enable that competitor to target specific customers with significant revenue through ScanSource, gain insight to the ScanSource business plan for Motorola products, and margins and strategy for specific customers purchasing Motorola product from ScanSource, among other things." (Affidavit of Chris Spearman ¶ 10; *see also* Affidavit of Robbie Cox ¶ 8.) Plaintiff sought out the QBRs because of the wealth of information in them and its value to him. His initial steps to implement his Varsguide business

[5] Plaintiff's protestations ring hollow when his other suspicious actions are considered, especially his decision to download and run KillDisk on his ScanSource laptop. He was covering his tracks and did not think he would get caught. Although he says he has no use for the information, his actions show that he cannot be trusted.

plan included a marketing proposal to Honeywell, which was one of the very QBRs Plaintiff took. (*See* Affidavit of Chris Spearman ¶ 5 ("In that conversation, Mr. Yelton asked Mr. Fowler to provide him with the quarterly business report for Honeywell.").)

Although at the time of his deposition he did not know the extent of Plaintiff's Varsguide business plan, Mr. Benbenek testified then about the potential for harm from use of ScanSource's information in relation to the marking functions provided by ScanSource:

> Not trying to be a wise aleck or whatever. I think it's not true from the sense of this will be noncompetitive with ScanSource. I think that in some ways it's competing for the same money, marketing money, at times that we do. So vendors have discretionary marketing funds that if their customers, and in our case we're a distributor, come up with good ideas, they will give you extra money in addition to their contractual obligation with you for marketing money. So my point is that could be competitive, that could be competing with the same dollars, and so that's the only statement I'm making is in that sense it could be competitive, but it's not obviously the same business that we're in.

(Benbenek Depo. at 169:9-24.) Plaintiff's use of the information through a business like he described to Penn Williams on January 3rd thus would harm ScanSource by detracting from ScanSource's own marketing services. (*See* September 17th Letter at 3.)

Mr. Benbenek also testified about ScanSource's obligations to protect the information related to its vendors:

> Q: Isn't it accurate that not only does company policy forbid an employee to take ScanSource or vendor or customer proprietary information with them when they leave –
> A: Yes.
> Q: – it's also our obligation to our customers, correct, to the Motorola to the Intermec to not let that information leave, correct?
> Mr. Murphy: Object to the form.
> The Deponent: That's correct.
> Reexamination resumed by Mr. Foster:
> Q: By contract?
> A: Most of the time by contract, yes.

(Id. at 252.) ScanSource would be harmed by Plaintiff's solicitation, possession, and use of its information because ScanSource is obligated by contract to protect that information and would

be required to take steps (and already is doing everything it can) to stop Plaintiff. Further, ScanSource's goodwill would be harmed if its vendors' information is possessed, used, or disclosed by Plaintiff, and loss of goodwill is an irreparable harm considered in whether an injunction is appropriate. *See, e.g., Multi-Channel TV Cable Co. v. Charlottesville Quality Cable Operating Co.*, 22 F.3d 546, 552 (4th Cir. 1994). Contrary to Plaintiff's argument that ScanSource has presented only a "bizarre scenario," the evidence and case law show that Plaintiff's actual and threatened actions would harm ScanSource and that a preliminary injunction is appropriate.

C. PLAINTIFF IS CONFUSED ABOUT THE NEED FOR AN INJUNCTION AGAINST HIS USE OF THE INFORMATION VERSUS SCANSOURCE'S LIKELIHOOD OF SUCCESS ON THE MERITS.

Plaintiff's argument against the second element required for a preliminary injunction, that "Defendant cannot show likelihood of success on the merits," once again confuses the analysis. (Pl.'s Mem. Opp'n Mot. Prelim. Injunction at 7.) The question is whether ScanSource likely will succeed on the merits of its underlying claims, not whether it can succeed on the merits of its injunction request. *See Compton v. S.C. Dep't of Corr.*, 392 S.C. 361, 266, 709 S.E.2d 639, 642 (2011). "In evaluating whether a plaintiff is entitled to a preliminary injunction, the court must examine the merits of the underlying case only to the extent necessary to determine whether the plaintiff has made a sufficient prima facie showing of entitlement to relief." *Id.* at 367, 709 S.E.2d at 642.

Perhaps the argument that ScanSource has no evidence of use (*see* Pl.'s Mem. at Part IV.B.1, 7-9), is meant to address use as an element of misappropriation of trade secrets. However, misappropriation of trade secrets does not depend only on use and also can be found based on disclosure or on "acquisition of a trade secret of another by a person by improper

means." *See* S.C. Code Ann. § 39-8-20(2)(a). Improper means include "*theft*, bribery, *misrepresentation, breach or inducement of a breach of a duty to maintain secrecy, duties imposed by the common law, statute, contract, license, protective order, or other court or administrative* added *order*, or *espionage through electronic or other means*." *Id.* at section 39-8-20(1) (emphasis added). The evidence already presented shows that Plaintiff has misappropriated trade secrets in a variety of improper ways. In addition to the misappropriation of trade secrets claim, ScanSource addresses its likelihood of success on the merits of each of its claims in its initial Motion for Temporary Restraining Order and Preliminary Injunction at pages 17-20 and Plaintiff has offered no evidence to refute ScanSource's position on these issues.

III. DISCLOSURE OR USE OF SCANSOURCE'S INFORMATION WOULD BE IRREPARABLE, AS RECOGNIZED BY JUDGE HILL AND SOUTH CAROLINA LAW.

Plaintiff contests whether ScanSource has shown that his actions would cause irreparable harm. (Pl.'s Mem. at 4-7.) However, ScanSource made this showing in its initial Motion for Temporary Restraining Order and Preliminary Injunction at pages 14-17. Judge Hill agreed: "Obviously, the disclosure of confidential information, and trade secrets would constitute irreparable harm to ScanSource given the nature of the information, and the high level of management involved on both sides -- or former management . . . ." (Jan. 27, 2012 Hearing Transcript at 29-30.) *See Peek*, 367 S.C. at 455-56 & n.2, 626 S.E.2d at 37; *see also Barker Indus., Inc. v. Gould*, 553 S.E.2d 227, 230 (N.C. Ct. App. 2001). The circumstances presented to Judge Hill have only intensified as the investigation has developed and the extent of Plaintiff's actions and potential dissemination of ScanSource's information have been revealed.

IV. THE SCOPE OF THE PROPOSED INJUNCTION IS SUFFICIENTLY DEFINITE.

ScanSource has requested specific, clear, and express injunctive relief, and no part of the relief requested risks confusion on the part of Plaintiff. As previously noted, Judge Hill removed all debate over the scope of protected information in this case when he expressly defined "Confidential Information" as including, but not limited to, "information described in Plaintiff's Employment Agreement ..., ScanSource's Business Ethics and Code of Conduct ..., the S.C. Trade Secrets Act, and South Carolina law." (TRO at 2.) Heretofore, Plaintiff has never claimed to have any confusion over the scope of this definition.[6] Plaintiff cannot have it both ways, as the additional relief requested does not expand upon the scope of information at issue one iota; it simply adds a further *proscription* on his conduct in regard to the very same Confidential Information he swears he has returned. Accordingly, there is utterly no risk of confusion and nothing "indefinite" in ScanSource's request for preliminary injunctive relief.

Further, definitions available from the employment agreement, ScanSource policies, and the South Carolina Trade Secrets Act can provide greater specificity if necessary. Judge Hill relied on these definitions in the TRO. (TRO at 2.) However, restating the language of the applicable definitions in the preliminary injunction can resolve Plaintiff's concern about referring to other documents. *See IDG USA, LLC v. Schupp*, 416 F. App'x 86, 88 (2d Cir. Mar. 25, 2011) (unpub.) (instructing district court regarding specificity and explaining that "[t]he district court may consider tracking the words of the [non-compete agreement], which defines trade agreements and confidential information. While an order granting a preliminary injunction may not incorporate extrinsic documents by reference, it can track language from such documents in order to add specificity to the injunction. The language in the [non-compete

[6] Given that Plaintiff served as the President of ScanSource's largest business unit for five years, any argument that he is uncertain as to what information belongs to the Company surely rings false.

agreement] should be sufficient to satisfy . . . Rule 65(d)"); *Uncle B's Bakery v. O'Rourke*, 920 F. Supp. 1405, 1438 (N.D. Iowa 1996) (explaining the requirements of Rule 65(d) and "find[ing] that an injunction of proper scope can be fashioned from appropriate language in the Confidentiality Agreement . . . and from the 'Non-Disclosure/Non-Compete' Agreement"). Many of the cases Plaintiff cites address broad, generalized definitions of trade secrets and confidential information.

In comparison, the definitions used in Plaintiff's employment agreement and ScanSource's policies are specific, even providing examples of the types of documents to which they would apply. (*See* Employment Agreement at 9-13, item 11.b "Trade Secrets," attached as Exhibit A to ScanSource's Answer; Business Ethics and Code of Conduct, Policy # 112-Intellectual Property and Confidentiality, attached as Exhibit D to ScanSource's Answer.) The definitions of protected information in Plaintiff's employment agreement and ScanSource's policies, along with the Trade Secrets Act, provide more than sufficient notice of the scope of the preliminary injunction.

In addition, Plaintiff has had notice of the potential expansion of ScanSource's request for injunctive relief by virtue of the request for other relief that the Court may deem to be just and equitable. (Mot. TRO & Prelim. Injunction at 3, 23.) Upon learning of the extent of Plaintiff's misdeeds, an injunction against him using the information he took from ScanSource seems more than just and equitable. He logically would have been restricted from use by an injunction ordering him to return the information, but his arguments against the use injunction belie his intention to use ScanSource information that has not been returned or that he simply has learned or otherwise preserved from reviewing the misappropriated files. The initial request for injunctive relief captures the necessary injunction against use.

V. A PRELIMINARY INJUNCTION ORDER IS THE ONLY REMEDY THAT WILL PROTECT SCANSOURCE'S CONFIDENTIAL INFORMATION.

> "[S]econdly, if, in fact, disclosure occurred, there would be an inadequate remedy at law because money damages cannot rectify that and compensate ScanSource for the damage."
>
> -The Hon. Gary Hill, Transcript of Hearing, January 27, 2012, pp. 29-30

Plaintiff's claim that ScanSource is protected from irreparable harm by virtue of the parties' Consent Confidentiality Order is logically fallacious. (*See* Pl.'s Mem. At 12-13.) The Consent Confidentiality Order, by its terms, applies only to documents produced by the parties in discovery and it has zero application to Confidential Information (as defined by Judge Hill) misappropriated by Plaintiff. (Amended Consent Confidentiality Order at 1, item 1.) Indeed, Plaintiff's argument is the functional equivalent of suggesting ScanSource should simply trust him to "do the right thing."

In addition, a continuing order for the return of information is necessary, despite Plaintiff's offer to amend the Consent Protocol. (Pl.'s Mem. at 13.) Plaintiff's proposed amendment would render the purpose of the TRO a nullity, since he would have an escape hatch if he were later to find any information. The order to return information would have an indefinite time period, and ScanSource would have no assurance that its information had been secured. At some point, Plaintiff must stand by his efforts to search for and produce devices, cloud accounts, or other repositories containing ScanSource's information.

A continuing order for the return of information also is necessary because additional information still has not been presented for investigation, including but not limited to the second Dropbox account Plaintiff opened after he left ScanSource, along with any other cloud accounts he has used and that may contain ScanSource information. Although he claims to have

misplaced the QBR Flash Drive and has not produced four other flash drives, somehow Plaintiff must be accountable for his search efforts.

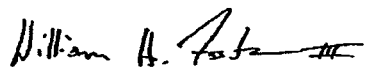
Plaintiff argues that ScanSource does nothing to protect its information and that Plaintiff should not have been expected to return devices and hard drives from his computer. (Pl.'s Mem. at 14.) Plaintiff appears to suggest that despite ScanSource's policies and Plaintiff's knowledge of and agreement to them, he was entitled to use a flash drive and Dropbox to take information from ScanSource in his last days of employment and to retain that information for his own use after he resigned. Instead, ScanSource's policies plainly restrict Confidential and proprietary information to prevent someone from maliciously taking that information under suspicious circumstances. ScanSource had no reason to request Plaintiff to return devices and information until it learned that he had disabled his ScanSource laptop and requested his subordinates to provide him with QBRs on a flash drive. Plaintiff knows he should not have kept the information, much less have taken it in the first place. Under no circumstance was Plaintiff entitled to keep ScanSource Confidential or proprietary information after he left ScanSource, and an injunction is necessary to prevent him from doing so now.

CONCLUSION

The decision to grant a preliminary injunction is at the "sound discretion of the trial court." *Compton*, 392 S.C. at 266, 709 S.E.2d t 642. The evidence ScanSource has been able to access and present to the Court, despite Plaintiff's ongoing efforts to hamper the investigation into his misconduct, shows that Plaintiff actually has and continues to threaten to solicit, possess, and use ScanSource's information. An injunction is the only adequate remedy to stop Plaintiff from further activities that will endanger ScanSource's Confidential, trade secret, or proprietary information.

Respectfully submitted,

NELSON MULLINS RILEY & SCARBOROUGH LLP



By: _____

William H. Foster
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Attorneys for ScanSource, Inc.

Greenville, South Carolina
September 24, 2012

CERTIFICATE OF SERVICE

I, the undersigned attorney of the law offices of Nelson Mullins Riley & Scarborough, LLP, attorneys for ScanSource, Inc., do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by delivering a copy of the same electronically and via U.S. Mail to the following address(es):

Pleadings: **REPLY TO PLAINTIFF'S MEMORANDUM IN OPPOSITION TO PRELIMINARY INJUNCTION**

Counsel Served:

Brian Murphy, Esq.
Brian Murphy Law Firm, P.C.
514 Pettigru Street
Greenville, SC 29601

William H. Foster

September 24, 2012

EXHIBIT A

Timeline

Date	Event
January 16, 2012	John Ellsworth emailed a letter to Yelton describing what ScanSource had learned of his activities as of that date and asking Yelton to remedy the Company's concerns or ScanSource would be forced to take legal action.
January 18, 2012	Yelton filed Complaint against ScanSource.
January 24, 2012	ScanSource answered, asserting counterclaims, and moved for a Temporary Restraining Order and Preliminary Injunction.
January 26, 2012	Yelton filed an affidavit in response to ScanSource's motion in which he offered his sworn testimony about ScanSource Confidential Information and his actions.
January 27, 2012	Judge Hill orally granted the Temporary Restraining Order and directed ScanSource to prepare a proposed order. Yelton immediately objected to any specific requirements in the draft order regarding how he must return the electronic confidential information subject to the order. At the hearing, Yelton turned over to ScanSource's counsel the Cisco flash drive and the Accubanker flash drive, and ScanSource's counsel sent those hard drives to FTI. (July 17, 2012 Gaida Affidavit at Part II.A.)
January 28, 2012	Email from Brian Murphy to Corky Harper, Jan. 28, 2012, Exhibit J to Petition, identifying 14 devices that Yelton used while employed at ScanSource and that he possessed.
February 3, 2012	FTI received a laptop from ScanSource that was an HP ProBook6450b model, which had been identified as Yelton's laptop at ScanSource. (July 17, 2012 Gaida Affidavit.)
February 8, 2012	After a week of negotiations about the proposed order, Judge Hill issued an order on February 8, 2012. (Temporary Restraining Order, Exhibit I to the Petition.)
February 14, 2012	The parties met with the Special Referee to discuss the Preliminary Injunction and how to return ScanSource's Confidential Information, including the information on the remaining 12 devices. Yelton brought boxes of documents that he had removed from his office

Date	Event
	on December 15 and 16, 2011, and ScanSource's counsel examined the documents to identify ScanSource's information. Yelton also produced 11 devices that were turned over to the Special Referee's custody in a sealed box with a label describing the contents of the box. (Consent Order on Protocol for Conducting Discovery as to Certain Hardware Produced by Plaintiff at 1, Exhibit K to Petition.)
February 20, 2012	FTI preserved a record of the activity in Yelton's Dropbox account by creating "screenshots" of the Events pages. (Exhibit C to July 17, 2012 Gaida Affidavit.)
February - March 2012	The parties negotiate regarding the protocol.
April 5, 2012	Special Referee Quattlebaum emails final Consent Protocol to parties and asks them to coordinate picking up devices. Thomas emails Murphy to coordinate device pick-up.
April 9, 2012	After seven weeks of negotiations and several presentations to the Special Referee, the Consent Protocol is entered. Due to Yelton's objections to the proposed process for returning ScanSource's Confidential Information, ScanSource did not have access to the 12 devices Yelton had turned over or promised to turn over until the parties could agree to the protocol.
April 11, 2012	Thomas emails Murphy again to coordinate device pick-up after no response to April 5th email, conveying request of John Akerman for Plaintiff to agree to Adam Walsh Act disclosure. Murphy inquires about the laws, and Thomas responds that she will investigate.
April 12, 2012	Thomas forwards John Akerman's interpretation of Adam Walsh Act obligations, and Murphy responds that he does not agree to interpretation of the Adam Walsh Act and is willing to find another provider to image the devices that will not require the affidavit requested by John Akerman.
April 19, 2012	Foster emails Murphy to inquire if Murphy can provide an update as to when he will be free to pick up the devices at Special Referee Quattlebaum's office. Foster notes that ScanSource does not want to wait another week to move the project forward. Murphy replies that tomorrow should be good.
April 20, 2012	Pursuant to the Protocol, the 11 devices were hand-delivered to John Ackerman of Rosen Litigation Technology Consulting, Inc. (Affidavit of John Ackerman, Exhibit L to the Petition.)

Date	Event
April 20 – 26, 2011	Ackerman imaged the 11 devices, creating forensically sound exact copies of the contents of each device except the Dell laptop, for which no complete image could be obtained. (Ackerman Affidavit, Exhibit L to the Petition.)
April 27, 2012	Plaintiff notices deposition of Scott Benbenek for May 7, 2012.
May 4, 2012	ScanSource files a Motion for Protective Order regarding Deposition of Scott Benbenek
May 18, 2012	Foster sends Murphy ScanSource's proposed search terms and also provides information regarding cloud-based or similar accounts.
May 23, 2012	Murphy responds asking if Foster is able to discuss the search term list and requesting status of the devices.
May 24, 2012	Foster discusses with Murphy the two search terms at issue.
May 25, 2012	Foster responds to Murphy to explain Yelton's questions about the two search terms at issue.
June 11, 2012	Foster emails language to amend the confidentiality order. Murphy responds with additional revisions and states the photo computer will not be ready for pick up until Friday.
June 14, 2012	Email exchange between Murphy and Foster regarding photo computer and that this week is bad to pick it up. Murphy states the other devices have been gone for 3 months.
June 15, 2012	Foster informs Murphy the imaging has been completed and the other devices can be returned to Murphy.
June 27, 2012	Ackerman returned the box of devices to Murphy. (Chain of Custody form attached to Ackerman affidavit.) Ackerman took custody of a custom desktop computer containing five hard drives. (Ackerman Affidavit.) Ackerman began imaging Yelton's home desktop computer that Yelton had promised to produce at a later time.
June 28, 2012	Ackerman delivered to Nelson Mullins' Greenville office a hard drive containing all of the images collected from the box of devices.
June 29, 2012	Ackerman returned the custom desktop computer to Murphy. (Chain of Custody form attached to Ackerman affidavit.)

Date	Event
July 11, 2012	Among other topics, Murphy requests an answer as to whether the iPad will be returned. Foster responds that the iPad report needs to be reviewed by ScanSource and that can only happen after Murphy gives the OK for ScanSource to review the report. Once that occurs, then ScanSource can determine what information the iPad contains and clean it in such a way to remove any proprietary information. At that point, the iPad can be returned.
July 13, 2012	Plaintiff serves amended notice of deposition of Scott Benbenek.
July 16, 2012	Murphy email to Foster questioning the results of the iPad search. Foster responds that the iPad stores material differently and therefore the report is different. Murphy states this is not protocol. Foster responds and explains how the search was in accordance to protocol. Murphy again questions the iPad report.
July 17, 2012	ScanSource files Petition for a Rule to Show Cause for Civil Contempt by Plaintiff Jeff Yelton and Motion to Compel and for Sanctions Pursuant to rule 37, SCRCP.
July 17, 2012	Foster email to Murphy stating he will follow up with FTI for a complete explanation of the iPad report.
July 17, 2012	Thomas agreed to separate training sessions (8:44 am). FTI reached out to Murphy regarding training on the review platform, Ringtail (4:47 pm).
July 18, 2012	FTI determined that five electronic storage devices were connected to the ScanSource Laptop by USB during the period of December 9, 2011 to December 15, 2011, to drive letter E. None of these five devices were among the 12 devices that were examined by Ackerman and were not the two USB devices provided to FTI by ScanSource. (July 28, 2012 Affidavit of Gaida.)
July 18, 2012	Murphy email to Foster objecting that protocol was not followed on the iPad review. Any disclosure on that basis will be objected to. Foster email to Murphy explaining FTI provided a list of everything stored on the iPad. Foster provides Murphy a contact at FTI who can answer all questions he may have. Murphy email to Foster continuing on that the review was not done in accordance with protocol. Foster responds that ScanSource has not seen the results of the iPad review and that ScanSource has not looked at anything on the iPad.

Date	Event
July 18, 2012	FTI notified Thomas that they had not yet heard from Murphy about training on the review platform, Ringtail.
July 22, 2012	Murphy email to Foster objecting to the manner in which the iPad was searched. Murphy questions why the other devices have not had searches conducted.
July 23, 2012	Foster email to Murphy regarding iPad report and that FTI will review the report with Murphy at his convenience. Foster is not aware of Murphy contacting FTI to arrange such a review. FTI reached out to Murphy last week to arrange training on the review platform (Ringtail). Murphy has failed to respond. Murphy email to Foster regarding not having time to be trained on Ringtail system and for all of the documents to be printed out. Murphy states we can move forward if the only the documents containing search terms can be produced. Foster responds that the platform allows for privilege identification and would save time as opposed to printing out all of the documents for review.
July 26, 2012	FTI's analysis shows that 3 of the 5 devices that were connected to the ScanSource Laptop by USB between December 9, 2011 and December 15, 2011, also were connected to the HP Laptop after December 15, 2011. (July 26, 2012 Gaida Affidavit.)
July 30, 2012	ScanSource files Motion for Expedited Hearing with July 26, 2012 Gaida Affidavit.
August 1, 2012	Foster email to Murphy stating FTI will index the iPad report and files (to the extent they can be indexed) and run search terms to see if there are any hits. With regard to the other devices, hard copy review will be extremely cumbersome for all parties and will add several steps which could be avoided.
August 2, 2012	Murphy continues to object to utilization of the review platform. Foster suggests a call to Special Referee Quattlebaum and FTI to work this out as time is being wasted. ScanSource will continue to push to do the review electronically because it is cheaper and quicker.
August 3, 2012	FTI provided Murphy with reports from the iPad review (Lee Email to Murphy dated August 3, 2012.)
August 8, 2012	Plaintiff deposes Scott Benbenek.

Date	Event
August 13, 2012	Murphy email to Foster regarding the iPad report. Believes the report of responsive hits is probably fine. Murphy also requests status of deferred compensation.
August 20, 2012 and August 23, 2012	FTI received a copy of Chris Spearman and Robbie Cox's work laptop hard drives. Using EnCase, an image was created for both of these machines. (August 28, 2012 Gaida Affidavit.)
August 21, 2012	Murphy emails Foster asking if Yelton can have his iPad back Foster responds to Murphy that the iPad contains confidential materials that will need to be deleted before it can be returned and asks Murphy to consider taking the Ringtail training.
August 27, 2012	Murphy emails Foster inquiring as to what confidential content was on the iPad and the resistance to producing documents. Foster responds with an explanation of the content and the need for Ringtail. Murphy responds that he believes Yelton will be fine with resetting the iPad and that Special Referee Quattlebaum should decide the Ringtail issue
August 28, 2012	ScanSource files Notice of Filing Supplemental Affidavit of Dean Gaida in Support of Petition for Rule to Show Cause and Motion for Sanctions
August 28, 2012	FTI generated reports which detail the removable USB devices connected to these machines as recorded by Windows. (August 28, 2012 Gaida Affidavit.)
August 29, 2012	Hearing before Judge Hill.
August 31, 2012	Hearing before Special Referee Quattlebaum.
September 13, 2012	Foster email to Murphy regarding performing factory reset on iPad and requesting a certification that the information on the iPad has not been backed up to some storage device.
September 18, 2012	Factory settings on iPad restored and iPad returned to Murphy.

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State of South Carolina	**IN THE COURT OF COMMON PLEAS**
County of Greenville	**2012-CP-23-0314**
Jeff Yelton,	
Plaintiff,	**Plaintiff's Submission Regarding Damages if Injunctive Relief is Granted and the Results of the Forensic Examination**
v.	
ScanSource, Inc.,	
Defendant.	

Plaintiff files this submission to address two points: (1) damages that will occur with by the issuance of and injunction; and (2) that Defendant's bases for seeking injunctive relief have been called into more serious doubt by the recent forensic search results and that issuing an injunction without actually reviewing the evidence would be an abuse of discretion.

Damages resulting from Defendant's use of injunction and proceedings

The damages that should be considered include the loss of employment that is resulting from Defendant's successful efforts to use this litigation to keep Plaintiff out of the industry. These proceedings, including the TRO, have rendered it impossible for Plaintiff to pursue a career in the field in which he has spent his career. The issuance of injunctive relief would effectively seal the deal for Defendant even though it has offered **no evidence** that Plaintiff has used or disclosed any confidential information. AJG Holdings, LLC v. Dunn, 382 S.C. 43, 50, 674 S.E.2d 505, 508 (Ct. App. 2009) (security bond should includes losses from inability to conduct business); Atwood Agency v. Black, 374 S.C. 68, 73, 646 S.E.2d 882, 884 (2007)("[A] nominal security bond does not satisfy Rule 65(c)

because it erroneously assumes the injunction is proper instead of providing an amount sufficient to protect appellants in the event the injunction is ultimately deemed improper . . .")

Plaintiff previously provided to the Special Referee emails from Defendant's CEO, distributing Defendant's injunction papers throughout the industry. (Pl. Resp. To Def. Submission to Special Referee Exhibit 2; see also Yelton9026-27, 9153 (submitted en camera). Plaintiff also provided testimony from Mr. Benbenek regarding Defendant's desire to not have Plaintiff work for vendors, as well as internal emails that make clear that Defendant's executives are using Defendant's leverage to keep potential employers in the industry from hiring or doing business with Plaintiff. (Pl. Resp. To Def. Submission to Special Referee at 3-4). Defendant has gone so far as to intimidate a reporter in the industry because he had the audacity to publish nice things about Plaintiff, even though nobody has said anything disparaging about Defendant. (Id. at 4). Defendant engages in such spiteful tactics after Plaintiff turned down over $70,000 to expand his post-employment restrictive covenants. (Benbenek Affidavit Exhibit submitted with Motion for TROI Pl. Aff. ¶ 12 (attached)).

The results of these efforts have been quite successful for Defendant. As Plaintiff attests, when he sought to do business in the industry, responses ceased at the same time Defendant filed its papers and distributed them through the industry. (Id. ¶¶ 1-4).

And the effort continues. For example, Defendant's grossly misleading representations of Plaintiff's dealings with Penn Williams, coupled with proposed language that will only fuel further disputes, make clear that Defendant is simply attempting to keep anyone from becoming associated with Plaintiff with sweeping language about anyone

"acting in concert and active[ly] participation with him." While such efforts are improper, and they highlight the serious financial consequences that would attend any injunctive relief.

Likewise, Defendant's amorphous and expansive view of what constitutes "confidential information" (including information obtained from others) puts Plaintiff in the position of either having to stay out of the industry in which he has built his career or, even if Plaintiff could obtain work or a business relationship, Defendant will torpedo it by threatening anyone from becoming "associated with" or "working in concert" with Plaintiff.

That is quite "drastic" relief given that Defendant has not shown any improper use or disclosure of any confidential information, or even a desire or opportunity to do so on the part of Plaintiff.

Costs and fees

A conservative estimate of Plaintiff's earning capacity had Defendant not interfered with his efforts is $250,000 for the likely amount of time that this case will remain pending. (Pl. Aff. ¶ 6). Because an injunction will actually countenance and further harm these relationships, it is imperative that Plaintiff have recourse.

Defendant's arguments can be shown to be based on false premises

When the parties were before the Court on Plaintiff's Motion for Summary Judgment, counsel for Defendant urged that the Court wait until the facts are in on the electronic search. Here, Defendant has urged that the Special Referee not to wait for any facts to come in because they may detract from the incorrect assumptions and conclusions

that serve as the very foundation of Defendant's unsubstantiated efforts to obtain injunctive relief. A rush to judgment here is unwarranted because the status quo remains in effect.

For example, Defendant offered pure speculation that Plaintiff may have used the "Bottom 1000" list post employment. While Plaintiff already has refuted that (with actual evidence) and has explained why such a list would not be useful, the only apparent copy of the list that the Undersigned could find in the search results did not come from any of Plaintiff's computer, but rather from a deleted zip backup file from the backup drive. The last date noted for the Bottom 1000 list was the date of the zip backup in early January (which captured hundreds of documents at exactly the same time, which can only indicate this was some kind of timed backup of the work files or virus scan of files that used to exist at one point). Nothing in the results the Undersigned could find indicated that files were ever unzipped or used. (See also Pl. Aff. ¶ 9).

As another example, Defendant has attempted to cause alarm with respect to QBR's, going so far as to claim that Plaintiff stole them, accessed them post employment and then lied about it. The search results did not unearth a Motorola QBR that the Undersigned could see. There were deleted copies of the Intermec and Honeywell QBR's on the backup drive in the recycle bin. However, it appears clear that they were never accessed after Jeff's employment ended as the only dates given for them are December 12, 2012 (the date Defendant now alleges Plaintiff obtained them on the flash drive). It does not appear that those files were accessed on Plaintiff's laptop (or any other computer). (See also id ¶ 10).

Further, Defendant attempted to show that Plaintiff was "editing" ScanSource documents by referencing the "edited" notation in Dropbox. While Plaintiff already has

shown that "edited" feeds off the file system modification date, which is an issue in Windows 7, FTI Consulting has provided an explanation of the different dates, which confirms that they do not accurately reflect actual transactions as one would expect. (See Pl. Aff. attachment).

Significantly also, there are no files being modified or accessed on the date that Mr. Gaida claims that what Defendant calls the "QBR drive" was plugged into his laptop. To the extent Defendant can show that a particular flash drive once had QBR's on them, it appears that either Defendant has the wrong flash drive or the flash drive did not have QBR's or any other confidential data on it on January 17. (See also id ¶ 11).

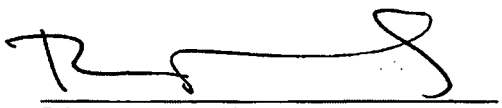
These are just the examples of the weakness of the arguments upon which Defendant's effort to obtain injunctive relief are based. It is Defendant that carries the heavy burden here. Yet, even with respect to the deleted backup and December files, there appears to be no evidence Plaintiff ever accessed or used the documents at any relevant time. There is no apparent evidence that he used these files on his computers, or even opened or viewed them on his computers. And even if he did at some point, which he simply does not recall doing, they no longer exist and there is no basis for saying that he is causing or threatening to cause any harm to ScanSource.

How then can Defendant make the showing necessary for a use or disclosure injunction? It can only do so by offering assumption and speculation instead of proof and then rushing the process to deny Plaintiff the opportunity to offer actual evidence. To deny Plaintiff the right to offer evidence to refute Defendant's unfounded and unsubstantiated theories would be an injustice and an abuse of discretion. Defendant surely should have a right to review the results and offer its view. Based on an extensive review, Plaintiff and

the Undersigned believe it will become clear that many of the assumptions (such as the use of a "QBR flashdrive") will become debunked. It was Defendant that waited many months to run the scans here. We can surely wait a week or two more (since there is nothing allegedly going on that is improper and the TRO remains in effect) for a deliberate review of actual evidence.

Respectfully submitted this 19th day of October, 2012.

For the Plaintiff:



Brian P. Murphy No. 6770

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(864) 241-1386 (fax)

State of South Carolina	)	**IN THE COURT OF COMMON PLEAS**
	)	
County of Greenville	)	**2012-CP-23-0314**
	)	
Jeff Yelton,	)	
	)	
Plaintiff,	)	
v.	)	**Plaintiff's Affidavit Regarding damages**
ScanSource, Inc.,	)	
	)	
Defendant.	)	
	)	

Plaintiff is an adult over the age of 18 years and the following are true and correct facts personally known to Plaintiff and are within his personal knowledge:

1. Prior to Defendant filing its counterclaims, I had been discussing possible working arrangements with both Motorola and Honeywell and I later met with representatives from both companies before Defendant filed its counterclaims and request for injunctive relief. I spoke to both companies about Varsguide and the possibility of becoming a value added retailer (VAR) and/or an employee.
2. After Defendant filed its counterclaims, nobody from Motorola responded regarding the Varsguide opportunity. I was told that, with respect to becoming a bar-coding VAR, Motorola would have to check with its lawyers. I was not offered special pricing, meaning that, as a VAR, I would have to pay full price for products (from a distributer such as ScanSource). Effectively, that eliminated my ability to work as a bar-coding VAR because one can not compete with VARs that receive discounted pricing.

3. After Defendant filed its counterclaims, I did not receive the approval to become a business partner from Honeywell as anticipated. I called the head of channel marketing to inquire. She told me she was very nervous and that this was a very uncomfortable call for her. I asked why, and she said because ScanSource is our largest customer and we have to make sure they are O.K. with this. She also told me that she needed to speak to the attorneys. She called me back and said that the attorneys said that I would not receive any benefits (i.e. discounting). Nobody got back to me about Varsguide after Defendant filed its counterclaims even though I made repeated calls to follow up.

4. I also spoke to an individual at Zebra mentioned in the emails produced by Defendant whom Mike Baur instructed to ignore me. I attempted to call him repeatedly. When I finally reached him after a few weeks, he said he would follow up. I was then approved at the lowest level, which means I would not receive the discounting necessary to compete.

5. My corporation, Wired Fox Technologies, Inc. ("WFTI") was incorporated in January 2012 as Varsguide, Inc. As I previously mentioned, the only business it has conducted to date has been in the area of selling two-way radios. The business plan is to sell through e-commerce sites, which is consistent with the views I have expressed as part of the new model paradigm. It is my hope to do business as a e-commerce VAR in other industries, including bar coding, but I have not conducted any business in those areas although WFTI is qualified as a VAR to sell a variety of products.

6. In my business planning, I created a budget for operating as a VAR that planned for a combination of salary and net profit of $336,000 per year. I could not create any hard and fast numbers for VarsGuide, primarily because it is such a unique niche. My overall plan and a reasonable goal with both initiatives would be to earn $250,000 per year.

7. I was trained by FTI Consulting on how to use the Ringtail system and I personally participated in the review of the documents submitted that were found on the devices pursuant to the Consent Protocol.

8. Ms. Henley Clement provided the training via webinar. She also offered to handle any follow up questions, which she did. We asked questions both over the phone and via email, to which she promptly responded. A copy of some of the information she provided is attached hereto.

9. With respect to the "Bottom 1000" list, the only apparent copy of the list that the Undersigned could find in the search results did not come from any of my computers, but rather, from a deleted zip backup file from the backup drive. The last date noted for the Bottom 1000 list was the date of the zip backup in early January (which captured hundreds of documents at exactly the same time). There was nothing apparent to me in the results that indicated that files were ever unzipped or used.

10. The search results did not show a Motorola QBR that I could see. There were copies of the Intermec and Honeywell QBR's on the backup drive. However, it appears clear that they were never accessed after my employment ended as the

only dates given for them are December 12, 2012. It does not appear that those files were accessed on any of my personal computers.

11. I did not see any ScanSource-related files being modified or accessed on January 17, 2012.

12. According to the Participant Benefit Statement I received through 12/31/11, the amount of my unvested company contributions in the Deferred Compensation Plan was $70,581.

Respectfully submitted this 19th day of October, 2012.

Jeff Yelton

Sworn to and subscribed before me
this 19th day of October, 2012

Notary Public - South Carolina
my commission expires ~~9/14/14~~ 3/29/17

H. LORRAINE MILLER NOTARY PUBLIC SOUTH CAROLINA

H. Lorraine Miller
NOTARY PUBLIC
State of South Carolina
My Commission Expires
March 29, 2017

Brian Murphy

From: Clement, Henley <Henley.Clement@fticonsulting.com>
Sent: Tuesday, October 16, 2012 5:46 PM
To: brian@brianmurphylawfirm.com
Cc: Project_Reflection
Subject: RE: Project Reflection – Follow-up

Hi Brian,
Please see my answers in red below.

Thanks,

Henley

From: Brian Murphy [mailto:brian.murphy@mindspring.com]
Sent: Tuesday, October 16, 2012 10:57 AM
To: Clement, Henley
Subject: RE: Project Reflection -- Follow-up
Importance: High

[ ] = Responses
BBM

Thank you for all of your help in this. We are trying to get this information released to the firm that retained you ASAP, so if you could please help us with a few issues, I would appreciate it.

1. As asked below, we are trying to figure out if the metadata report allows us to figure out when something is deleted. As we understand your explanation, the "del" in the metadata string shows the document was deleted, but we see when. [There is no "deletion time" recorded by a system the closest time you can use is the last accessed date and time. This will only be updated by the system for an active file and can be changed simply by the system running virus scanning or other such programs that might touch the file. This time will say the last time the file was known to be active but will not necessarily be the day/time of deletion.]

2. There are numerous files that cannot be opened. They are identifed by a long string of characters (from what I understand this is called a "hex string"), but cannot be viewed. Is there a way to view them or will they be unreadable/inaccessible to everyone? [Are these the 32 files that are not yet coded? If so, we will confirm on our end that these cannot be read.]

3. If there is any more detail you can provide on the meaning of the different dates and how the system creates those, that would be appreciated. From what I understand from our call, different dates may be used under the same category depending on the document. [The three most common times associated with a loose file are Created, Modified, and Accessed. The creation time is the date and time a file is created windows considers a copy paste of a file as creating a new file and thus these types of moments will generate a new date/time stamp it is possible therefore to have a creation date after the last modified date. The modified date is the most stable date and time stamp and is updated when a change is made and saved to a file indicating the last time the file was interacted with. The Accessed date and time is the most volatile and can be changed even when the file is not modified but is scanned or referenced by a program system.]

Thanks again for your assistance.

Please support the Brian Murphy Law Firm virtual toy drive, benefiting the young patients at Greenville's Children's Hospital. We will match the first $5,000 pledged through October 2012.

http://www.virtualtoydrive.org/home.php?sponsor=333

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(864) 370-9400
(864) 241-1386 (fax)

brian@brianmurphylawfirm.com

www.brianmurphylawfirm.com

From: Brian Murphy [mailto:brian.murphy@mindspring.com]
Sent: Monday, October 15, 2012 5:13 PM
To: 'Clement, Henley'
Subject: RE: Project Reflection -- Follow-up

Can we tell *when* docs were deleted from these reports?

Please support the Brian Murphy Law Firm virtual toy drive, benefiting the young patients at Greenville's Children's Hospital. We will match the first $5,000 pledged through October 2012.
http://www.virtualtoydrive.org/home.php?sponsor=333

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(864) 370-9400
(864) 241-1386 (fax)

brian@brianmurphylawfirm.com

www.brianmurphylawfirm.com

From: Clement, Henley [mailto:Henley.Clement@fticonsulting.com]
Sent: Monday, October 15, 2012 4:37 PM
To: brian@brianmurphylawfirm.com
Cc: Project_Reflection
Subject: Project Reflection -- Follow-up

Brian,

Attached please find the information you requested during our training call last Friday. The first is a list of all the metadata fields with a description of each field. The second is a reference chart for the Evidence ID numbers in Ringtail.

You also asked about determining if documents are deleted or temp files. Unfortunately, we don't have a dedicated field in the database for this information but you can find it in the file path, as you saw during training.

If you have any further questions please let me know.

Thanks,

Henley

Henley Clement
Senior Consultant
Technology

F T I Consulting
312.606.2629 direct
henley.clement@fticonsulting.com

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Chicago, IL 60606
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State of South Carolina	)	**IN THE COURT OF COMMON PLEAS**
	)	
County of Greenville	)	**2012-CP-23-0314**
	)	
Jeff Yelton,	)	
	)	
Plaintiff,	)	
v.	)	**CERTIFICATE OF SERVICE**
	)	
ScanSource, Inc.,	)	
	)	
Defendant.	)	
	)	

2012 OCT 19 P 2:55

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This is to certify that a copy of Plaintiff's Submission Regarding Damages if Injunctive Relief is Granted and the Results of the Forensic Examination in this matter was served on the Defendant ScanSource, Inc., on October 19, 2012, by hand-delivering a copy as follows:

William H. Foster, Esq.
Nelson Mullins Riley & Scarborough LLP
104 South Main Street, Suite 900
Greenville, SC 2963

H. Lorraine Miller

H. Lorraine (Lorry) Miller, PLS
Legal Assistant to Brian Murphy

Brian Murphy Law Firm, P.C.
514 Pettigru Street
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