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DISTRICT COURT
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DISTRICT OF UTAH
BY: _____
CLERK
FOR THE DISTRICT OF UTAH CENTRAL DIVISION

PHILLIP M. ADAMS and PHILLIP M.
ADAMS & ASSOCIATES, L.L.C.,

Plaintiff(s),

vs.

GATEWAY, INC.,

Defendant(s).

**ORDER REGARDING MOTION TO
COMPEL DOCUMENTS WITHHELD
ON THE BASIS OF PRIVILEGE**

Case No: 2:02-CV-106 TS

District Judge Ted Stewart
Magistrate Judge David Nuffer

A telephone conference was held Friday November 14, 2003, at 2:30 p. m. between counsel (Mr. Gregory Phillips for Plaintiff and Mr. John Posthumus for Gateway) and the court, to discuss the hearing set November 18 and 19, 2003, on Plaintiffs' Motion to Compel Documents Improperly Withheld on the Basis of Privilege.¹ The hearing was originally set for Gateway to elicit testimony from five witnesses, Mark Walker, Dave Harrell, Mike Holstein, Ron Naves, and Thomas Stepp, as a further opportunity for Gateway to fulfill its burden of proof on its claims of privilege. Gateway was required to secure the attendance of those witnesses by this court's order of October 22, 2003,² after Gateway did not bring witnesses to the hearing October 21, 2003.³

Recently, Gateway's ability and desire to present testimony from witnesses at the

¹ Docket no. 81, filed September 3, 2003.

² Docket no. 110.

³ See minute entry of September 15, 2003, docket no 91.

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upcoming hearing has diminished, and altered. By various e-mails in the last week, Mr. Posthumus advised that he was unable to secure the attendance of Mr. Holstein and Mr. Naves, and that Gateway did not intend to rely on testimony from Mr. Stepp and Mr. Harrell.⁴ By the most recent e-mail, Mr. Posthumus indicated that Gateway believed its proof from these individuals was so interwoven with privileged matters that their testimony (or depositions in lieu of testimony), should occur outside the presence of Adams and Adams' counsel. Thus, the November 18, 2003, hearing was set for one witness whose testimony, in Gateway's view, should occur outside the presence of opposing parties to protect the privilege claims at issue.

After discussion with counsel,

IT IS HEREBY ORDERED that the hearing set November 18 and 19, 2003 is STRICKEN.

IT IS FURTHER ORDERED that Gateway shall submit declarations supporting its privilege claims to the court, with supporting exhibits, for *in camera* review, serving on Adams' counsel (a) redacted copies of the declarations, (b) such exhibits as to which no privilege is claimed, and (c) a list of all exhibits submitted, with a complete description of the documents, and a reference to where each such document is listed on the Privilege Logs. The deadlines for filing and service are:

Mark Walker - November 20, 2003
Ron Naves - November 21, 2003
Mike Holstein - November 26, 2003

⁴ E-mails of November 7, 2003; November 11, 2003; and November 13, 2003, all lodged in the file.

IT IS FURTHER ORDERED that Gateway and Adams may file and serve further memoranda on this motion, with any supporting exhibits, on or before November 26, 2003.

IT IS FURTHER ORDERED that Gateway shall serve Adams with documents as to which it no longer claims privilege on or before November 18, 2003.

November 14, 2003.

BY THE COURT:

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

David Nuffer
U.S. Magistrate Judge

blk

United States District Court
for the
District of Utah
November 17, 2003

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:02-cv-00106

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

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