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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

<hr/>)
)
SECURITIES AND EXCHANGE COMMISSION,)
)
PLAINTIFF,)
)
v.)
)
MANAGEMENT SOLUTIONS, INC., a Texas)
Corporation; WENDELL A. JACOBSON; and)
ALLEN R. JACOBSON,)
)
DEFENDANTS.)
<hr/>)

**MEMORANDUM IN
OPPOSITION TO WENDELL A.
JACOBSON’S MOTION FOR A
PROTECTIVE ORDER**

Civil No. 2:11-cv-01165
Judge Bruce S. Jenkins

Plaintiff, Securities and Exchange Commission (the “Commission”), hereby submits this Memorandum in Opposition to Wendell A. Jacobson’s (“Wendell Jacobson” or “Defendant”) Motion for a Protective Order.

STATEMENT OF FACTS

1. The Commission filed a Complaint (Docket # 1) against Management Solutions, Inc., Wendell Jacobson and Allen R. Jacobson on December 15, 2011, alleging violations of the federal securities laws.

2. On the same day the Complaint was filed, Wendell Jacobson, working through his counsel at the time, Mark Pugsley (“Mr. Pugsley”) and Loren Weiss (“Mr. Weiss”) of Ray Quinney & Nebeker, stipulated to the entry of the Temporary Restraining Order, Order Accelerating Discovery and Order to Show Cause (“TRO”) (Docket No. 3). In doing so, Wendell Jacobson agreed to set the hearing date for the proposed Preliminary Injunction on Monday, February 13, 2012, with a pre-trial hearing of Friday, February 3 and the joint pre-trial submission due on Wednesday, February 1.

3. That same day, the parties also agreed to an expedited discovery schedule, pursuant to which depositions could be set with five days notice and responses to written discovery would be due ten days from the date of service. These dates and the discovery schedule were memorialized on December 20, 2012, five days after the Complaint was filed, in the stipulated Order Amending Temporary Restraining Order, Order Accelerating Discovery and Order to Show Cause and Order Appointing Receiver, Freezing Assets and Other Relief (“Amended TRO”) (Docket No. 15).

4. On January 4, 2012, the Commission provided notice of Wendell Jacobson’s deposition to all counsel and/or parties, including Mr. Pugsley and Mr. Weiss, by emailing the Notice of Deposition of Wendell A. Jacobson. A copy of the Notice of Deposition of Wendell A. Jacobson (the “Deposition Notice”) is attached hereto as Exhibit “A”. A copy of the email sent to the parties attaching the Deposition Notice, dated January 4, 2012 (“January 4, 2012 Email”), is attached hereto as Exhibit “B”. Wendell Jacobson’s deposition was noticed for Tuesday, January 17, 2012. Four additional depositions were scheduled at that same time, with Allen Jacobson being noticed for Thursday, January 19th, Dustin Barrett for Monday, January

23rd, Gene Jacobson for Wednesday, January 25th, and Evan Jacobson in Texas for Friday, January 27th.

4. On January 6, 2012, Stephen Quesenberry (“Mr. Quesenberry”) and Christopher R. Infanger (“Mr. Infanger”) filed a Notice of Substitution of Counsel for Wendell Jacobson, certifying that “they are aware of and will comply with the existing discovery schedule and deadlines.” (Docket #50).

5. Subsequently, on January 11, 2012, Mr. Quesenberry and Mr. Infanger filed a second Substitution of Counsel for Wendell Jacobson, again certifying that they were aware of and would comply with the schedule and deadlines. (Docket #61).

6. On January 12, 2012, Wendell Jacobson served his First Set of Interrogatories and Document Requests on the Commission. Under the terms of the Amended TRO, responses to the discovery requests were due ten days thereafter, or Sunday, January 22, 2012. Because the due date fell on a Sunday, under Federal Rule 6(a)(1)(C) the response period continues until the next business day, Monday, January 23. Although an additional three days were available to respond under Rule 6(d) due to the manner of service of the discovery requests, the Commission decided to forego the additional three days because of the expedited nature of the discovery period.

7. Later on January 12, 2012, Mr. Infanger telephoned Mr. Wadley and informed Mr. Wadley that he and Mr. Quesenberry had a conflict with the January 17 deposition date of Wendell Jacobson as they had a previously scheduled preliminary injunction hearing that day. See Declaration of Daniel J. Wadley (“Wadley Decl.”), ¶ 1, attached hereto as Exhibit “C”. Mr. Infanger therefore requested that Wendell Jacobson’s deposition be moved to a later date. Id. In requesting that the deposition be rescheduled, Mr. Infanger never raised a concern with having

sufficient time to prepare Wendell Jacobson for the deposition, nor did he mention the need to obtain the Commission's discovery responses as a reason for requesting the delay. Mr. Wadley told Mr. Infanger that he would be willing to agree to move the deposition to accommodate the conflict, and proposed Friday, January 20 as a possible alternative. Id. Both counsel agreed to review their respective calendars and get back to one another.

8. On January 13, 2012, Mr. Infanger and Mr. Wadley had another telephone call in which the proposed rescheduled deposition date of Friday, January 20 for Wendell Jacobson was confirmed. See Wadley Decl., ¶ 2. Once again, Mr. Infanger did not raise any concerns relating to having insufficient time to prepare Wendell Jacobson for his deposition or the need to obtain the Commission's discovery responses prior to Wendell Jacobson's deposition. Id.

9. On January 13, 2012, Mr. Wadley sent Mr. Quesenberry and Mr. Infanger an email confirming Mr. Infanger and Mr. Wadley's telephone conversation and agreement to reschedule Wendell Jacobson's deposition to Friday, January 20, 2012. See Wadley Decl., ¶ 3, and Exhibit 1 attached thereto. In that same email, Mr. Wadley reminded Messrs. Quesenberry and Infanger that three depositions had been scheduled for Monday (January 23), Wednesday (January 25), and Friday (January 27) the following week, with the Friday deposition scheduled to take place in Fort Worth, Texas. Id.

10. On Monday, January 16, 2012, Mr. Infanger emailed Mr. Wadley and for the first time expressed concern about the need to obtain the Commission's discovery responses prior to Wendell Jacobson's deposition. See Wadley Decl., ¶ 4, and Exhibit 2 attached thereto. He informed Mr. Wadley that they needed at least one week from the time the discovery responses were received to prepare for the deposition, and that absent the Commission's stipulation to the second requested extension they would seek a protective order. Id.

11. Mr. Wadley responded to Mr. Infanger's email on Tuesday morning, January 17, 2012. See Wadley Decl., ¶ 5, and Exhibit 3 attached thereto. In his email, Mr. Wadley reminded Mr. Infanger that his client had stipulated to the current preliminary injunction schedule and that upon joining the case, both Mr. Quesenberry and Mr. Infanger had certified that they were aware of and would comply with the current schedule and deadlines. Id. In that same email, Mr. Wadley noted his understanding that Wendell Jacobson's previous attorneys had provided them with all of the documents that MSI and the Jacobsons had produced to the Commission during the course of the investigation, and he informed counsel that the Commission had not obtained any documents seized by the FBI and therefore could not produce them. Id. Mr. Wadley further reminded Messrs. Quesenberry and Infanger of the compressed discovery schedule, the currently scheduled depositions, and the pre-trial hearing submission that was due on February 1, 2012. Id. Based on the compressed and already full schedule, Mr. Wadley informed counsel that he was simply unable to accommodate yet another delay to Wendell Jacobson's deposition, and that the Commission intended to move forward with the deposition as scheduled on Friday, January 20. Id.

12. Pursuant to the previous agreement between the parties, on Tuesday January 17 the Commission served an amended deposition notice for Wendell Jacobson, noticing his deposition for the previously agreed upon date of Friday, January 20. See Exhibit D attached hereto.

13. On Wednesday afternoon, January 18, counsel for Wendell Jacobson met with the Commission to discuss the case generally. In that meeting, Mr. Quesenberry stated that unless the Commission agreed to delay the preliminary injunction hearing by at least two weeks he intended to seek a protective order precluding the Commission from taking Wendell Jacobson's

deposition as scheduled. See Wadley Decl., ¶ 7. The Commission would not stipulate to extend the time for the preliminary injunction hearing, and informed counsel for Mr. Jacobson that they would need to obtain a protective order and that in the absence of a protective order the Commission intended to move forward with the deposition as scheduled. Id.

14. On Thursday afternoon at approximately 3:00 p.m. the Commission received notice that Wendell Jacobson had filed a motion seeking a protective order to preclude his deposition, scheduled to take place the following morning (Docket No. 76).

15. No protective order was issued prior to Friday morning at 9:30 a.m. Nevertheless, on January 20, 2012, neither Wendell Jacobson nor his counsel appeared to provide deposition testimony despite the Commission's efforts to confer with them.

ARGUMENT

Wendell Jacobson's Motion for a Protective Order is without basis and should be denied. In seeking a protective order, Defendant is correct in stating that Rule 26(c) clearly places the burden on the moving party to demonstrate good cause sufficient to justify a restriction on the discovery process. To establish good cause, the moving party "must show that the disclosure will result in a clearly defined and serious injury to the party seeking protection." Exum, M.D. v. United States Olympic Committee, 209 F.R.D. 201, 206 (D. Colo. 2002) (finding that generalized assertions of embarrassment were not sufficient to establish good cause to restrict the dissemination of discovery material to the public, where there was no reasonable expectation of privacy). "In the absence of a showing of good cause for confidentiality, the parties are free to disseminate discovery materials to the public." Id. The Defendant has failed to establish sufficient good cause to justify the imposition of a protective order in this case.

First, Wendell Jacobson requests a protective order to preclude the Commission from taking his deposition “until at least one week after [Wendell Jacobson] has been provided discovery containing copies of the records relevant to the transactions about which the SEC seeks to question him in his deposition.” Memorandum in Support of Motion for a Protective Order (“Memo in Supp.”), p. 9. Forbidding, or otherwise restricting, a plaintiff from deposing a defendant until the plaintiff identifies specifically which documents and issues it wishes to question the defendant on has no basis in law or practice. Deponents cannot hold a party hostage until they know exactly what they will be questioned on. This demand is all the more unreasonable in this case, where the defendant is the individual with the most detailed information as to all issues in this case, and who already has in his possession all of the documentation that the defendants provided to the Commission.

Moreover, the Defendant has had since December 15, 2011, to draft and serve discovery on the Commission. On December 15, the very day this action was filed, Wendell Jacobson stipulated to the current discovery schedule. He has at all times been represented by counsel, and nothing prevented him from getting his discovery requests out earlier than he did. The fact that he chose to wait until January 12, 2012 to serve discovery – nearly one month after the case was filed and over one week *after* the Commission provided notice of his deposition – cannot now be used as a basis for further delaying the discovery schedule that was stipulated to by the parties and entered by this Court.

By rule, temporary restraining orders, like the one entered by the Court in this case, last no more than ten days. That would have required the Defendant to oppose the imposition of the requested Preliminary Injunction at a hearing on or before December 24, 2011. Recognizing the severe burden this placed upon the Defendant, the Commission agreed to extend the hearing date

for the Preliminary Injunction by nearly two months – until February 13, 2012, in order to permit the Defendant to have an opportunity to prepare for and defend against the Commission’s motion for a preliminary injunction. The Commission further agreed to a modified discovery schedule pursuant to which the Defendant could obtain discovery and conduct depositions. The Defendant was aware of this schedule, and in fact stipulated to it, and should not now be permitted to delay these proceedings based on a disingenuous excuse that he has not yet received documents in response to his belated discovery requests, documents that he admits he likely already has in his possession but simply has not had time to review.¹

The Commission was willing to accommodate, to the extent possible, Wendell Jacobson’s first request to delay the deposition, moving it from January 17 until January 20. Unfortunately, due to the realities dictated by the expedited schedule stipulated to in this case, further accommodation simply was not reasonable. By no later than January 4, 2012, the Defendant knew that three depositions had already been scheduled for the week of January 23, one of which was in Texas, and that the parties’ pre-trial submission was due a few short days thereafter. Knowing the expedited nature of this discovery schedule, the Defendant could have gotten discovery out earlier. He chose not to do so. He should not now be rewarded for his delay by receiving a protective order preventing his deposition, when the very basis for the protective order is his own inaction.

Second, there is no basis for excluding the FBI – or any other individual, for that matter – from being present at Wendell Jacobson’s deposition. The Defendant has failed to identify any

¹ The Defendant states that his current counsel received over 300 gigabytes of unindexed information from his previous counsel, and that based on sheer volume alone he could not be expected to review the information in preparation for his deposition. Yet, missing from the Defendant’s request for a protective order is any description of what efforts were made by his current counsel to coordinate with, or even converse with, the Defendant’s previous counsel on sorting through the information passed along from previous counsel. Certainly his previous counsel could have been imminently helpful, if he were only asked, in the effort of identifying which documents were important to review prior to the deposition.

reasonable expectation of privacy that would support a finding of good cause necessary to restrict the attendees at his deposition. Depositions, like discovery material, are public proceedings unless the party seeking a protective order is able to identify and support a legitimate claim of confidentiality. Exum, M.D. v. United States Olympic Committee, 209 F.R.D. 201, 206 (D. Colo. 2002). The Defendant has failed to make such a showing in this case.

Underscoring the Defendant's failure to identify any reasonable basis to have the FBI excluded from the deposition, the Defendant admits that if "the FBI wishes to know the contents of Mr. Jacobson's deposition testimony, it can obtain a copy of the transcript through the proper channels." Memo in Supp., pp. 7-8. Clearly the Defendant does not assert any claim of confidentiality as to the contents of his deposition, and as such the public, including the FBI, cannot be precluded from attending.

Instead of asserting a claim of confidentiality, the Defendant claims that the presence of the FBI at Wendell Jacobson's deposition would be for the purpose of coercing Mr. Jacobson into invoking his Fifth Amendment privilege against self incrimination. Memo in Support, p. 8. The Defendant claims that "[i]ntroducing the FBI into the middle of a civil suit which already entails incredibly high levels of stress, difficulty, and humiliation is an oppressive and undue burden which this Court can and should relieve by issuing a protective order preventing the FBI's presence" at the deposition. Memo in Supp., p. 8.

The fact that the FBI's presence at Wendell Jacobson's deposition would increase the stress level of the Defendant is insufficient to justify closing an otherwise open proceeding to the public. The "party seeking a protective order must show that disclosure will result in a clearly defined and serious injury to the party seeking protection." Exum, M.D. v. United States Olympic Committee, 209 F.R.D. at 206. The potential for additional stress, difficulty, and

humiliation is simply not a “clearly defined and serious injury” sufficient to establish good cause, especially when the Defendant himself admits that the FBI will be able to obtain a copy of the deposition transcript anyway.

In seeking a protective order to delay his deposition and to prevent the FBI from attending his deposition, the Defendant not only has failed to satisfy the good cause requirement set forth in Rule 26(c) and in case law, but has manipulated the entire process to achieve the ends he was seeking from the beginning – delay. The Court should not condone the Defendant’s efforts here, but rather should deny the application for a protective order and compel Mr. Jacobson to attend his properly-noticed deposition and abide by the discovery schedule he already stipulated to in this matter.

CONCLUSION

For the foregoing reasons, the Court should deny the Defendant’s Motion for a Protective Order and compel him to comply with the discovery schedule in place in this matter and attend his properly noticed deposition.

Dated this 20th day of January, 2011.

Respectfully submitted,

/s/ Daniel J. Wadley
Daniel J. Wadley
Thomas M. Melton
Attorneys for Plaintiff
Securities and Exchange Commission

CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of January, 2012, I served the foregoing by the method(s) indicated on the following:

VIA CM/ECF

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VIA U.S. MAIL, POSTAGE PREPAID

Greg B. Bailey
PO Box 298
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Movant, Pro Se

Don Ramey Logan as trustee of the P&K Brown Family Trust
i.c.o Law Offices of Squitieri & Fearon
32 East 57th Street, 12th Floor
New York, NY 10022
Representative of Related Party

/s/ Marie Elliott

Exhibit A

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

SECURITIES AND EXCHANGE COMMISSION,

PLAINTIFF,

v.

**MANAGEMENT SOLUTIONS, INC., a Texas
Corporation; WENDELL A. JACOBSON; and
ALLEN R. JACOBSON,**

DEFENDANTS.

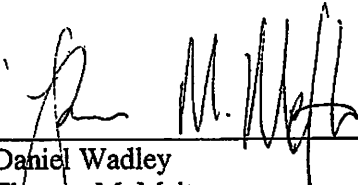
**NOTICE OF
DEPOSITION OF
WENDELL A. JACOBSON**

Civil No. 2:11-cv-01165

Judge Bruce S. Jenkins

PLEASE TAKE NOTICE that, pursuant to Fed. R. Civ. P. 30, Plaintiff, Securities and Exchange Commission, will take the deposition of Wendell A. Jacobson at the offices of the Securities and Exchange Commission, Salt Lake Regional Office, 15 W. South Temple, Suite 1800, Salt Lake City, Utah 84101, on Tuesday, January 17, 2012 at 9:30 a.m. and lasting until completed.

DATED this 4th day of January, 2012.



Daniel Wadley
Thomas M. Melton
Attorneys for Plaintiff
SECURITIES AND EXCHANGE COMMISSION

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of January, 2012, I caused to be sent by the methods stated below a true and correct copy of the foregoing Notice of Deposition of Wendell A. Jacobson to:

Via Electronic Mail:

Mark W. Pugsley
mpugsley@rqn.com

Loren E. Weiss
lweiss@rqn.com

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Attorney for Movant Utah Community Bank

Via U.S. Mail, postage prepaid:

Greg B. Bailey
PO Box 298
Fountain Green, UT 84632

A handwritten signature in black ink, appearing to read "GB Bailey", is written over a solid horizontal line.

Exhibit B

Reiter, Misty

From: Reiter, Misty
Sent: Wednesday, January 04, 2012 12:38 PM
To: 'mpugsley@rqn.com'; 'lweiss@rqn.com'; 'nak@clydesnow.com'; 'dlw@clydesnow.com'; 'jaj@clydesnow.com'; 'catalbot@hollandhart.com'; 'dbroadbent@hollandhart.com'; 'jasjoblom@hollandhart.com'; 'mwirthlin@hollandhart.com'; 'rcmarshall@hollandhart.com'; 'dsbyers@hollandhart.com'; 'cfrischknecht@rqn.com'; 'worton@kmclaw.com'
Subject: SEC v. Management Solutions, Inc., et al.
Attachments: Gene Jacobson_Dep Notice.PDF; Evan Jacobson_Dep Notice.PDF; Allen Jacobson_Dep Notice.PDF; Wendell Jacobson_Dep Notice.PDF; Dustin Barret_Dep Notice.PDF

Counsel,

Please find attached depo notices for: Wendell A. Jacobson, Allen R. Jacobson, Evan Jacobson, Gene Jacobson and Dustin Barrett.

Regards,

Misty Reiter

Paralegal
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Salt Lake Regional Office
Division of Enforcement
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Exhibit C

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

SECURITIES AND EXCHANGE COMMISSION,

PLAINTIFF,

v.

**MANAGEMENT SOLUTIONS, INC., a Texas
Corporation; WENDELL A. JACOBSON; and
ALLEN R. JACOBSON,**

DEFENDANTS.

**DECLARATION OF
DANIEL J. WADLEY**

Civil No. 2:11-cv-01165

Judge Bruce S. Jenkins

I, Daniel J. Wadley, pursuant to 28 U.S.C. § 1746, declare as follows:

1. On January 12, 2012, Mr. Infanger telephoned me and informed me that he and Mr. Quesenberry had a conflict with the January 17 deposition date of Wendell Jacobson as they had a previously scheduled preliminary injunction hearing that day. Mr. Infanger therefore requested that Wendell Jacobson's deposition be moved to a later date. In requesting that the deposition be rescheduled, Mr. Infanger never raised a concern with having sufficient time to prepare Wendell Jacobson for the deposition, nor did he mention the need to obtain the Commission's discovery responses as a reason for requesting the delay. I told Mr. Infanger that I

would be willing to agree to move the deposition to accommodate the conflict, and proposed Friday, January 20 as a possible alternative. We both agreed to review our respective calendars and get back to one another.

2. On January 13, 2012, Mr. Infanger and I had another telephone call in which the proposed rescheduled deposition date of Friday, January 20 for Wendell Jacobson was confirmed. Once again, Mr. Infanger did not raise any concerns relating to having insufficient time to prepare Wendell Jacobson for his deposition or the need to obtain the Commission's discovery responses prior to Wendell Jacobson's deposition.

3. On January 13, 2012, I sent Mr. Quesenberry and Mr. Infanger an email confirming Mr. Infanger and my telephone conversation and agreement to reschedule Wendell Jacobson's deposition to Friday, January 20, 2012. See Exhibit 1 attached hereto. In that same email, I reminded Messrs. Quesenberry and Infanger that three depositions had been scheduled for Monday (January 23), Wednesday (January 25), and Friday (January 27) the following week, with the Friday deposition scheduled to take place in Fort Worth, Texas. Id.

4. On Monday, January 16, 2012, Mr. Infanger emailed me and for the first time expressed concern about the need to obtain the Commission's discovery responses prior to Wendell Jacobson's deposition. See Exhibit 2 attached hereto. He informed me that they needed at least one week from the time the discovery responses were received to prepare for the deposition, and that absent the Commission's stipulation to the second requested extension they would seek a protective order. Id.

5. I responded to Mr. Infanger's email on Tuesday morning, January 17, 2012. See Exhibit 3 attached hereto. In my email, reminded Mr. Infanger that his client had stipulated to the current preliminary injunction schedule and that upon joining the case, both Mr. Quesenberry

and Mr. Infanger had certified that they were aware of and would comply with the current schedule and deadlines. Id. In that same email, I noted my understanding that Wendell Jacobson's previous attorneys had provided them with all of the documents that MSI and the Jacobsons had produced to the Commission during the course of the investigation, and I informed counsel that the Commission had not obtained any documents seized by the FBI and therefore could not produce them. Id. I further reminded Messrs. Quesenberry and Infanger of the compressed discovery schedule, the currently scheduled depositions, and the pre-trial hearing submission that was due on February 1, 2012. Id. Based on the compressed and already full schedule, I informed counsel that I was simply unable to accommodate yet another delay to Wendell Jacobson's deposition, and that the Commission intended to move forward with the deposition as scheduled on Friday, January 20. Id.

6. Pursuant to the previous agreement between the parties, on Tuesday January 17 the Commission served an amended deposition notice for Wendell Jacobson, noticing his deposition for the previously agreed upon date of Friday, January 20.

7. On Wednesday afternoon, January 18, counsel for Wendell Jacobson met with the Commission to discuss the case generally. In that meeting, Mr. Quesenberry stated that unless the Commission agreed to delay the preliminary injunction hearing by at least two weeks he intended to seek a protective order precluding the Commission from taking Wendell Jacobson's deposition as scheduled. The Commission would not stipulate to extend the time for the preliminary injunction hearing, and informed counsel for Mr. Jacobson that they would need to obtain a protective order and that in the absence of a protective order the Commission intended to move forward with the deposition as scheduled.

8. On Thursday afternoon at approximately 3:00 p.m. the Commission received

notice that Wendell Jacobson had filed a motion seeking a protective order to preclude his deposition, scheduled to take place the following morning.

9. No protective order was issued prior to Friday morning at 9:30 a.m. Nevertheless, on January 20, 2012, neither Wendell Jacobson nor his counsel appeared to provide deposition testimony despite the Commission's efforts to confer with them.

I declare under penalty of perjury that the foregoing is true and correct. Executed in Salt Lake City, Utah, on January 20, 2012.

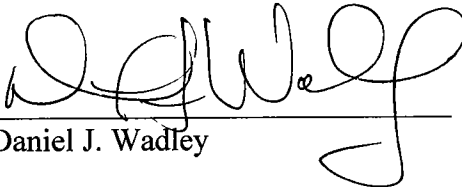

Daniel J. Wadley

Exhibit 1

Wadley, Daniel J.

From: Wadley, Daniel J.
Sent: Friday, January 13, 2012 5:13 PM
To: 'squesenberry@hjslaw.com'; 'Chris Infanger (CInfanger@HJSLaw.com)'
Cc: Melton, Thomas M.; Okinaka, Alison J.; Feindt, Paul; Frost, Scott R.; Reiter, Misty
Subject: Allen Jacobson Deposition

Steve and Chris,

We have now received a letter from Allen Jacobson's attorneys confirming that, were we to move forward with his deposition, he will assert his Fifth Amendment privilege as to any question asked by the Commission. Based on that representation, and his agreement to stipulate to the preliminary injunction and asset freeze, we have provisionally canceled his deposition that had been scheduled for Thursday, January 19th.

In my discussions with Chris, based on a conflict you have on Tuesday, we have agreed to move Wendell's deposition until Friday, January 20. We will get you a revised deposition notice for that date. We also have Dustin Barrett scheduled for Monday, January 23; Gene Jacobson scheduled for Wednesday, January 25, and Evan Jacobson scheduled for Friday, January 27. Dustin and Gene are scheduled to take place in our office, while Evan is scheduled to take place in the SEC's Fort Worth office. As I mentioned to Chris, there is a chance that the FBI may be attending the depositions.

We will plan to have our discovery responses to you on Monday, January 23. We will be sending discovery requests to you early next week.

Let me know if you have any questions about the above schedule. I will look forward to meeting with you in our offices on Wednesday at 3:00.

Thanks,
Dan Wadley



Daniel J. Wadley
U.S. Securities and Exchange Commission
15 West South Temple, Suite 1800
Salt Lake City, Utah 84101
(801) 524-3422

Exhibit 2

Wadley, Daniel J.

From: Chris Infanger [CInfanger@hjslaw.com]
Sent: Monday, January 16, 2012 12:59 PM
To: Wadley, Daniel J.
Cc: Stephen Quesenberry; Leann Johnson
Subject: RE: Allen Jacobson Deposition

Mr. Wadley—

I have spoken with Steve Quesenberry (the partner heading up this case) at length regarding this deposition. We are extremely uncomfortable with the idea of having a deposition, especially one in which you indicate the FBI might be present, when we don't even have a copy of the documents which were seized, let alone any time to review those documents or to prepare. Your proposition that we take Wendell's deposition before even receiving our documents is not tenable.

We need at least a week after the receipt of our discovery to prepare for such a deposition and allow our client to have the ability to defend himself. We would prefer to reach an agreement with you on the scheduling of this deposition after a reasonable amount of preparation time following the receipt of our documents. However, if we are unable to reach such an agreement, we will file a motion with the Court requesting a protective order, postponing the deposition until a more reasonable time.

We are still very interested in sitting with you to discuss the case as a whole, and will plan on being at your office at 3:00 on Wednesday to do so.

Please let me know at your earliest convenience whether we might be able to reach an agreement on the date of the deposition. If we have not heard from you by tomorrow afternoon, we will move forward with our motion for a protective order.

Best Regards,

Christopher R. Infanger
Attorney at Law

HILL JOHNSON
SCHMUTZ

Attorneys at Law
RiverViewPlaza, Suite 300
4844 North 300 West
Provo, UT 84604-5663
Phone (801) 375-6600
Facsimile (801) 375-3865
www.hjslaw.com

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From: Wadley, Daniel J. [mailto:WadleyD@SEC.GOV]
Sent: Friday, January 13, 2012 5:13 PM
To: Stephen Quesenberry; Chris Infanger
Cc: Melton, Thomas M.; Okinaka, Alison J.; Feindt, Paul; Frost, Scott R.; Reiter, Misty
Subject: Allen Jacobson Deposition

Steve and Chris,

We have now received a letter from Allen Jacobson's attorneys confirming that, were we to move forward with his deposition, he will assert his Fifth Amendment privilege as to any question asked by the Commission. Based on that representation, and his agreement to stipulate to the preliminary injunction and asset freeze, we have provisionally canceled his deposition that had been scheduled for Thursday, January 19th.

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Daniel J. Wadley
U.S. Securities and Exchange Commission
15 West South Temple, Suite 1800
Salt Lake City, Utah 84101
(801) 524-3422

Exhibit 3

Wadley, Daniel J.

From: Wadley, Daniel J.
Sent: Tuesday, January 17, 2012 10:43 AM
To: 'Chris Infanger'
Cc: Stephen Quesenberry; Leann Johnson; Melton, Thomas M.; Reiter, Misty
Subject: RE: Allen Jacobson Deposition

Chris,

Thank you for your email. The current schedule regarding the pending preliminary injunction hearing was stipulated to by Mr. Jacobson's attorneys and entered by Judge Jenkins on December 15, the day the complaint was filed. Setting the PI hearing on February 13, with the pretrial set for Friday, February 3, was an accommodation to Mr. Jacobson in order to permit him time to evaluate whether to oppose the PI and, if so, to prepare his defense. When you and Mr. Quesenberry joined this case on January 6th you certified that you were aware of and would comply with the existing discovery schedule and deadlines. I understand that you have received all of the documentation that Ray Quinney had in this case, which includes the documents MSI previously produced to the SEC.

As you know, Mr. Jacobson's deposition had previously been scheduled for today. At your request, and because you had a conflict with the date, we agreed to move the deposition until this Friday, January 20. Next week, we have the depositions of Dustin Barrett (January 23), Gene Jacobson (January 25), and Evan Jacobson (January 27). Evan Jacobson will be deposed in Texas, requiring that Thursday the 26th be used for travel. The pretrial disclosure is due on Wednesday, February 1, with the pretrial hearing set for February 3rd. In addition to these scheduled depositions, we will be responding to your discovery requests, propounding our own discovery requests, and preparing our additional witnesses for the hearing on the 13th.

With all that is scheduled over the next two and a half weeks leading up to our pretrial submission, I simply do not see a time that we could reasonably reschedule Mr. Jacobson's deposition and still meet the set deadlines. As a result, I will be unable to accommodate your request to reschedule the deposition date, and will plan to move ahead with the deposition as scheduled this Friday.

We understand your concerns with the stakes at issue for a deposition this early in the case, especially with the prospect that the FBI may be attending. We have not received a copy of the documents seized by the FBI in their raid of the business or the home, nor can we compel them to produce any documents seized. Given the nature of criminal proceedings, it is very possible that the documents may not be available prior to the February 13 hearing. With these issues on the table, Allen Jacobson preferred not to testify at this stage of the litigation and instead has agreed to stipulate to the entry of the preliminary injunction, which would then enable him to proceed with the litigation on a standard litigation track. We would be happy to talk with you about working out a similar arrangement with Mr. Jacobson. We understand that your client may choose a different path than his son did, and he is entitled to do so. However, if he chooses to oppose the preliminary injunction, we do not have any choice other than to adhere to the expedited schedule currently in place.

We will still plan to meet with you tomorrow at 3:00 in our offices, and look forward to discussing the case with you at that time. If you need to speak with me earlier regarding these or other matters, I am happy to talk with you before then.

Thanks,
Dan Wadley

From: Chris Infanger [mailto:CInfanger@hjslaw.com]
Sent: Monday, January 16, 2012 12:59 PM

To: Wadley, Daniel J.
Cc: Stephen Quesenberry; Leann Johnson
Subject: RE: Allen Jacobson Deposition

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Best Regards,

Christopher R. Infanger
Attorney at Law

HILL JOHNSON
SCHMUTZ

Attorneys at Law
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To: Stephen Quesenberry; Chris Infanger

Cc: Melton, Thomas M.; Okinaka, Alison J.; Feindt, Paul; Frost, Scott R.; Reiter, Misty

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Thanks,
Dan Wadley



Daniel J. Wadley
U.S. Securities and Exchange Commission
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Salt Lake City, Utah 84101
(801) 524-3422

Exhibit D

Moran, Alyssa (Contractor)

From: Moran, Alyssa (Contractor)
Sent: Tuesday, January 17, 2012 1:47 PM
To: 'squesenberry@hjslaw.com'; 'catalbot@hollandhart.com'; 'dbroadbent@hollandhart.com';
'jasjoblom@hollandhart.com'; 'mwirthlin@hollandhart.com'; 'rcmarshall@hollandhart.com';
'dsbyers@hollandhart.com'; 'nak@clydesnow.com'; 'jaj@clydesnow.com';
'dlw@clydesnow.com'; 'worton@kmclaw.com'; 'gwingier@kmclaw.com';
'srichards@kmclaw.com'; 'cfrischknecht@rqn.com'
Cc: Wadley, Daniel J.
Subject: Management Solutions 2:11-cv-01165
Attachments: Amended Notice of Deposition Wendell.pdf

Please see the attached Amended Notice of Deposition of Wendell A. Jacobsen.

Alyssa K. Moran

Paralegal
CACI, Inc.
U.S. Securities and Exchange Commission
Salt Lake Regional Office
15 W. South Temple, Suite 1800
Salt Lake City, UT 84101
(801) 524-3360 Fax: (801) 524-5262

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of January, 2012, I served the foregoing Amended Notice of Deposition of Wendell A. Jacobson by the method(s) indicated on the following:

VIA Electronic Service

Stephen Quesenberry
squesenberry@hjslaw.com
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Attorneys for Movant Utah Community Bank

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Attorneys for Movant Platinum Protection, LLC

VIA U.S. MAIL, POSTAGE PREPAID

Greg B. Bailey
PO Box 298
Fountain Green, UT 84632
Movant, Pro Se

Don Ramey Logan as trustee of the P&K Brown Family Trust
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32 East 57th Street, 12th Floor
New York, NY 10022
(949) 872-6806
Representative of Related Party

/s/ Alyssa Moran