

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
TYLER DIVISION

ERIC M. ALBRITTON

v.

CISCO SYSTEMS, INC. and
RICK FRENKEL

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C. A. NO. 6:08-CV-00089
JURY

**CISCO SYSTEMS, INC.'S MOTION TO RECONSIDER ORDER DENYING
CISCO'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS**

TO THE HONORABLE DISTRICT JUDGE:

Defendant Cisco Systems, Inc. (“Cisco”) hereby files this Motion to Reconsider Order Denying Cisco’s Motion to Compel Production of Documents (the “Motion”) pursuant to the Court’s order dated May 8, 2009.

I. INTRODUCTION

This Court granted Cisco’s Motion in Limine No. 1, holding that Eric Albritton is bound by his unamended disclosure which explicitly does not seek damages for injury to reputation. Accordingly, Plaintiff is not permitted to introduce evidence of damages other than mental anguish and punitive damages. At the hearing on May 11, 2009, the Court said it would entertain Plaintiff’s request to reconsider such ruling.

This Court was certainly correct in its ruling on the Motion in Limine. The Motion in Limine was well briefed and correctly decided, and there is no reason to alter that sound decision. However, in the unlikely event the Court changes its ruling, Cisco would be entitled to evidence regarding Albritton’s reputation, which he has steadfastly refused to provide in discovery. Albritton alleges in the Pretrial Order that “Defendants’ statements tend to injure him in his trade or profession as an attorney.” (Docket No. 189 at p. 3). Yet he has refused to produce a single document relating to his “profession as an attorney.” On the other hand, if the Court denies Plaintiff’s motion for reconsideration, which it should, then this Motion is entirely moot.

II. FACTUAL BACKGROUND

On March 31, 2008, the then-presiding judge in this lawsuit, Judge Michael H. Schneider, ordered that within 60 days of the order, the parties must produce all documents that are “relevant to the claims or defenses of any party,” and directed the parties to Local Rule CV 26(d)

to define “Relevant to the Claim or Defense” (Exhibit A at p. 2) and that “requests for production under FED. R. CIV. P. 34 will not be allowed...” (Exhibit A at p. 3).

Despite several requests by Cisco, Albritton failed to produce any documents related to reputational harm. Specifically, Albritton refuses to produce the following documents, which are relevant to his mental anguish and reputational damage claims: (1) documents evidencing Albritton’s damages; (2) documents evidencing Albritton’s new matters or clients since October 16, 2007, including but not limited to engagement letters concerning such clients and matters; (3) Albritton and the Albritton Law Firm’s tax returns for 2002 through the present; and (4) annual and interim balance sheets, income statements, and statements of cash flows for the Albritton Law Firm for 2002 through the present. (*See* Letter requesting documents, Exhibit B).

On January 15, 2009, Magistrate Judge Don Bush denied Cisco’s Motion to Compel, stating that Albritton was not required to produce his medical records or tax returns because Albritton was not seeking medical expenses or economic damages. The Order did not specifically address whether Albritton was required to produce documents evidencing Albritton’s damages, Albritton’s mental anguish, or Albritton’s new matters or clients since October 16, 2007, including engagement letters concerning such clients and matters, which had also been requested and were also the subject of the Motion to Compel.

It is frequently the case that Plaintiffs who, as here, have **not** suffered damages will try to shield their financial information from discovery, which is the very reason why the Defendants seek it, that is, to show that the Plaintiff’s **business reputation** was **not** harmed. The fact finder is certainly entitled to hear that the Plaintiff made more money in the year following the alleged defamation than in the years preceding it (and how much) and that he filed more lawsuits, attracted more clients, and had more financial success than before these alleged defamatory

internet articles which hardly anybody read. To deprive Cisco this discovery is to deny it powerful, probative evidence in its defense of a claim of reputational injury.

III. DEFENDANTS ARE ENTITLED TO EVIDENCE REGARDING ALBRITTON'S ALLEGED REPUTATIONAL DAMAGES

In the unlikely event the Court permits Albritton to offer evidence of reputational harm even though he refused to disclose evidence of such harm, Cisco requests that the Court reconsider its denial of Cisco's Motion.

The United States Supreme Court limits defamation Plaintiffs seeking recovery for reputational damage to "actual injury." *Gertz v. Welch*, 418 U.S. 323, 348-49 (1974) (holding that the state's interest "extends no further than compensating for actual injury.") *Gertz* also held that "all awards must be supported by competent evidence concerning the injury." *Id.* at 350. *Gertz* therefore does not permit Albritton to conceal evidence that is pertinent to the alleged "actual injury" to his reputation, and Cisco is thus entitled to discover evidence that Albritton has not indeed suffered any actual injury to his reputation.¹

Texas law plainly recognizes a defamation defendant's right to challenge the plaintiff's damage claims. Texas law has long permitted evidence to rebut the plaintiff's claim of reputational damages. *See Finklea v. Jacksonville Daily Progress*, 742 S.W.2d 512, 517 (Tex. App.—Tyler 1988, writ dismissed) (noting that Texas has long permitted evidence of the plaintiff's prior reputation to mitigate damages); *McBride v. New Braunfels Herald-Zeitung*, 894 S.W.2d 6, 10 (Tex. App.—Austin 1994, writ denied). Further, the Texas libel statute provides that "[t]o determine the extent and source of actual damages, the defendant in a libel action may give evidence of the following matters... (1) all material facts surrounding the claim for damages

¹ Even in a libel *per se* case, which this matter is not, a jury "may choose not to award presumed damages" even if the fact finder finds that the plaintiff's reputation was damaged. *Snead v. Redlands Aggregates Ltd.*, 998 F.2d 1325, 1331 (5th Cir. 1993).

and defenses to that claim...” TEX. CIV. PRAC. & REM. § 73.003. Indeed, in this case Cisco specifically plead in its answer the defense that “Plaintiff has not suffered any actual, special, consequential or other damages” (Answer at ¶49) and that “Plaintiff’s actual damages and exemplary damages were mitigated pursuant to § 73.003 of the Texas Civil Practice & Remedies Code” (Answer at ¶52). Cisco should therefore be entitled to discover evidence to show that Albritton has not suffered the damages he alleges.

In this case, Albritton alleges that the statements at issue are libel and libel *per se* because they “tend to injure him in his trade or profession as an attorney.” (Docket No. 189 at p. 3). Yet he has refused to produce a single document relating to his profession as an attorney. A critical component to alleged damage to a person’s trade or profession is some effect on the plaintiff’s finances “as an attorney.” Certainly evidence of the financial condition of an attorney’s practice is relevant to his claim that his “profession as an attorney” has been injured. Beyond Plaintiff’s case putting the issue directly in play, the very definition of libel in Texas includes financial injury as a part of the definition of libel. *See* TEX. CIV. PRAC. & REM. CODE § 73.001 (defining libel as “defamation expressed in written or other graphic form that tends to ... injure a living person's reputation and thereby expose the person to public hatred, contempt or ridicule, or financial injury.”)

Nor may Albritton shield from discovery probative evidence because his allegation that the complained-of articles are libel *per se* fails for the obvious reason that there has been no finding that the articles are libel *per se*. Albritton cannot avoid discovery based on his allegation, just like a defendant may not avoid discovery based on an affirmative defense.

Nor can Albritton avoid production of his tax returns, which are relevant to his business reputation, because they would show whether his business has been negatively affected, where

he has failed to produce any evidence concerning his income. Indeed, Albritton refused to testify regarding his finances (Exhibit C at 132-34) and has refused to produce any other, less sensitive evidence of his income, such as interim balance sheets, income statements, statements of cash flow, and new matters or clients. Similarly, Albritton would not say whether his case load has increased or decreased in the past year. (Exhibit C at 134). Thus, because Plaintiff's pleadings, Plaintiff's theory of his case, Texas statutory and case law all have placed in issue alleged injury in his "profession as an attorney," there is compelling need for this evidence—it is not obtainable from any source. Cisco is therefore entitled to the tax returns. *See F.D.I.C. v. LeGrand*, 43 F.3d 163, 172 (5th Cir. 1995) (after the party seeking discovery of tax returns shows their relevance, "the burden shifts to the party opposing production to show that other sources exist from which the information contained in the tax returns may be readily obtained.") Even if the Court finds that his tax returns are not discoverable, the Court should allow discovery of Albritton's other financial documents and information concerning his cases.

Simply put, Albritton should not be permitted to allege reputational damage, yet refuse to produce the most obvious evidence that would show whether he has suffered an "actual injury" to his reputation. To hold differently is clearly erroneous and contrary to law. Accordingly, Defendants respectfully request an order requiring Albritton to produce the following:

- Documents evidencing Eric Albritton's damages;
- Documents evidencing all of Albritton's new matters or clients since October 16, 2007, including but not limited to engagement letters concerning such clients and matters;
- Eric Albritton and the Albritton Law Firm's tax returns for 2002 through the present; and
- Annual and interim balance sheets, income statements, and statements of cash flows for the Albritton Law Firm for 2002 through the present.

Defendants also request such further relief to which they may be justly entitled.

Respectfully submitted,

JACKSON WALKER L.L.P.

By: /s/ Charles L. Babcock

Charles L. Babcock
Federal Bar No.: 10982
Email: cbabcock@jw.com
Crystal J. Parker
Federal Bar No.: 621142
Email: cparker@jw.com
1401 McKinney
Suite 1900
Houston, Texas 77010
(713) 752-4200
(713) 752-4221 – Fax

ATTORNEYS FOR DEFENDANT
CISCO SYSTEMS, INC.

CERTIFICATE OF CONFERENCE

Counsel for Cisco has complied with the meet and confer requirement in Local Rule CV-7(h). On August 26, 2008, Charles L. Babcock, attorney in charge for Cisco Systems, Inc., sent a letter to Jamey Holmes, attorney in charge for Eric Albritton requesting the documents at issue in this Motion. On October 1, 2008, Charles L. Babcock, attorney in charge for Cisco Systems, Inc., and Jamey Holmes, attorney in charge for Eric Albritton, spoke via telephone regarding the document requests. Jamey Holmes advised that an agreement to produce the documents at issue could not be reached because it is Plaintiff's position that the requested documents are irrelevant. The parties came to an impasse, leaving an open issue for the court to resolve.

/s/ Charles L. Babcock

Charles L. Babcock

Attorney in Charge for Cisco Systems, Inc.

CERTIFICATE OF SERVICE

This is to certify that on this 18th day of May, 2009, a true and correct copy of the foregoing was served via electronic mail upon:

George L. McWilliams
406 Walnut
P.O. Box 58
Texarkana, Texas 75504-0058
Attorney for Defendant Richard Frenkel

James A. Holmes
605 South Main Street, Suite 203
Henderson, Texas 75654
Attorney for Plaintiff Eric Albritton

Patricia L. Peden
Law Offices of Patricia L. Peden
5901 Christie Avenue
Suite 201
Emeryville, CA 94608
Attorney for Plaintiff Eric Albritton

Nicholas H. Patton
Patton, Tidwell & Schroeder, LLP
4605 Texas Boulevard
P.O. Box 5398
Texarkana, Texas 75505-5398
Attorney for John Ward, Jr.

/s/ Charles L. Babcock

Charles L. Babcock

EXHIBIT

A

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

ERIC ALBRITTON

VS.

CISCO SYSTEMS, INC. and
RICHARD FRENKEL

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CIVIL ACTION NO. 6:08cv89

ORDER FOR SCHEDULING CONFERENCE

Based on a review of this case and pursuant to Fed. R. Civ. P. 16, the Court enters the following Order.

The attorneys shall appear in Court at **1:30 o'clock p.m.** on the **5th** day of **June, 2008**, for a Scheduling Conference.

Prior to the conference, the parties shall:

- A. Hold a meeting pursuant to Fed. R. Civ. P. 26(f). At the meeting the attorneys shall prepare a detailed Scheduling Order to be submitted to the Court seven (7) days prior to the Rule 16 Conference. The Order should be in the form set out in Appendix 1, attached herein, to be signed and entered by the Court at the scheduling conference, if approved. In preparing the Order, the parties shall include the following mandatory dates:
1. Jury Trial: **To be announced at Pretrial Conference**
 2. Final Pretrial Conference: **February 2, 2009**, at 9:00 o'clock a.m.
 3. Submission of Final Pretrial Order following the format in Appendix D

of the Local Court Rules, which shall include and be in lieu of the disclosures required by Fed. R. Civ. P. 26(a)(3), and Submission of Joint Proposed Jury Instructions or Findings of Fact and Conclusions of Law: **January 7, 2009.**

4. Last date to file dispositive motions or motions challenging expert witnesses: **November 21, 2008;**

- B. Complete the Required Disclosure under Fed. R. Civ. P. 26(a)(1), as modified by this Order, within sixty (60) days of this Order.

Modifications

1. The scope of the disclosures in Fed. R. Civ. P. 26(a)(1)(A) and Fed. R. Civ. P. 26(a)(1)(B) of "that the disclosing party may use to support its claims or defenses" is modified to read "relevant to the claims or defenses of any party." The parties are directed to Local Rule CV-26(d) "Relevant to the Claim or Defense," for assistance in determining what information meets this standard. A party that fails to timely disclose such information will not, unless such failure is harmless, be permitted to use such evidence at trial, hearing or in support of a motion. A party is not excused from making its disclosures because it has not fully completed its investigation of the case.
2. A Magistrate Judge is available during business hours to immediately hear discovery disputes and to enforce provisions of the rules. The

hotline is an appropriate means to obtain an immediate ruling on whether a discovery request is relevant to the claims or defenses and on disputes which arise during depositions. The hotline number is (903) 590-1198. See Local Rule CV-26(e).


3. The parties are required to provide as part of their disclosures a copy of the documents described in Fed. R. Civ. P. 26(a)(1)(B), as modified by this Order. By written agreement the parties may agree to alternative methods of production, such as a description by category and location of the documents, exchange of documents in electronic format, or review and copy of disclosure materials at the offices of the parties or their attorneys.
4. In light of the initial disclosure provisions above, requests for production under Fed. R. Civ. P. 34 will not be allowed, and the parties are directed to conduct document discovery through the process of disclosures.
5. Documents produced by a party under disclosure requirements or any other method of discovery in this case are presumed to have satisfied the authentication requirements of Fed. R. Evid. 901 unless authenticity is challenged within twenty (20) days of the disclosure/production.
6. Failure to comply with relevant provisions of the Local Rules, the Federal Rules of Civil Procedure, or this order may result in the exclusion of evidence at trial, the imposition of sanctions by the court,

or both. If a fellow member of the Bar makes a just request for cooperation or seeks scheduling accommodation, a lawyer will not arbitrarily or unreasonably withhold consent. However, the court is not bound to accept agreements to extend deadlines imposed by rule or court order. See Local Rule AT-3(j).

- C. Be prepared at the Scheduling Conference to discuss the proposed Scheduling Order previously submitted to the Court and any matters mentioned in Fed. R. Civ. P. 16(b-c) and 26(f) that are not included in the proposed Order. Be prepared at the Conference to argue any motions that have been filed twenty (20) days prior to the Conference.

SO ORDERED.

SIGNED this 31st day of March, 2008.


MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE

APPENDIX 1

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

ERIC ALBRITTON

VS.

CISCO SYSTEMS, INC. and
RICHARD FRENKEL

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CIVIL ACTION NO. 6:08cv89

SCHEDULING ORDER

In accordance with the parties' Rule 26(f) Scheduling Order and the Scheduling Conference held in this action on **June 5, 2008**, the Court enters this case specific order which controls disposition of this action pending further order of the Court. The following actions shall be completed by the date indicated.

DEADLINES

_____	Deadline to join additional parties.
_____	Plaintiff's disclosure of expert testimony pursuant to Fed.R.Civ.P. 26(a)(2) and Local Rule CIV-26(b). Expert report due.
_____	Defendant's disclosure of expert testimony pursuant to Fed. R. Civ. P. 26(a)(2) and Local Rule CV-26(b). Expert report due.
_____	Deadline for amended pleadings. (A motion for leave to amend is not necessary before this deadline.)
_____	Discovery deadline.
_____	Mediation completed by this date. <i>The Court refers most cases to mediation. The parties should discuss proposed mediators and timing of mediation</i>

prior to the Scheduling Conference and be prepared with a recommendation for the Court.

(name, address and phone number) is appointed as mediator in this case. The mediator shall be deemed to have agreed to the terms of Court Ordered Mediation Plan of the United States District Court of the Eastern District of Texas by going forth with the mediation in accordance with this order. (See General Order 99-2.)

Plaintiff to Identify Trial Witnesses.

Defendant to Identify Trial Witnesses.

November 21, 2008

Deadline for filing dispositive motions and any other motions that might require a hearing.

January 7, 2009

Joint Pretrial Order and Proposed Jury Instructions/Form of Verdict (or Proposed Findings of Fact and Conclusions of Law). Counsel and unrepresented parties are each responsible for contacting opposing counsel and unrepresented parties to determine how they will prepare the Joint Final Pretrial Order (See Local Rule CV-16(b)) and Joint Proposed Jury Instructions and Verdict Form (or Proposed Findings of Fact and Conclusions of Law in nonjury cases).

Video Deposition Designation Due. Each party who proposes to offer a deposition by video shall file a disclosure identifying the line and page numbers to be offered. All other parties will have ten days to file a response requesting cross examination line and page numbers to be included. Any objections to testimony must be filed ten days prior to the Final Pretrial Conference. The party who filed the initial Video Deposition Designation is responsible for preparation of the final edited video in accordance with all parties designations and the court's rulings on objections.

Trial Exhibits due.

Objections to Trial Exhibits due.

Motions in limine due

February 2, 2009

Pretrial Conference at 9:00 a.m.
Date for Jury Trial to be announced
at the Pretrial Conference.

Trial is anticipated to last _____ days.

This Scheduling Order shall not be modified except by leave of Court upon showing of good cause, and shall be binding on all parties.

SO ORDERED.

EXHIBIT B



Charles L. Babcock
(713) 752-4210 (Direct Dial)
(713) 308-4110 (Direct Fax)
cbabcock@jw.com

August 26, 2008

Via Facsimile

Mr. James A. Holmes
605 South Main Street, Suite 203
Henderson, TX 75654

Re: Civil Action No. 6:08-CV-89; *Eric Albritton v. Cisco Systems, Inc. and Richard Frenkel*; In U.S. District Court, Eastern District of Texas, Tyler Division

Dear Jamey:

There are several categories of documents that appear to be missing from Eric Albritton's document production. Please produce the following documents:

- All attachments to the email Bates numbered EMA 0838-39;
- All documents demonstrating how Eric Albritton received the email Bates numbered EMA 0838-39;
- Eric Albritton and the Albritton Law Firm's tax returns for 2002 through the present;
- A copy of the credit card statement that shows the charge for the filing of the ESN lawsuit on October 15 or 16, 2007;
- Annual and interim balance sheets, income statements, and statements of cash flows for the Albritton Law Firm for 2002 through the present;
- Documents evidencing Eric Albritton's damages;
- Documents evidencing Eric Albritton's mental anguish;
- A medical authorization for Eric Albritton's medical records (a form is attached);
- All documents relating to the filing of Civil Action No. 5:07-CV-00156, styled *ESN, LLC v. Cisco Systems, Inc.*, in the United States District Court for the Eastern District of Texas (the "ESN Lawsuit");
- All documents relating to communications with the United States District Court or any of its employees regarding the filing of the ESN Lawsuit and/or whether subject-matter jurisdiction existed in the ESN Lawsuit;
- All documents relating to communications between or among ESN, LLC (including its attorneys, agents, or anyone acting on its behalf) and any other person relating to the filing of the ESN Lawsuit. Include communications between ESN, LLC, Eric M. Albritton, T. John Ward, Jr., McAndrews Held & Malloy, Ltd., and anyone purporting to act on their behalf;

1401 McKinney Street, Suite 1900 • Houston, Texas 77010 • (713) 752-4200 • fax (713) 752-4221

August 26, 2008
Page 2

- ESN, LLC's prefilings due diligence, investigation and analysis relating to filing the ESN Lawsuit; and
- Documents evidencing all of Albritton's new matters or clients since October 16, 2007, including but not limited to engagement letters concerning such clients and matters.

Very truly yours,



Charles L. Babcock

cc: George L. McWilliams

MEDICAL AUTHORIZATION

I, _____, hereby authorize and direct all doctors, hospitals, medical institutions, pharmaceutical dispensers, or other health or psychiatric care providers who have examined, treated, x-rayed or otherwise cared for _____ to provide to JACKSON WALKER L.L.P., 1401 McKinney, Suite 1900, Houston, Texas 77010, all facts, opinions, documents, and records pertaining to _____ medical and emotional condition, past, present and future. This authorization specifically includes, without limitation, medical records, reports, x-rays, admission reports, outpatient reports, lab reports, consultation reports, narratives, histories, reports of histories, nurses' notes, doctors' notes, doctors' orders, consents, waivers, all documents signed by _____, records of treatment, records of medication - prescribed and administered, reports relating to any treatments given, therapy reports or notes, and all other means of storing information (including without limitation audio tapes, video tapes, computer tapes or disks and microfiche), and direct communication with JACKSON WALKER L.L.P., concerning the same.

If any document sought herein has been destroyed, modified, or the person or entity receiving this authorization refuses to provide any document or thing requested herein, please identify any such document or thing and explain why the recipient hereof refuses to comply with the request(s) made herein, in all or part.

The release of the matters listed above is being authorized for purposes of a pending lawsuit.

To assist in providing the information requested, the following information is provided:

Patient Name: _____

Social Security Number: _____

Date of Birth: _____

A copy of this Medical Authorization is agreed by the undersigned to have the same force and effect as an original. Any person, firm, or entity releasing matters pursuant to this authorization is hereby absolved from any liability arising from such release.

(Name)

SUBSCRIBED AND SWORN TO before me, the undersigned authority, on this _____ day of _____, 2008.

Notary Public in and for the State of Texas

EXHIBIT C

Albritton, Eric M.

10/27/2008

Page 1

IN THE UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF TEXAS

TYLER DIVISION

ERIC M. ALBRITTON,

Plaintiff,

VS.

CISCO SYSTEMS, INC., RICK
FRENKEL, MALLUN YEN &
JOHN NOH,

Defendants.

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C.A. NO. 6:08-CV-00089

CERTIFIED COPY

ORAL DEPOSITION OF

ERIC M. ALBRITTON

OCTOBER 27TH, 2008

ORAL DEPOSITION OF ERIC ALBRITTON, produced as a witness at the instance of the CLAIMANT, and duly sworn, was taken in the above-styled and numbered cause on the 27th of October, 2008, from 12:44 p.m. to 4:24 p.m., before Tammy Staggs, CSR in and for the State of Texas, reported by machine shorthand, at the Law Offices of James A. Holmes, 605 South Main, Suite 203, Henderson, Texas, pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record or attached hereto.

P R O C E E D I N G S

(Exhibits 21A - 63 marked)

THE VIDEOGRAPHER: Here begins the videotape deposition of Eric Albritton in the matter of Eric M. Albritton vs. Cisco Systems, Inc., Rick Frenkel, et al. Case No. 6:08CV00089. Today's date is October 27th of 2008. The time is approximately 12:44 p.m. Now on the record.

ERIC ALBRITTON,
having been first duly sworn, testified as follows:

EXAMINATION

BY MR. BABCOCK:

Q. Would you state your name, sir.

A. Eric Albritton.

Q. Mr. Albritton, here is Exhibit 21A. I just like to start each deposition with a notice. Obviously you're here, so there's no question about that.

What -- how are you employed?

A. I'm a lawyer.

Q. And do you practice with a firm?

A. I do.

Q. What's the name of the firm?

A. Eric M. Albritton, PC.

Q. And PC stands for professional corporation, correct?

1 Q. Okay.

2 A. I know I was at the office all weekend working
3 on a cert petition and death penalty case while I'm
4 getting ready to pick a jury on the third, so this week
5 I'm real, real busy.

6 Q. Okay. And do you recall how much income you
7 received from your law practice in 2007?

8 A. Uh-uh.

9 Q. Excuse me?

10 A. No, sir.

11 Q. Okay. And how do you file with the Internal
12 Revenue Service? Do you have a Subchapter S Corporation
13 or how do you handle that?

14 A. I think it is an S Corp.

15 Q. Okay. And you would have to refer to your
16 federal income tax return to tell me how much income you
17 made in 2007, right?

18 A. Uh-huh.

19 Q. Is that a "yes"?

20 A. Yes, sir. But, of course, you know, income --
21 you know, some of the things that I earned in 2007 were
22 from cases that were, you know, signed up in 2005.

23 Q. Sure. Do you know whether your income from
24 your law practice is going to increase in 2008 over
25 2007? I know we've got two months to go.

1 A. I believe it will.

2 Q. Okay. Even though you can't be specific, can
3 you tell me generally how much you made in 2007 from
4 your law practice?

5 A. No.

6 Q. Can you tell me whether it was 100,000 or a
7 hundred million?

8 A. It was neither a 100,000 nor a hundred
9 million.

10 Q. Somewhere in between?

11 A. Yes, sir.

12 Q. Was it in the millions?

13 MR. HOLMES: Let's -- why don't we hold
14 off on that until we get a response from the Court on
15 your motion. We -- you asked for that information in
16 your motion to compel --

17 MR. BABCOCK: I did.

18 MR. HOLMES: -- and that's part of what
19 I've been objecting to. So I would ask we hold off on
20 that until we get a ruling.

21 MR. BABCOCK: Okay.

22 Q. (BY MR. BABCOCK) I know you're your own man,
23 but you're going to follow what your lawyer says?

24 A. Yeah, and just to be clear, I'm not saying --
25 I mean, I will have made more money in 2008 than 2007.

1 And just like I told you in the very beginning, you
2 know, I cannot quantify and I'm not claiming that I've
3 been financially harmed as a result of this. I may have
4 been, but there's no way of knowing that.

5 MR. BABCOCK: Well, subject to reserving
6 the right to ask the witness questions on that topic if
7 the Judge rules in our favor, then I'll pass to
8 Mr. McWilliams.

9 MR. HOLMES: All right. Thank you.

10 EXAMINATION

11 BY MR. McWILLIAMS:

12 Q. Eric, I don't know whether Mr. Babcock asked
13 you about your case load change from 2007 to 2008. What
14 -- has your case load increased in 2008 over 2007 or can
15 you tell?

16 A. I have no idea.

17 Q. What's your sense about that?

18 A. Well, what case load are you talking about,
19 Mr. McWilliams?

20 Q. Well, like most lawyers know what case load
21 is.

22 A. I've got fewer criminal cases probably. You
23 know, when Hacker was appointed judge, I started ramping
24 down my criminal business. So my criminal business is
25 diminishing. I have probably -- I have filed -- I have

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
TYLER DIVISION

ERIC M. ALBRITTON, *
 *
Plaintiff, *
 *
VS. * C.A. NO. 6:08-CV-00089
 *
CISCO SYSTEMS, INC., RICK *
FRENKEL, MALLUN YEN & *
JOHN NOH, *
 *
Defendants. *

REPORTER'S CERTIFICATION
DEPOSITION OF ERIC ALBRITTON
OCTOBER 27TH, 2008

I, TAMMY LEA STAGGS, Certified Shorthand Reporter in
and for the State of Texas, hereby certify to the
following:

That the witness, ERIC ALBRITTON, was duly sworn by
the officer and that the transcript of the oral
deposition is a true record of the testimony given by
the witness;

That the deposition transcript was submitted on
_____ to the witness or to the attorney
for the witness for examination, signature and return to

me by _____;

That the amount of time used by each party at the deposition is as follows:

Mr. James A. Holmes - (0:00)

Mr. Charles L. Babcock - (2:38)

Mr. George L. McWilliams - (0:35)

That pursuant to information given to the deposition officer at the time said testimony was taken, the following includes counsel for all parties of record:

FOR THE PLAINTIFF:

James A. Holmes, Esq.

FOR THE DEFENDANT, CISCO SYSTEMS, INC.:

Charles L. Babcock, Esq.

FOR THE DEFENDANT, RICHARD FRENKEL:

George L. McWilliams, Esq.

Nicole Peavy

That \$_____ is the deposition officer's charges to the Defendant, Cisco Systems, for preparing the original deposition transcript and any copies of exhibits;

1 I further certify that I am neither counsel for,
2 related to, nor employed by any of the parties or
3 attorneys in the action in which this proceeding was
4 taken, and further that I am not financially or
5 otherwise interested in the outcome of the action.
6 I am certified to by me this 31st of October, 2008.

7
8
9 Tammy Lea Scaggs
10 Tammy Lea Scaggs, CSR 7496

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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

ERIC M. ALBRITTON,

Plaintiff

v.

**CISCO SYSTEMS, INC. and
RICHARD FRENKEL**

Defendants

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**NO. 6:08-cv-00089
JURY**

**ORDER GRANTING DEFENDANTS'
MOTION TO COMPEL**

The court, having considered Cisco Systems, Inc.'s Motion to Reconsider Order Denying Cisco's Motion to Compel Production of Documents, finds that the motion is well taken and should be GRANTED.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Plaintiff is ordered to produce the following:

- Documents evidencing Eric Albritton's damages;
- Documents evidencing all of Albritton's new matters or clients since October 16, 2007, including but not limited to engagement letters concerning such clients and matters;
- Eric Albritton and the Albritton Law Firm's tax returns for 2002 through the present; and
- Annual and interim balance sheets, income statements, and statements of cash flows for the Albritton Law Firm for 2002 through the present.

IT IS SO ORDERED.