

EXHIBIT K

**IN THE SUPERIOR COURT OF GWINNETT COUNTY
STATE OF GEORGIA**

N4D, LLC, a Delaware Limited)
Liability Company,)
)
Plaintiff,)

Civil Action

v.)

File No. 10-A-11197-7

CHARLES GREGORY PASSMORE)
a/k/a GREG PASSMORE, an)
individual; BIRD ROCK)
MULTIMEDIA, INC. d/b/a)
PASSMORE LAB and/or Z)
MEDIA, a California corporation;)
and DOES 1-50, inclusive,)
)
Defendants.)

**PLAINTIFF’S MOTION FOR LEAVE TO ADD NEW PARTY
DEFENDANT AND INCORPORATED BRIEF**

Plaintiff N4D, Inc. (“N4D”) hereby moves the Court for an order allowing the addition of Legend3D, Inc. (“Legend3D”) as a party defendant pursuant to O.C.G.A. §§ 9-11-15 and 9-11-21.

Statement of Facts

This is an action by Plaintiff N4D, Inc. for breach of contract, fraud and related claims arising out of a seven-year software development agreement with defendants Charles Gregory Passmore and Bird Rock Multimedia, Inc. dba Passmore Labs (collectively, “Passmore Labs”). N4D, and 3DH Communications,

Inc., paid Passmore Labs over \$7.2 million for the development of 2D-to-3D conversion technology for use primarily in the film and medical industries.

Formal discovery with Passmore Labs, and informal conversations with Legend3D, have recently disclosed that Passmore Labs has apparently transferred the 2D-to-3D conversion and related technology to Legend3D, Inc., which is successfully using it in the film industry on hit 3D movies such as Martin Scorsese's recent Academy Award winning "Hugo," Tim Burton and Disney's cutting edge "Alice in Wonderland," the most recent "Transformers" and "Pirates of the Caribbean" franchises, and others. The proposed First Amended Complaint adds Legend3D on a new tenth count only for misappropriation of N4D's trade secrets, i.e., the 2D-to-3D conversion and related technology.

Legend3D will not be surprised or prejudiced by being added as a defendant. Legend3D has been aware of this lawsuit since its inception:

1. Before filing this lawsuit on December 15, 2010, N4D on October 5, 2010 sent Passmore Labs a cease and desist letter. Passmore Labs' original lawyer, Dana Cotman of ARC IP Law, PC, responded at the time on behalf of Passmore Labs, and then surfaced again in 2011 as Legend3D's lawyers. In other words, Passmore Labs and Legend3D share the same lawyer.
2. Legend3D was served with a subpoena for documents and depositions on August 8, 2011. Passmore Labs filed a motion to quash the subpoena on

Legend3D, among other motions. Therefore, Legend3D requested, and N4D agreed, to postpone Legend3D's production of documents and deposition until after Passmore Labs' motion to quash the subpoena was decided. The Special Master denied the motion to quash, among other rulings, in his February 1, 2012 Special Master Report and Ruling which became the Order of the Court.

Legend3D is currently in the process of producing the subpoenaed documents.

3. In Passmore Labs' recent supplemental interrogatory responses, it disclosed for the first time that yet another 2D to 3D conversion patent application, called the "Director's Style," was filed on February 1, 2011, and was then assigned to Legend3D, needless to say without N4D's knowledge or consent.

4. In a recent February 29, 2012 letter, Passmore Labs first disclosed that on February 6, 2012, Gregory Passmore or Passmore Labs filed and assigned to Legend3D another patent application related to 2D to 3D conversion technologies entitled "System And Method For Rapid Image Sequence Depth Enhancement With Translucent Elements."

5. Since the Special Master's February 1, 2012 ruling on the long pending discovery issues, including the motion to quash the Legend3D subpoena, document discovery and depositions in this action are finally commencing and being scheduled in earnest. For example, Passmore Labs has now noticed eight depositions in Georgia the week of March 19, 2012. All parties should participate

in this document and deposition discovery at one time rather than have serial and duplicative discovery as new parties are added.

6. Over at least the last three months, N4D's and Legend3D's principals have had multiple discussions and meetings regarding this lawsuit. This case was settled in principle on the morning of the third day of defendant Gregory Passmore's deposition in November 2011, but Passmore Labs and Mr. Passmore subsequently reneged on the settlement. Even with Legend3D's attempted assistance, negotiations have stalled, and the settlement has not been consummated.

Legend3D will not be the only new defendant recently added to this matter. Passmore Labs in the related California action, which is being treated as consolidated with this action for discovery purposes, has recently filed a First Amended Complaint in which Passmore Labs itself added three new defendants to this dispute – Anthony Balakian, the Balakian Family LLC, and Symphony 3D Technologies, LLC. None of these three new defendants have yet responded to the recently served Passmore Labs' complaint. Therefore, further discovery in both this action and the related California action will also be delayed while those three new defendants, recently added by Passmore Labs, appear and gear up to participate in discovery.

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.