

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

ALACRITECH, INC.,

Plaintiff,

v.

CENTURLINK, INC., *et al.*,

Defendants.

Case No. 2:16-cv-693-RWS

LEAD CASE

Jury Trial Demanded

**DEFENDANT DELL INC.'S FIRST SUPPLEMENTAL RESPONSE TO
PLAINTIFF'S SECOND SET OF COMMON INTERROGATORIES
TO DEFENDANTS AND INTERVENORS (NO. 11)**

Pursuant to Federal Rules of Civil Procedure 26 and 33, Defendant Dell Inc. (“Dell”) provides its First Supplemental Responses and Objections to Plaintiff Alacritech Inc.’s (“Alacritech” or “Plaintiff”) Second Set of Common Interrogatories, Interrogatory No. 11 (“Interrogatories” or “Interrogatory”).

GENERAL STATEMENTS AND OBJECTIONS

The responses provided here are submitted on behalf of Dell, and reflect Dell’s continuing investigations of facts and discovery of information and documents relating to the claims and defenses at issue in this case. Accordingly, Dell’s responses to these Interrogatories are based upon Dell’s current knowledge and reasonable beliefs. Dell expressly reserves the right to modify and/or supplement any response, and to assert additional objections to these Interrogatories as necessary and/or appropriate.

Nothing in these responses and objections shall be deemed an admission by Dell regarding the existence of any information, the relevance or admissibility of any information, for any purpose, or the truth or accuracy of any statement or characterization contained in any

Interrogatory. Where Dell responds by identifying individuals with knowledge concerning a particular subject matter identified in an Interrogatory, such response shall not be construed as an admission concerning the accuracy of Alacritech's characterization of the subject matter.

Furthermore, Dell makes the following General Objections, whether or not separately set forth in each response to each instruction, definition, and Interrogatory made in Alacritech's Second Set of Interrogatories:

1. Dell objects to the Interrogatories to the extent they seek information or documents protected by any applicable privilege, including but not limited to the attorney-client privilege, the work-product doctrine or immunity, joint-defense privilege, common-interest privilege, and any other applicable privilege, immunity, or exemption from discovery as outlined in the Federal Rules of Civil Procedure, Local Rules, orders of the Court, and applicable law. For the sake of clarity, Dell hereby asserts such privileges and/or exemptions. Any inadvertent disclosure or production of information and/or documents shall not be deemed a waiver of any privilege with respect to such information or documents or of any work-product doctrine or immunity that may attach thereto.

2. Dell objects to the Interrogatories to the extent they seek information or documents not relevant to the claims or defenses of any party, not reasonably calculated to lead to the discovery of admissible evidence, or otherwise not within the scope of relevant discovery.

3. Dell objects to the Interrogatories to the extent that they request information that is not proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit.

4. Dell objects to the Interrogatories to the extent they seek information that Dell is under an obligation to third parties not to disclose, or information otherwise subject to confidentiality restrictions of a third party. Dell will not disclose or produce such information except in conformity with Dell's obligations to such third party.

5. Dell objects to the Interrogatories to the extent that they request information that is a matter of public record, that is equally available to Alacritech and/or equally obtainable from more convenient sources, or that purport to impose upon Dell a burden or obligation beyond the duties imposed by the Federal Rules of Civil Procedure or other applicable rules or law governing this action.

6. Dell objects to the Interrogatories to the extent that they are duplicative, cumulative, compound, or contain multiple subparts in violation of Fed. R. Civ. P. 33. Dell objects to the Interrogatories to the extent they exceed the permissible number, including all parts and subparts.

7. Dell objects to the Interrogatories to the extent they are overly broad, unduly burdensome, oppressive, or constitute an abuse of process, particularly when the cost necessary to investigate or respond is high compared to Alacritech's need for the information.

8. Consistent with Fed. R. Civ. P. 33(d), Dell objects to providing narrative responses to the Interrogatories where the information sought can be derived from documents produced by Dell or Dell's suppliers, and where the burden to derive such information from those documents is substantially the same for Alacritech as it is for Dell.

9. Dell objects to the Interrogatories as overly broad to the extent they fail to specify a relevant time period for which information is requested, to the extent the specified period is irrelevant, or to the extent the specified period includes periods of time for which Alacritech would not be entitled to collect any documents.

10. Dell objects to the Interrogatories as overly broad to the extent they fail to specify a relevant geographic area for which information is requested, and to the extent a specified geographic area is irrelevant.

11. Dell objects to the Interrogatories to the extent that they use terms that are not defined or understood; Dell will not speculate as to the meaning ascribed to these terms, and will respond to the extent it understands such requests.

12. Dell objects to the Interrogatories to the extent they seek legal opinions or conclusions, or present questions of pure law.

13. Dell objects to the Definitions, Instructions, and Interrogatories to the extent they seek information or the identification of documents not within Dell's possession, custody or control, or refer to persons, entities, or events not known to Dell, on the grounds that such Definitions, Instructions, and Interrogatories seek to require more of Dell than any obligation imposed by law, they subject Dell to unreasonable and undue burden and expense, and further seek to impose upon Dell an obligation to investigate or discover information or materials from third parties or sources which are equally accessible to Alacritech.

14. Dell objects to the Interrogatories to the extent they seek identification of "all" information that refers or relates to a particular subject on the grounds of overbreadth, undue burden, and expense.

15. Dell objects to the Interrogatories to the extent they are premature. Dell's investigation, discovery and analysis are ongoing, and its responses are based on its present investigation and information presently available to Dell. Dell reserves the right to produce evidence of subsequently discovered facts, and to modify, supplement, or otherwise change or amend its responses to these Interrogatories as necessary.

16. Dell objects to each and every Interrogatory to the extent that it (i) is framed in terms that Alacritech has not specifically or reasonably defined or (ii) fails to identify with reasonable particularity the information requested. Dell objects to such Interrogatories on the grounds that they are vague, ambiguous, and unduly broad.

17. Dell reserves the right to make any use of, or to introduce at any hearing and at trial, information and/or documents responsive to the Interrogatories but discovered subsequent to the date of its response, including, but not limited to, any such information or documents obtained in discovery herein.

18. Dell uses the term “will produce” throughout its responses to indicate that it will comply with the particular demand for inspection and any related obligations imposed by the Federal Rules of Civil Procedure, the Local Rules, and/or the scheduling orders agreed to and entered in this case, subject to the qualifications and objections set forth in the specific response and these general objections. Dell’s statements that it “will produce” responsive information or documents is not a representation that such information or documents exist.

19. Dell incorporates by reference the general objections set forth above into specific objections and responses set forth below. Dell may repeat a general objection for emphasis or some other reason. The failure to repeat any general objections, or failure to specifically incorporate a general objection by reference, does not waive any general objection to the Interrogatory. Moreover, Dell does not waive its rights to amend its objections.

20. Dell objects to the “Definitions” and “Instructions” contained in Alacritech’s Interrogatories to the extent they are inconsistent with or seek to impose obligations beyond those imposed by the Federal Rules of Civil Procedure, Local Rules, or orders of the Court.

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