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

AGIS SOFTWARE DEVELOPMENT LLC,

Plaintiff,

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v.

HUAWEI DEVICE USA INC.,
HUAWEI DEVICE CO., LTD. AND
HUAWEI DEVICE (DONGGUAN) CO.,
LTD., HTC CORPORATION,
LG ELECTRONICS, INC.,
APPLE INC.,
ZTE CORPORATION, ZTE (USA), INC.,
AND ZTE (TX), INC.,

Defendants.

CIVIL ACTION NO. 2:17-CV-00513-JRG (LEAD CASE)

CIVIL ACTION NO. 2:17-CV-514-JRG CIVIL ACTION NO. 2:17-CV-515-JRG CIVIL ACTION NO. 2:17-CV-516-JRG CIVIL ACTION NO. 2:17-CV-517-JRG

ORDER RE: "DISCOVERY HOTLINE" HEARING

Participants: Vincent Rubino – Counsel for Plaintiff

Lionel Marks Lavenue – Counsel for Defendant ZTE (USA) ("ZTE")

Date: August 15, 2018

This case is assigned to the docket of United States Chief District Judge Rodney Gilstrap. Pursuant to 28 U.S.C. § 636(b)(1) and the Local Rules for the United States District Court for the Eastern District of Texas, this matter came before the undersigned United States Magistrate Judge for determination of an emergency discovery dispute. The parties in this civil action contacted the Court via the "Discovery Hotline" maintained by the United States District Court for the Eastern District of Texas.



On August 15, 2018, counsel for Plaintiff contacted the undersigned regarding a dispute that had arisen during the deposition of Defendant ZTE's corporate witness. Pursuant to Federal Rule of Civil Procedure 30(b)(6), Defendant ZTE designated one representative to testify over all 30(b)(6) topics in Plaintiff's notice. Prior to the deposition, Defendant ZTE's corporate designee prepared a notebook comprised of his personal notes to reference during the deposition. Plaintiff objected to the use of such material during the deposition. The Court conduct a telephonic hearing on the record and the parties argued their respective positions.

Plaintiff objected to the use of the notebook and argued that a Rule 30(b)(6) witness referencing such material during a deposition violates Rule 30, which requires examination and cross-examination of a witness in a deposition to be conducted as would be allowed during trial. Defendant ZTE responded and stated that its corporate representative spent numerous hours investigating issues and collecting documents pertaining the deposition's topics and summarized his findings in the notebook. The notebook, ZTE avers, was not configured to coach the corporate representative through the deposition. Rather, the notebook reflects the corporate representative's personal findings and provides for more accurate and concise answers to Plaintiff's questions.

Defendant ZTE further asserts that courts have maintained that such notebooks are proper during the deposition of Rule 30(b)(6) corporate designees. Specifically, ZTE cites Zeng v. Elec. Data Sys. Corp., No. 1:07CV310, 2007 WL 2713905, at *4 (E.D. Va. Sept. 13, 2007). In that case, the defendant's 30(b)(6) designee continuously referenced a notebook during her deposition, which was prepared by defense counsel and contained a twenty-two-page summary of various documents. The plaintiff insisted that the use of the notebook was improper because: (1) Rule 30 mandates that depositions be conducted as would be permissible at trial; and (2) the corporate representative's reliance on the notebook meant that she was not adequately prepared to testify as



required by Rule 30(b)(6). The District Judge agreed with the Magistrate Judge's findings and held:

[G]iven the duty of a corporate designee to testify to all information reasonably known to the corporation, including matters beyond the designee's personal knowledge, a well-prepared deposition notebook has the potential to enhance the accuracy and depth of a designee's testimony. As such, use of a notebook is not [sic] indicative of a designee's unpreparedness; nor is it evidence of witness coaching.

Id.

This Court found *Zeng* persuasive and agreed with the rationale explicated in the case. Therefore, after considering the arguments, this Court **ORDERED** that Defendant ZTE's 30(b)(6) corporate representative is allowed to use the notebook during his deposition.

IT IS SO ORDERED.

SIGNED this the 17th day of August, 2018.

KEITH F. GIBLIN

UNITED STATES MAGISTRATE JUDGE

