

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

NEWS AMERICA MARKETING)	
IN-STORE, LLC,)	
)	
Plaintiff,)	CIVIL ACTION NO.
v.)	
)	1:07-CV-791-TCB
ROBERT T. EMMEL,)	
)	
Defendant.)	

**DEFENDANT ROBERT T. EMMEL’S RESPONSE TO
PLAINTIFF’S STATEMENT OF MATERIAL FACTS AS
TO WHICH THERE IS NO GENUINE ISSUE TO BE TRIED**

Pursuant to N.D. Ga. LR 56.1B.(2)(a), defendant Robert T. Emmel hereby responds to Plaintiff’s Statement of Material Facts as to Which There is No Genuine Issue to be Tried (“Pl. SMF”) [Doc. 247-8]:

1. Admitted.
2. Admitted.
3. No response necessary because this statement is not a material fact, as required by LR 56.1B.(1).
4. Admitted.
5. Admitted.
6. Admitted.
7. Admitted.

8. Denied. Emmel was not provided with the contracts' monetary values as related to NAMIS' profitability, but instead only as to the projected share of revenue for the client-retailer. (Emmel Suppl. Decl. ¶ 3.)

9. Denied. The information Emmel received during NAMIS internal conference calls that was strategic and tactical information on how to sustain and grow the business that related to its retailers were "trade secrets"—not merely "confidential"—information because the information was financial data, financial plans, product plans, and lists of actual or potential customers or suppliers, all of which was not commonly known by or available to the public or NAMIS competitors. (Emmel Suppl. Decl. ¶ 4.)

10. Denied. The information Emmel received from NAMIS concerning profit improvement initiatives that related to its retailers were "trade secrets"—not merely "confidential"—because the information was financial data, financial plans, product plans, and lists of actual or potential customers or suppliers, all of which was not commonly known by or available to the public or NAMIS competitors. (Emmel Suppl. Decl. ¶ 5.)

11. Admitted.

12. Denied. All the information stored on the NAMIS-issued laptop to Emmel, other than personal information that may have been there, was strictly intangible information that were "trade secrets"—not merely

“confidential”—because all that intangible information was either nontechnical company data, compilations of other trade-secret information, financial data, financial plans, product plans, and lists of actual or potential customers and suppliers, all of which was not commonly known by or available to the public or NAMIS competitors. (Emmel Suppl. Decl. ¶ 6.)

13. Denied. The intangible information stored on the NAMIS-issued laptop to Emmel that were “selling strategies, pricing, and negotiating tactics” were “trade secrets”—not merely “confidential”—because all that intangible information constituted financial plans and product plans and related to actual or potential customers and suppliers, all of which was not commonly known by or available to the public or NAMIS competitors. (Emmel Suppl. Decl. ¶ 7.)

14. Denied. The intangible information stored on the NAMIS-issued laptop to Emmel that were “customer invoices, customer contracts and addenda, internal customer assessments, proposed contract terms, customer contract demands, customer payment schedule details, and internal sales strategies” were “trade secrets”—not merely “confidential”—because all that intangible information involved financial plans and product plans and related to actual or potential customers and suppliers, all of which was not commonly

known by or available to the public or NAMIS competitors. (Emmel Suppl. Decl. ¶ 8.)

15. Admitted.

16. Admitted.

17. Admitted.

18. No response is required because this single numbered paragraph includes two statements of allegedly material fact, in direct violation of LR 56.1B.(1).

However, in reference to the first statement in Pl. SMF No. 18, Emmel admits only that NAMIS undertook a number of steps to preserve the confidentiality of its trade-secret information, which NAMIS calls “sensitive business information.” Emmel, in reference to the first statement, also admits only that at various times NAMIS issued different employee manuals and handbooks, including to Emmel—but Emmel does ***not*** admit that he read those manuals. (Emmel Suppl. Decl. ¶ 10.)

No response required to the second statement in Pl. SMF No. 18 because that statement about what NAMIS’s policies purportedly “required” is a “legal conclusion” in violation of LR 56.1B.(1). The central issue in this case is whether and to what extent the plaintiff’s employee-handbook materials applied to and created contractual obligations for the defendant.

Denied, because the NAMIS Employee Handbook stated it was not a contract and that NAMIS wanted all employees to sign a written Non-Disclosure Agreement to ensure the confidentiality of NAMIS's sensitive information and materials—but Emmel never entered into any such agreement with NAMIS during his employment. (Emmel 1/11/08 Dep. – Pl. Ex. 1 at 9 [NAM-ATL 00239]; Emmel Suppl. Decl. ¶ 10.)

Denied as inadmissible because the written policies referred to in the second statement are documents and the plaintiff's second statement is not a quotation from any of those documents but, rather, a characterization of what they purport to say and mean—thereby making the second statement inadmissible as hearsay under Fed. R. Evid. 801 and as mere argument.

19. Admitted.

20. Admitted.

21. Denied because this statement is a “legal conclusion” in violation of LR 56.1B.(1). The central issue in this case is whether and to what extent the plaintiff's employee-handbook materials applied to and created contractual obligations for the defendant.

22. No response required because this single numbered paragraph includes two statements of allegedly material fact, in direct violation of LR 56.1B.(1).

No response required because the first statement is a “legal conclusion” in violation of LR 56.1B.(1). The central issue in this case is whether and to what extent the plaintiff’s employee-handbook materials applied to and created contractual obligations for the defendant.

Denied, because both the NAMIS Employee Handbook and the receipts for the handbook *signed* by Emmel stated the Handbook was *not* a contract, and because the Handbook also stated that NAMIS wanted all employees to sign a separate written Non-Disclosure Agreement to ensure the confidentiality of NAMIS’s sensitive information and materials—but Emmel never entered into any such agreement with NAMIS during his employment. (Emmel 1/11/08 Dep. – Pl. Ex. 1 at 9 [NAM-ATL 00239]; Emmel 1/11/08 Dep. – Pl. Exs. 2, 3 [NAM-ATL 000051-52]; Emmel Suppl. Decl. ¶ 10.)

Denied. Emmel’s signature on the receipts for the Employee Handbook—referenced in the first statement—did not constitute, nor was it intended to constitute, confirmation of his “understanding” that he had agreed to certain obligations vis-à-vis NAMIS, but, rather, his signature on the receipts merely represented an acknowledgment that he received the handbook itself—and *not* even that he read it. (Emmel Dep. 1/11/08 at 50:15-51:2; Emmel Suppl. Decl. ¶¶ 11-12.)

Denied. The Employee Handbook referenced in the second statement is a document, and the plaintiff's statement is a characterization coupled with an abbreviated quotation from that—thereby making the statement inadmissible as hearsay under Fed. R. Evid. 801, based on the “rule of completeness” under Fed. R. Evid. 106, and as mere argument.

23. No response necessary because this statement is not a material fact, as required by LR 56.1B.(1).

24. No response necessary because this statement is not a material fact, as required by LR 56.1B.(1).

25. No response necessary because this statement is not a material fact, as required by LR 56.1B.(1).

26. No response required because this single numbered paragraph includes two statements of allegedly material fact, in direct violation of LR 56.1B.(1).

No response required because this statement is a “legal conclusion” in violation of LR 56.1B.(1), given that the central issue in this case is whether and to what extent the plaintiff's employee-handbook materials applied to and created contractual obligations for the defendant.

Denied, because the NAMIS Employee Handbook stated it was not a contract and that NAMIS wanted all employees to sign a written Non-

Disclosure Agreement to ensure the confidentiality of NAMIS's sensitive information and materials—but Emmel never entered into any such agreement with NAMIS during his employment. (Emmel 1/11/08 Dep. – Pl. Ex. 1 at 9 [NAM-ATL 00239]; Emmel Suppl. Decl. ¶ 10.)

Denied. Emmel denies that his mere receipt of an employee manual or handbook created or established a contract between him and NAMIS. (*Id.*; Emmel Dep. 1/11/08 at 50:15-51:2.)

27. Admitted.

28. No response required because this single numbered paragraph includes two statements of allegedly material fact, in direct violation of LR 56.1B.(1).

No response required because this statement is a “legal conclusion” in violation of LR 56.1B.(1), given that the central issue in this case is whether and to what extent the plaintiff's employee-handbook materials applied to and created contractual obligations for the defendant.

Denied, because the NAMIS Employee Handbook stated it was not a contract, that it the Handbook covered NAMIS's electronic-communications policy, and that NAMIS wanted all employees to sign a written Non-Disclosure Agreement to ensure the confidentiality of NAMIS's sensitive information and materials—but Emmel never entered into any such

agreement with NAMIS during his employment. (Emmel 1/11/08 Dep. – Pl. Ex. 1 at 9 [NAM-ATL 00239]; Emmel Suppl. Decl. ¶ 10.)

Denied. Emmel denies that his mere receipt of an employee-handbook or policy manual constitutes his agreement, acceptance, or understanding that he was bound by any alleged term or condition contained in such materials. (Emmel Dep. 1/11/08 at 50:15-51:2; Emmel Suppl. Decl. ¶¶ 11-12.)

29. No response necessary because this statement is not a material fact, as required by LR 56.1B.(1).

30. Admitted.

31. No response required because this single numbered paragraph includes two statements of allegedly material fact, in direct violation of LR 56.1B.(1)—based on footnote 2’s inclusion.

32. Denied. The Electronic Communications Policy is a document, and the plaintiff’s statement is a characterization coupled with an abbreviated quotation from one of the documents—thereby making the statement inadmissible as hearsay under Fed. R. Evid. 801, based on the “rule of completeness” under Fed. R. Evid. 106, and as mere argument.

33. Admitted.

34. Denied. The date on the receipt is not Emmel’s handwriting and was inserted by someone other than Emmel without his knowledge or consent, and there is no testimony by any NAMIS witness stating that the date was inserted at or near the time Emmel signed the receipt—thereby making the receipt useless to prove when Emmel received any News Corp. Standards of Business Conduct. (Emmel Suppl. Decl. ¶ 13.)

35. No response required because this statement is a “legal conclusion” in violation of LR 56.1B.(1), given that the central issue in this case is whether and to what extent the plaintiff’s employee-handbook materials applied to and created contractual obligations for the defendant.

Denied, because the NAMIS Employee Handbook stated it was not a contract and that NAMIS wanted all employees to sign a written Non-Disclosure Agreement to ensure the confidentiality of NAMIS’s sensitive information and materials—but Emmel never entered into any such agreement with NAMIS during his employment. (Emmel 1/11/08 Dep. – Pl. Ex. 1 at 9 [NAM-ATL 00239]; Emmel Suppl. Decl. ¶ 10.)

Denied because the Standards of Business Conduct is a document, and the plaintiff’s statement is not a quotation from the document but rather a characterization of what it purports to say—thereby making it inadmissible as hearsay under Fed. R. Evid. 801 and mere as argument.

36. No response required because this statement is a “legal conclusion” in violation of LR 56.1B.(1), given that the central issue in this case is whether and to what extent the plaintiff’s employee-handbook materials applied to and created contractual obligations for the defendant.

Denied, because the NAMIS Employee Handbook stated it was not a contract and that NAMIS wanted all employees to sign a written Non-Disclosure Agreement to ensure the confidentiality of NAMIS’s sensitive information and materials—but Emmel never entered into any such agreement with NAMIS during his employment. (Emmel 1/11/08 Dep. – Pl. Ex. 1 at 9 [NAM-ATL 00239]; Emmel Suppl. Decl. ¶ 10.)

Denied because the Standards of Business Conduct is a document, and the plaintiff’s introductory statement is not a quotation from the document but rather a characterization of what it purports to say—thereby making it inadmissible as hearsay under Fed. R. Evid. 801 and mere as argument.

37. Denied because NAMIS’s citation to Emmel’s deposition testimony does not support the statement that in 2006, another version of NAMIS’s Standards of Business Conduct (“SBC”) was issue. Emmel clearly testified that he did not recall receiving a version of the SBC in 2006.

Emmel Dep. 1/11/08 at 51:22-:25. The pages from Emmel's deposition cited by NAMIS (except the last 3 lines of p. 51) discuss the 2004 version of the SBC—not the 2006 version.

No response required because this statement is a “legal conclusion” in violation of LR 56.1B.(1), given that the central issue in this case is whether and to what extent the plaintiff's employee-handbook materials applied to and created contractual obligations for the defendant.

Denied, because the NAMIS Employee Handbook stated it was not a contract and that NAMIS wanted all employees to sign a written Non-Disclosure Agreement to ensure the confidentiality of NAMIS's sensitive information and materials—but Emmel never entered into any such agreement with NAMIS during his employment. (Emmel 1/11/08 Dep. – Pl. Ex. 1 at 9 [NAM-ATL 00239]; Emmel Suppl. Decl. ¶ 10.)

Denied because the Standards of Business Conduct is a document, and the plaintiff's introductory statement is not a quotation from the document but rather a characterization of what it purports to say—thereby making it inadmissible as hearsay under Fed. R. Evid. 801 and mere as argument.

Denied because Emmel denies that his mere receipt of an employee-handbook or policy manual constitutes his agreement, acceptance,

acknowledgement, approval, or endorsement of, with, or to any alleged term or condition contained in such materials, or that his mere receipt of an employee manual or handbook created or established a contract between him and NAMIS. (Emmel Dep. 1/11/08 at 50:15-51:2; Emmel Suppl. Decl. ¶¶ 11-12.)

38. Admitted.

39. Denied. The NAMIS' Insider Trading and Confidentiality Policy ("ITCP") is a document, and the plaintiff's statement is only an abbreviated quotation from that document that mischaracterizes the ITCP's purpose and the obligations of NAMIS employees—thereby making the statement inadmissible based on the "rule of completeness" under Fed. R. Evid. 106 and as mere argument.

Indeed, the very sentence that immediately *precedes* the quotation in plaintiff's Pl. SMF No. 39—which the plaintiff did not quote—explains that the ITCP's purpose focuses on illegally trading or tipping about company securities:

Use and Disclosure of Material, Non-Public Information. As explained previously, under no circumstances may an employee use material, non-public information about the Company for his or her personal benefit, or, except as specifically authorized, release to others information that might affect the Company's securities. Therefore, . . . [remainder of this sentence is the first

paragraph from the ITCP quoted in Plaintiff's Pl. SMF No. 39.]

(Nix Dec. – Ex. F at NAM-ATL 00635) (underscore added).

40. Admitted.

41. Denied. The information and documents Emmel received from NAMIS was “trade secret” information—not merely “confidential”—because that information and those documents were either nontechnical company data, compilations of other trade-secret information, financial data, financial plans, product plans, and lists of actual or potential customers and suppliers, all of which was not commonly known by or available to the public or NAMIS competitors. (Emmel Suppl. Decl. ¶¶ 6-9.)

42. Denied. Emmel testified that he had a “general understanding” of his post-employment confidentiality obligations. (Emmel Dep. 1/11/08 at 55:23-56:2.)

43. Denied. Emmel testified that he had a “general understanding” that at the conclusion of his employment, he was required to return company documents. (Emmel Dep. 1/11/08 at 55:17-:22.)

44. Denied. Emmel admits that on or about early ***October 2006***, as directed by two levels of NAMIS management and NAMIS's IT Administrator, he went to Comp-USA and had his hard drive duplicated to

fulfill a discovery request by FLOORgraphics, Inc. to NAMIS in FLOORgraphic's lawsuit against NAMIS in New Jersey federal court, after which Emmel sent a portable duplicate of his hard-drive to NAMIS's Chicago lawyers, Mayer Brown. (Emmel Dep. 1/11/08 at 158:13-165:17.)

45. Admitted.

46. No response required because this single numbered paragraph includes two statements of allegedly material fact, in direct violation of LR 56.1B.(1).

Denied because Emmel did not "secretly" keep the three DVDs in October 2006, given that at that time, Emmel was still a NAMIS employee and no instruction was given to him or contained in policy handbook requiring Emmel to tell anyone about the 3 extra discs created by Comp-USA on its own initiative, ***not*** at Emmel's request. (Emmel Dep. 1/11/08 at 163:12-165:1.)

Furthermore, Emmel kept the 3 discs in October 2006 only because the Comp-USA employee, who generated the duplicate portable hard-drive that Emmel sent to Lee Abrams of Mayer Brown, told Emmel that the portable hard-drive may contain data errors, so it would be prudent for Emmel to retain the 3 discs for the benefit of NAMIS's legal counsel in the FLOORgraphics New Jersey federal lawsuit against NAMIS to ensure that

all relevant materials on Emmel's computer were produced in the New Jersey lawsuit. (Emmel Dep. 1/11/08 at 163:12-165:1, 179:25-180:15.)

Emmel admits sending via UPS the portable hard-drive to Lee Abrams of Mayer Brown on or about October 4, 2006. (Emmel Suppl. Decl. ¶ 14.)

47. Admitted.

48. Admitted.

49. Denied because Emmel did not "secretly" keep the three DVDs in October 2006—as set forth in detail above in Response No. 46. (Emmel Dep. 1/11/08 at 163:12-165:1, 179:25-180:15.)

Denied. NAMIS's citation to the testimony in Lippner Decl. ¶ 12 and to the pages in Lippner's deposition are inadmissible hearsay, inasmuch as Lippner is offering for the truth statements made to him by other NAMIS employees.

50. Denied. Emmel never provided any NAMIS documents to any third parties—such as any NAMIS competitor—in any instance that required the advance authorization of NAMIS, either directly or indirectly or through any agent or attorney. (Emmel Suppl. Decl. ¶ 15.)

Emmel only provided NAMIS documents to: (i) two United States Senators, Paul Sarbanes and Charles Grassley; (ii) two United States

Senate Committees, Senate Banking Committee and the Senate Finance Committee through their investigative counsel; (iii) the Securities and Exchange Commission; and (iv) to the New York State Attorney General, on referral from the Senate Banking Committee—**but never to any NAMIS competitors or other non-governmental persons**—and Emmel’s purpose in doing so was to document for federal and state authorities what he believed in good faith was NAMIS’s illegal anti-competitive conduct against NAMIS competitors and fraudulent conduct against NAMIS customers. (Emmel Suppl. Decl. ¶¶16-17.)

51. Denied. Emmel admits he contacted Senator Sarbanes’ office to discuss NAMIS’s illegal activities, but **not** prior to January 2006. (Emmel Dep. 1/11/08 at 155:18-156:11.)

52. Denied on the basis that the NAMIS information and documents Emmel sent to Senator Sarbanes’ office were “trade secrets”—not merely “confidential”—because all the information and documents contained either nontechnical company data, compilations of other trade-secret information, financial data, financial plans, product plans, and lists of actual or potential customers and suppliers, all of which was not commonly known by or available to the public or NAMIS competitors. (Emmel Suppl. Decl. ¶ 18.)

53. Denied on the basis that the memorandum that Emmel sent to Senator Sarbanes' office contained NAMIS "trade secrets," as described above in Response No. 52. (Emmel Suppl. Decl. ¶ 18.)

54. No response necessary because this statement is not a material fact, as required by LR 56.1B.(1).

55. No response necessary because this statement is not a material fact, as required by LR 56.1B.(1).

Denied. Emmel merely used the *pen name* "Courter-Zanger" to protect his anonymity as a whistleblower and avoid any publicity, benefit, notoriety, or adverse consequences that may result from his actions. (Emmel Dep. 1/11/08 at 193:4-:20.)

Denied because Emmel did not at any time assume a "false identify" that would have involved the use of any false government-issued forms of identification or a false social security number or any other false documentation needed to create a false "identity." (Emmel Suppl. Decl. ¶ 19.)

56. Denied because the memorandum and 16 documents containing NAMIS information that Emmel sent to the S.E.C. in early February 2006 contained intangible NAMIS trade-secret information—not mere "confidential" information—because all the NAMIS intangible information reflected in that memorandum was either nontechnical company data,

compilations of other trade-secret information, financial data, financial plans, product plans, and lists of actual or potential customers and suppliers, all of which was not commonly known by or available to the public or NAMIS competitors. (Emmel Suppl. Decl. ¶ 20.)

57. Admitted.

58. Denied. Emmel had no substantive discussions with Mashburn about NAMIS's illegal activities during his meetings at the S.E.C. on February 6 and 7, 2006, but rather met with other S.E.C. investigators. (Emmel Suppl. Decl. ¶¶ 21-22.)

59. Denied only insofar as Emmel had no substantive discussions with Mashburn about NAMIS's illegal activities, but rather met with other S.E.C. investigators about his January 23, 2006 memorandum with exhibits to Senator Sarbanes regarding NAMIS's illegal activities. (Emmel Suppl. Decl. ¶¶ 21-22.)

60. No response required because this single numbered paragraph includes two statements of allegedly material fact, in direct violation of LR 56.1B.(1).

Denied. The only additional document Emmel gave the S.E.C. was a NAMIS rate card available to the general public on NAMIS's own website, www.newsamerica.com, which Emmel provided to the S.E.C. in

response to its investigators' request during their meeting on February 6, 2006. (Emmel Suppl. Decl. ¶ 23.)

Emmel obtained this rate-card from News America's publicly accessible and available website (www.newsamerica.com), for which no password was needed, and the plaintiff's website let him—and any other member of the public who so chose—to open the document in PDF format and print it. (Emmel Suppl. Decl. ¶ 23.)

The same type of NAMIS rate card—updated with 2008 rates and program changes and additions—is publicly available and accessible by: (i) going to www.newsamerica.com; (ii) then selecting “In-store Media”; (iii) then clicking on “Rates”; and (iv) then clicking on the “2008 Rate Card”—after which a PDF version of the current rate card will open to be viewed, printed, or saved in an electronic media format. (Emmel Suppl. Decl. ¶ 25.)

A comparison between the 2006 rate card that NAMIS filed under seal with the current NAMIS 2008 rate-card document on its website confirms they are the same document, except the for the 2008 rate card being updated to reflect current rates and any new NAMIS advertising programs offered since then. (Emmel Suppl. Decl. ¶ 26.)

61. No response necessary because this statement is not a material fact, as required by LR 56.1B.(1).

62. No response necessary because this statement is not a material fact, as required by LR 56.1B.(1).

63. Denied. Emmel met with the New York Attorney General's office on his *personal time* and only *after* concluding all NAMIS business required for that day, which meeting occurred just before leaving for the airport for a return flight home. (Emmel Suppl. Decl. ¶ 27.)

64. Denied only insofar as to state that the January 23, 2006 letter and attachments that Emmel provided to the New York Attorney General's Office were NAMIS intangible trade-secret information—not mere “confidential information”—because all the NAMIS intangible information reflected in those materials were either nontechnical company data, compilations of other trade-secret information, financial data, financial plans, product plans, and lists of actual or potential customers and suppliers, all of which was not commonly known by or available to the public or NAMIS competitors. (Emmel Suppl. Decl. ¶ 28.)

65. Denied as inadmissible based on the “rule of completeness” in Fed. R. Evid. 106 because the statement unfairly leaves out material testimony.

The full text of Emmel's response was:

Q And what did you say to these two duty officers on October 20th, 2006?

A. Just very succinctly, I told them that I had been referred by Senator Sarbanes' office on allegations concerning New York corporation News America. And here is my cover letter that I provided. Here is all the attachments that Senator Sarbanes' office had told me to assemble to support the allegations. And that I was giving it to them for their review and to contact me for further information if I could be of assistance to them.

(Emmel Dep. 1/11/08 at 202:5-:15.)

66. Admitted.

67. Admitted.

68. Admitted.

69. Admitted.

70. Admitted.

71. Denied only insofar as to state that the January 23, 2006 letter and attachments that Emmel provided to Podsiadly were NAMIS intangible trade-secret information—not mere “confidential information”—because all the NAMIS intangible information reflected in those materials were either nontechnical company data, compilations of other trade-secret information, financial data, financial plans, product plans, and lists of actual or potential customers and suppliers, all of which was not commonly known by or

available to the public or NAMIS competitors. (Emmel Suppl. Decl. ¶¶ 18, 29.)

72. Admitted.

73. Denied only insofar as to state that the exhibits to the “Chronology of a Lockout” provided to Podsiadly were NAMIS intangible trade-secret information—not mere “confidential information”—because all the NAMIS intangible information reflected in those materials were either nontechnical company data, compilations of other trade-secret information, financial data, financial plans, product plans, and lists of actual or potential customers and suppliers, all of which was not commonly known by or available to the public or NAMIS competitors. (Emmel Suppl. Decl. ¶¶ 18, 29.)

74. No response necessary because this statement is not a material fact, as required by LR 56.1B.(1).

75. Denied. The email of 11/15/06 is a document, and the plaintiff’s statement is a characterization coupled with an abbreviated quotation from one of those documents—thereby making the statement inadmissible as hearsay under Fed. R. Evid. 801, based on the “rule of completeness” under Fed. R. Evid. 106, and as mere argument.

76. Emmel admits he spoke briefly to—but had no substantive discussion with—Jennifer DeKarske of the Minnesota Attorney General’s Office on December 6, 2006. (Emmel Suppl. Decl. ¶ 30.)

77. Denied. The emails of 12/06/06 and 12/11/06 are documents, and the plaintiff’s statement is a characterization coupled with an abbreviated quotation from one of those documents—thereby making the statement inadmissible as hearsay under Fed. R. Evid. 801, based on the “rule of completeness” under Fed. R. Evid. 106, and as mere argument.

78. No response necessary because this statement is not a material fact, as required by LR 56.1B.(1).

79. Denied only insofar as to state that the NAMIS documents Emmel sent on December 20, 2006, to an agency of the United States—*i.e.*, a Committee of the United States Senate and its investigative counsel acting on the Committee’s behalf—at such agency’s request, were NAMIS intangible trade-secret information, not merely “confidential” information, because all the NAMIS intangible information reflected in those materials were either nontechnical company data, compilations of other trade-secret information, financial data, financial plans, product plans, and lists of actual or potential customers and suppliers, all of which was not commonly known by or

available to the public or NAMIS competitors. (Emmel Suppl. Decl. ¶¶ 18, 32.)

80. Denied. The 58 pages of NAMIS documents that Emmel sent on December 20, 2006, to United States Senate committee’s investigative counsel acting on the committee’s behalf were NAMIS intangible trade-secret information—not mere “confidential” information—because all the NAMIS intangible information reflected in those materials were either nontechnical company data, compilations of other trade-secret information, financial data, financial plans, product plans, and lists of actual or potential customers and suppliers, all of which was not commonly known by or available to the public or NAMIS competitors. (Emmel Suppl. Decl. ¶ 32.)

81. Denied insofar as to state that the materials were NAMIS trade-secret information, as set forth above in Response No. 80. (Emmel Suppl. Decl. ¶¶ 18, 32.)

82. No response necessary because this statement is not a material fact, as required by LR 56.1B.(1).

83. No response necessary because this statement is not a material fact, as required by LR 56.1B.(1).

84. No response necessary because this statement is not a material fact, as required by LR 56.1B.(1).

85. No response necessary because this statement is not a material fact, as required by LR 56.1B.(1).

86. No response necessary because this statement is not a material fact, as required by LR 56.1B.(1).

87. No response necessary because this statement is not a material fact, as required by LR 56.1B.(1).

88. No response necessary because this statement is not a material fact, as required by LR 56.1B.(1).

89. No response necessary because this statement is not a material fact, as required by LR 56.1B.(1).

90. No response necessary because this statement is not a material fact, as required by LR 56.1B.(1).

91. Denied. Emmel specifically asked “if any” non-compete agreements between Emmel and NAMIS were in its files—Emmel asked because he correctly believed he had not ever signed any non-compete agreement with NAMIS, nor had he received any such agreement from NAMIS. (Emmel Dep. 1/11/08 – Pl. Ex. 19; Emmel Suppl. Decl. ¶ 33.)

92. No response necessary because this statement is not a material fact, as required by LR 56.1B.(1).

93. No response necessary because this statement is not a material fact, as required by LR 56.1B.(1).

94. Admitted.

95. No response necessary because this statement is not a material fact, as required by LR 56.1B.(1).

96. Admitted.

97. No response necessary because this statement is not a material fact, as required by LR 56.1B.(1).

98. No response required because this statement is a “legal conclusion” in violation of LR 56.1B.(1). The central issue in this case is whether and to what extent the plaintiff’s employee-handbook materials applied to and created contractual obligations for the defendant.

Denied, because the NAMIS Employee Handbook stated it was not a contract and that NAMIS wanted all employees to sign a written Non-Disclosure Agreement to ensure the confidentiality of NAMIS’s sensitive information and materials—but Emmel never entered into any such agreement with NAMIS during his employment. (Emmel 1/11/08 Dep. – Pl. Ex. 1 at 9 [NAM-ATL 00239]; Emmel Suppl. Decl. ¶ 10.)

99. Denied. Emmel’s deposition testimony is that he was told to return “property”, but not “all property.” (Emmel Dep. at 102:7-:11.)

100. Admitted.

101. No response required because this single numbered paragraph includes two statements of allegedly material fact, in direct violation of LR 56.1B.(1).

Denied. The first statement is a characterization of Emmel's 12/01/06 written communication—thereby making the statement inadmissible as hearsay under Fed. R. Evid. 801 and as mere argument.

102. Denied. Emmel never told Kroc that he was returning all NAMIS property in his possession after his termination. (Emmel Dep. at 102:7-:11.)

Moreover, the plaintiff's citation to the Emmel-FGI 1/10/08 deposition is *not* to Emmel's own testimony, but rather *to plaintiff's counsel reading into the record* part of a letter written by a NAMIS employee to Emmel on 12/01/06. (Emmel-FGI 1/10/08 Dep. at 45:15-46:21.)

103. Admitted, except that Emmel did not send a letter but, rather, an email (as reflected in plaintiff's Pl. SMF No. 104).

104. Denied. Emmel clearly stated in his December 1, 2006 email to Teresa Enk that he planned to return NAMIS records and sales materials property, *i.e.*, that Emmel had the then-present intention to send NAMIS its materials. (Emmel 1/11/08 Dep. – Pl. Ex. 21.)

Emmel did not give any thought to keeping the 3 DVDs until ***mid-December 2006***, after he received a communication from Nicolas Podsiadly in Senator Grassley's Office (*i.e.*, the investigative counsel for a United States Senate committee) concerning Emmel's earlier disclosures to the government about NAMIS's illegal activities, in which Podsiadly referenced the committee's consideration of a referral about NAMIS's illegal activities to the United States Department of Justice and the Federal Trade Commission for investigation. (Emmel 1/11/08 Dep. at 109:4-110:16.)

105. Denied. Emmel testified in his 1/11/08 deposition—at pages 170-172, the pages cited by plaintiff—that he actually ***returned*** to NAMIS the documents that “would be helpful for anyone doing business in the retailers I [Emmel] had.” (Emmel 1/11/08 Dep. at 171:19-172:1.).

Emmel further testified: “I retained the information that I viewed would be supportive for the allegations that I had made to the government regulators.” (Emmel 1/11/08 Dep. at 172:1-:3.).

Emmel did ***not*** keep any documents for the purpose of giving them to any NAMIS competitors, but only for the purpose of supporting his earlier disclosures of NAMIS's illegal activities to two United States Senate Committees, two United States Senators, and for the potential use of the U.S.

Department of Justice and Federal Trade Commission. (*Ibid.*; Emmel Suppl. Decl. ¶¶ 34-36.)

106. Denied because all the documents and 3 DVDs that Emmel retained contained intangible trade-secret information—not mere “confidential” information—because all the NAMIS intangible information reflected in those documents and on the 3 DVDs was either nontechnical company data, compilations of other trade-secret information, financial data, financial plans, product plans, and lists of actual or potential customers and suppliers, all of which was not commonly known by or available to the public or NAMIS competitors. (Emmel Suppl. Decl. ¶ 36.)

107. Denied. Emmel’s testified only that he had a “general understanding” that he was “required” to return NAMIS property—*not* that “[he] knew he was obligated to return all such materials to NAMIS.” (Emmel 1/11/08 Dep. at 55:17-:22.)

108. No response necessary because this statement is not a material fact, as required by LR 56.1B.(1).

No response required because this single numbered paragraph includes two statements of allegedly material fact, in direct violation of LR 56.1B.(1)—based on footnote 3’s inclusion.

109. Denied on the limited point that the information and materials that Emmel retained was NAMIS trade-secret information, not mere “confidential” materials—for the reasons described in Response No. 106. (Emmel Suppl. Decl. ¶ 36.)

110. No response necessary because this statement is not a material fact, as required by LR 56.1B.(1).

Emmel admits he acted good faith to comply with his legal obligations under the subpoenas served on him by both NAMIS and FLOORgraphics. (Emmel Dep.-III ¶¶ 37-38.)

111. No response necessary because this statement is not a material fact, as required by LR 56.1B.(1).

Emmel admits he acted in good faith to comply with his legal obligations under the subpoenas served on him by both NAMIS and FLOORgraphics. (Emmel Dep.-III ¶¶ 37-38.)

112. No response required because this statement is a “legal conclusion” in violation of LR 56.1B.(1), given that the central issue here is what exactly were Emmel’s legal obligations to NAMIS.

Denied. The testimony in Lippner Decl. ¶ 14—cited by NAMIS—does not support the statement in Pl. SMF No. 112.

Denied, because the NAMIS Employee Handbook stated it was not a contract and that NAMIS wanted all employees to sign a written Non-Disclosure Agreement to ensure the confidentiality of NAMIS's sensitive information and materials—but Emmel never entered into any such agreement with NAMIS during his employment. (Emmel 1/11/08 Dep. – Pl. Ex. 1 at 9 [NAM-ATL 00239]; Emmel Suppl. Decl. ¶ 10.)

Denied, because this statement is inadmissible speculation given that the ultimate legal issues presented here are whether Emmel in fact had any legal duty to return NAMIS property upon his termination. *See* Fed. R. Evid. 601, 602.

113. No response required because this statement is a “legal conclusion” in violation of LR 56.1B.(1).

114. No response necessary because this statement is not a material fact, as required by LR 56.1B.(1).

115. No response necessary because this statement is not a material fact, as required by LR 56.1B.(1).

No response required because this single numbered paragraph includes two statements of allegedly material fact, in direct violation of LR 56.1B.(1).

116. Denied. NAMIS blocked employees from working for competitors only if those employees with non-compete agreements *voluntarily* left, but not if the employee was *involuntarily* terminated—neither of which applied to Emmel because he had no non-compete agreement with NAMIS at the time of his termination—and furthermore, nothing in the terms of the 12/21/06 Agreement state that it was releasing Emmel from any actual pre-existing non-compete agreement. (Emmel Suppl. Decl. ¶ 39; Emmel Dep. 1/11/08 – Pl. Ex. 27.)

Emmel admits entering into the 12/21/06 Agreement, however. (Emmel Suppl. Decl. ¶ 40.)

117. Denied because the 12/21/06 Agreement is a document, and the plaintiff's statement is not a quotation from the document but rather a characterization of what it purports to say—thereby making it inadmissible as hearsay under Fed. R. Evid. 801 and as mere argument.

118. No response required because this single numbered paragraph includes two statements of allegedly material fact, in direct violation of LR 56.1B.(1).

Denied as inadmissible. Plaintiff has abbreviated the definition of “Confidential Information” in the 12/21/06—leaving out materially relevant language in violation of the “rule of completeness” under Fed. R. Evid. 106.

119. Denied as inadmissible. Plaintiff's characterization is inadmissible as hearsay under Fed. R. Evid. 801, as mere argument, and also violates the "rule of completeness" under Fed. R. Evid. 106

Denied. The 12/21/06 Agreement clearly states that it "replaces and cancels all previous agreement and commitments, whether spoken or written, in connection with the matters described." (Emmel Dep. 1/11/08 – Pl. Ex. 27 ¶ 2.) Those "matters described" included NAM's authorization for Emmel to retain NAMIS documents, so long as he "will maintain them in complete confidence"—which he has done every day since 12/21/06, except when complying with the two federal-court subpoenas issued by this Court in the FLOORgraphics litigation. (*Id.* ¶ 1; Emmel Suppl. Decl. ¶¶ 15-16, 37.)

120. Denied as inadmissible. The 12/21/06 Agreement has a "merger clause" that makes irrelevant any beliefs, thoughts, intentions, or representations—other than those in the final agreement—during the negotiations. *Mims v. Cagle Foods JV, LLC*, 148 Fed.Appx. 762, 769 (11th Cir. 2005) ("a valid merger clause executed by two or more parties in an arm's length transaction precludes any subsequent claim of deceit based upon pre-contractual representations") (quotation omitted)

Denied as inadmissible under the “parol evidence rule.” NAMIS’s claim that Emmel said he returned all its property contradicts the express terms of ¶ 1 of the 12/21/06 Agreement under which NAMIS authorized Emmel to ***retain*** NAMIS property. *Atlanta Nat’l Real Estate Trust v. Tally*, 253 S.E.2d 692, 694 (Ga. 1979) (holding that evidence of alleged fraud-in-the-inducement that contradicts the parties’ written agreement is inadmissible under the parol evidence rule).

Denied. The testimony in Lippner Decl. ¶ 9 and to the pages in Lippner’s deposition—cited by NAMIS—do not support the statements in Pl. SMF No. 120.

Denied. NAMIS’s citation to the testimony in the pages of Lippner’s deposition are inadmissible for lack of foundation and hearsay, inasmuch as Lippner refused to state when and from whom he learned what Emmel allegedly told Kroc—which means Lippner could not, based on his own testimony (and refusal to testify), have relied on anything Emmel allegedly said during Lippner’s negotiation of the 12/21/06 Agreement.

121. Admitted.

122. Denied. NAMIS has totally mischaracterized Emmel’s testimony in this statement.

Emmel did not testify or admit anywhere that he “deliberately delayed execution the December 2006 Agreement”. No deadline even existed for Emmel to sign the 12/21/06 Agreement. (Emmel Suppl. Decl. ¶ 40.)

Rather—on the deposition pages *cited by the plaintiff*—Emmel was asked by plaintiff’s counsel why Emmel wrote the time he signed the 12/21/06 Agreement by his signature. Emmel answered:

Because I wanted to ensure if there were any actions that I had taken that it was clearly designated here that I was complying as of 11:44 on the 21st.

(Emmel 1/11/08 Dep. at 140:8-141:2).

123. No response necessary because this statement is not a material fact, as required by LR 56.1B.(1).

124. No response necessary because this statement is not a material fact, as required by LR 56.1B.(1).

125. Denied. Emmel never had any discussions with or made any statements about or demands for money from NAMIS to Jordan Lippner in December 2006 or January 2007 or any time thereafter. (Emmel Suppl. Decl. ¶ 41.)

Emmel never met Lippner or heard his voice prior to attending the late-February 2008 deposition of Lippner in New York. (Emmel Suppl. Decl. ¶ 42.)

Lippner, an attorney and high-level NAMIS in-house lawyer, never memorialized Emmel's supposedly extortionate threats—as confirmed by NAMIS's failure to produce any document authored by Lippner that corroborates his claim. (Emmel Suppl. Decl. ¶ 43.)

But Lippner admits that—after receiving these allegedly extortionate threats—he continued to negotiate a severance package for Emmel *for 15 more weeks* until March 2007. (Pl. SMF No. 127.)

126. No response necessary because this statement is not a material fact, as required by LR 56.1B.(1).

127. No response necessary because this statement is not a material fact, as required by LR 56.1B.(1).

128. No response necessary because this statement is not a material fact, as required by LR 56.1B.(1).

Denied, as inadmissible on grounds of relevancy.

129. No response necessary because this statement is not a material fact, as required by LR 56.1B.(1).

Denied, as inadmissible on grounds of relevancy.

Denied because the plaintiff's introductory editorial remark is (i) a speculative characterization of the defendant's testimony inadmissible

under Fed. R. Evid. 602, and (ii) an inadmissible “legal conclusion” in violation of LR 56.1B.(1).

130. No response necessary because this statement is not a material fact, as required by LR 56.1B.(1).

Denied, as inadmissible on grounds of relevancy. There is nothing illegal, unlawful, or unethical about paying a third-party’s attorney’s fees in the absence of evidence, beyond the payments themselves, proving an unlawful underlying purpose of inducing the witness to testify in a particular manner or to improperly influence their testimony—***which evidence is totally absent here***. See *Insignia Sys., Inc. v. News Am. Mktg. In-Store, Inc.*, No. 04-4213 JRT/AJB, at 3 (D. Minn. April 28, 2008) (denying defendant NAMIS’s demand for discovery into the plaintiff’s payment of attorney’s fees to Emmel because there is nothing inherently improper in doing so and NAMIS—despite months of discovery—had found no evidence, beyond the fact of the payments themselves, to support its demand) (attached); see also Ga. St. Bar R. and Reg., R 4-102, RPC 3.4; 3 Ga. Proc. Discovery § 11:24.

131. No response necessary because this statement is not a material fact, as required by LR 56.1B.(1).

Denied, as inadmissible on grounds of relevancy. There is nothing illegal, unlawful, or unethical about paying a third-party’s attorney’s

fees in the absence of evidence, beyond the payments themselves, proving an unlawful underlying purpose of inducing the witness to testify in a particular manner or to improperly influence their testimony—***which evidence is totally absent here***. See *Insignia Sys., Inc. v. News Am. Mktg. In-Store, Inc.*, No. 04-4213 JRT/AJB, at 3 (D. Minn. April 28, 2008) (denying defendant NAMIS’s demand for discovery into the plaintiff’s payment of attorney’s fees to Emmel because there is nothing inherently improper in doing so and NAMIS—despite months of discovery—had found no evidence, beyond the fact of the payments themselves, to support its demand) (attached); see also Ga. St. Bar R. and Reg., R 4-102, RPC 3.4; 3 Ga. Proc. Discovery § 11:24.

132. No response necessary because this statement is not a material fact, as required by LR 56.1B.(1).

Denied, as inadmissible on grounds of relevancy. There is nothing illegal, unlawful, or unethical about paying a third-party’s attorney’s fees in the absence of evidence, beyond the payments themselves, proving an unlawful underlying purpose of inducing the witness to testify in a particular manner or to improperly influence their testimony—***which evidence is totally absent here***. See *Insignia Sys., Inc. v. News Am. Mktg. In-Store, Inc.*, No. 04-4213 JRT/AJB, at 3 (D. Minn. April 28, 2008) (denying defendant NAMIS’s demand for discovery into the plaintiff’s payment of attorney’s fees

to Emmel because there is nothing inherently improper in doing so and NAMIS—despite months of discovery—had found no evidence, beyond the fact of the payments themselves, to support its demand) (attached); *see also* Ga. St. Bar R. and Reg., R 4-102, RPC 3.4; 3 Ga. Proc. Discovery § 11:24.

133. No response necessary because this statement is not a material fact, as required by LR 56.1B.(1).

Denied, as inadmissible on grounds of relevancy. There is nothing illegal, unlawful, or unethical about paying a third-party's attorney's fees in the absence of evidence, beyond the payments themselves, proving an unlawful underlying purpose of inducing the witness to testify in a particular manner or to improperly influence their testimony—***which evidence is totally absent here***. *See Insignia Sys., Inc. v. News Am. Mktg. In-Store, Inc.*, No. 04-4213 JRT/AJB, at 3 (D. Minn. April 28, 2008) (denying defendant NAMIS's demand for discovery into the plaintiff's payment of attorney's fees to Emmel because there is nothing inherently improper in doing so and NAMIS—despite months of discovery—had found no evidence, beyond the fact of the payments themselves, to support its demand) (attached); *see also* Ga. St. Bar R. and Reg., R 4-102, RPC 3.4; 3 Ga. Proc. Discovery § 11:24.

134. No response necessary because this statement is not a material fact, as required by LR 56.1B.(1).

Denied, as inadmissible on grounds of relevancy. There is nothing illegal, unlawful, or unethical about paying a third-party's attorney's fees in the absence of evidence, beyond the payments themselves, proving an unlawful underlying purpose of inducing the witness to testify in a particular manner or to improperly influence their testimony—***which evidence is totally absent here***. See *Insignia Sys., Inc. v. News Am. Mktg. In-Store, Inc.*, No. 04-4213 JRT/AJB, at 3 (D. Minn. April 28, 2008) (denying defendant NAMIS's demand for discovery into the plaintiff's payment of attorney's fees to Emmel because there is nothing inherently improper in doing so and NAMIS—despite months of discovery—had found no evidence, beyond the fact of the payments themselves, to support its demand) (attached); see also Ga. St. Bar R. and Reg., R 4-102, RPC 3.4; 3 Ga. Proc. Discovery § 11:24.

135. No response necessary because this statement is not a material fact, as required by LR 56.1B.(1).

Denied, as inadmissible on grounds of relevancy. There is nothing illegal, unlawful, or unethical about paying a third-party's attorney's fees in the absence of evidence, beyond the payments themselves, proving an unlawful underlying purpose of inducing the witness to testify in a particular manner or to improperly influence their testimony—***which evidence is totally absent here***. See *Insignia Sys., Inc. v. News Am. Mktg. In-Store,*

Inc., No. 04-4213 JRT/AJB, at 3 (D. Minn. April 28, 2008) (denying defendant NAMIS's demand for discovery into the plaintiff's payment of attorney's fees to Emmel because there is nothing inherently improper in doing so and NAMIS—despite months of discovery—had found no evidence, beyond the fact of the payments themselves, to support its demand) (attached); *see also* Ga. St. Bar R. and Reg., R 4-102, RPC 3.4; 3 Ga. Proc. Discovery § 11:24.

136. No response necessary because this statement is not a material fact, as required by LR 56.1B.(1).

Denied, as inadmissible on grounds of relevancy. There is nothing illegal, unlawful, or unethical about paying a third-party's attorney's fees in the absence of evidence, beyond the payments themselves, proving an unlawful underlying purpose of inducing the witness to testify in a particular manner or to improperly influence their testimony—***which evidence is totally absent here.*** *See Insignia Sys., Inc. v. News Am. Mktg. In-Store, Inc.*, No. 04-4213 JRT/AJB, at 3 (D. Minn. April 28, 2008) (denying defendant NAMIS's demand for discovery into the plaintiff's payment of attorney's fees to Emmel because there is nothing inherently improper in doing so and NAMIS—despite months of discovery—had found no evidence, beyond the fact of the payments themselves, to support its demand) (attached); *see also* Ga. St. Bar R. and Reg., R 4-102, RPC 3.4; 3 Ga. Proc. Discovery § 11:24.

137. No response required because this single numbered paragraph includes two statements of allegedly material fact, in direct violation of LR 56.1B.(1)—based on footnote 4’s inclusion.

No response necessary because this statement is not a material fact, as required by LR 56.1B.(1).

Denied, as inadmissible on grounds of relevancy. There is nothing illegal, unlawful, or unethical about paying a third-party’s attorney’s fees in the absence of evidence, beyond the payments themselves, proving an unlawful underlying purpose of inducing the witness to testify in a particular manner or to improperly influence their testimony—***which evidence is totally absent here.*** See *Insignia Sys., Inc. v. News Am. Mktg. In-Store, Inc.*, No. 04-4213 JRT/AJB, at 3 (D. Minn. April 28, 2008) (denying defendant NAMIS’s demand for discovery into the plaintiff’s payment of attorney’s fees to Emmel because there is nothing inherently improper in doing so and NAMIS—despite months of discovery—had found no evidence, beyond the fact of the payments themselves, to support its demand) (attached); *see also* Ga. St. Bar R. and Reg., R 4-102, RPC 3.4; 3 Ga. Proc. Discovery § 11:24.

138. No response necessary because this statement is not a material fact, as required by LR 56.1B.(1).

Denied, as inadmissible on grounds of relevancy. There is nothing illegal, unlawful, or unethical about paying a third-party's attorney's fees in the absence of evidence, beyond the payments themselves, proving an unlawful underlying purpose of inducing the witness to testify in a particular manner or to improperly influence their testimony—**which evidence is totally absent here**. See *Insignia Sys., Inc. v. News Am. Mktg. In-Store, Inc.*, No. 04-4213 JRT/AJB, at 3 (D. Minn. April 28, 2008) (denying defendant NAMIS's demand for discovery into the plaintiff's payment of attorney's fees to Emmel because there is nothing inherently improper in doing so and NAMIS—despite months of discovery—had found no evidence, beyond the fact of the payments themselves, to support its demand) (attached); see also Ga. St. Bar R. and Reg., R 4-102, RPC 3.4; 3 Ga. Proc. Discovery § 11:24.

139. No response necessary because this statement is not a material fact, as required by LR 56.1B.(1).

Denied, as inadmissible on grounds of relevancy. There is nothing illegal, unlawful, or unethical about paying a third-party's attorney's fees in the absence of evidence, beyond the payments themselves, proving an unlawful underlying purpose of inducing the witness to testify in a particular manner or to improperly influence their testimony—**which evidence is totally absent here**. See *Insignia Sys., Inc. v. News Am. Mktg. In-Store,*

Inc., No. 04-4213 JRT/AJB, at 3 (D. Minn. April 28, 2008) (denying defendant NAMIS’s demand for discovery into the plaintiff’s payment of attorney’s fees to Emmel because there is nothing inherently improper in doing so and NAMIS—despite months of discovery—had found no evidence, beyond the fact of the payments themselves, to support its demand) (attached); *see also* Ga. St. Bar R. and Reg., R 4-102, RPC 3.4; 3 Ga. Proc. Discovery § 11:24.

140. Denied. Teresa Enk’s 12/1/06 letter defined “all News America property” to mean only “computer equipment, credit card, office photo identification)”—not each and every bit of NAMIS information or documents Emmel may have possessed. (Emmel Dep. 1/11/08 at 103:20-:25; Emmel Dep. 1/11/08 – Pl. Ex. 20.)

141. Denied. Plaintiff has misstated the documentary evidence. Plaintiff’s attorney Diane Green-Kelly did not demand that Emmel, through his attorney Philip Hilder, simply return all NAMIS property, but—as evidenced by her 04/03/07 email to Mr. Hilder—invited Mr. Hilder to discuss whether Emmel would be willing to agree to return the property ***on the condition*** that he also give a deposition about whether he kept any copies. (Green-Kelly Decl. – Ex. D.)

142. No response required because this statement is a “legal conclusion” in violation of LR 56.1B.(1).

143. Denied. Emmel admits that the property at issue was NAMIS property that he was authorized to retain pursuant to the parties' 12/21/06 Agreement. (Emmel Dep. 1/11/08 – Pl. Ex. 27 ¶ 1.)

144. No response required because this single numbered paragraph includes two statements of allegedly material fact, in direct violation of LR 56.1B.(1).

No response required because this statement is a “legal conclusion” in violation of LR 56.1B.(1).

Respectfully submitted,

s/Marc N. Garber

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**ATTORNEYS FOR DEFENDANT
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FONT CERTIFICATION

The undersigned certifies that this pleading complies with the font requirements of LR 5.1B because it has been prepared in Century Schoolbook, 13 point.

s/Marc N. Garber
MARC N. GARBER

CERTIFICATE OF SERVICE

I hereby certify that on August 11, 2008, I electronically filed the foregoing pleading with the Clerk of Court using the CM/ECF system, which will automatically send email notification of such filing to all attorneys of record.

s/Marc N. Garber
MARC N. GARBER

**Order and
Memorandum Opinion in:**

Insignia Sys., Inc. v. News Am. Mktg

In-Store, Inc., No. 04-4213 JRT/AJB

(D. Minn. April 28, 2008)

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
THIRD DIVISION**

Insignia Systems, Inc.,

Civil No. 04-4213 JRT/AJB

Plaintiff,

v.

News America Marketing In-Store, Inc.,
and Albertsons Inc.,

Defendants.

**ORDER ON MOTION TO
PERMIT FEES DISCOVERY**

News America Marketing In-Store, Inc.,

Counterclaim-Plaintiff,

v.

Insignia Systems, Inc., and Scott Drill,

Counterclaim Defendants.

This matter is before the Court, Magistrate Judge Arthur J. Bovlan, on motion by News America Marketing In-Store, Inc. to permit discovery relating to payment of attorney fees incurred by a former employee of News America. [Docket No. 355]. Hearing was held on April 21, 2008, at the U.S. Courthouse, 300 South Fourth Street, Minneapolis, Minnesota 55415. Richard E. Donovan, Esq., and Stephen Wood, Esq., appeared on behalf of Insignia, Inc. Raymond Fav, Esq., Stacey Anne Mahoney, Esq., and Todd Wind, Esq., appeared on behalf of News America Marketing In-Store, Inc. Michael A. Lindsay, Esq., appeared on behalf of Albertsons Inc.

Based upon the file and documents contained therein, along with memorandums and

arguments of counsel. **IT IS HEREBY ORDERED** that News America Marketing In-Store, Inc.'s Motion for an Order Permitting Discovery of Communications Regarding Insignia's Payment of Robert Emmel's Legal Fees and Expenses is **denied** [Docket No. 355].

Dated: April 24, 2008

s/ Arthur J. Bovlan
Arthur J. Bovlan
United States Magistrate Judge

MEMORANDUM

News America Marketing In-Store, Inc. ("News America") seeks permission to undertake discovery of communications relating to Insignia Systems, Inc.'s ("Insignia") payment of attorney fees and expenses incurred by Robert Emmel. News America characterizes Emmel as a disgruntled former employee who is presently being sued by News America for theft of information. News America asserts that such payment of fees appears to be in exchange for testimony favorable to Insignia in this case, and as such are in violation of bribery statutes and attorney ethics rules. News America states that the discovery request is made pursuant to District of Minnesota Local Rule 83.6, addressing attorney discipline matters.

Insignia, Inc. does not deny that attorney fees payment have been made on Emmel's behalf, but opposes the discovery and argues that the motion is procedurally defective because Local Rule 83.6 provides no basis for the requested discovery and News America failed to comply with the meet and confer provision at Local Rule 37.1. In addition, Insignia contends that payment of a witness'

attorney's fees is certainly not criminal in nature, that such payment is not inherently unethical or otherwise improper, and that the motion is inflammatory. Specifically, Insignia asserts that no evidentiary basis has been provided to support a belief or allegation that payments were made with the purpose of inducing Emmel to testify in a particular manner or having the effect of influencing Emmel's testimony in this action.

The court finds that Insignia's position is well-taken. News America provides no persuasive authority to establish that payment of a witness's attorney's fees is in itself legally or ethically impermissible in the absence of a wrongful underlying motive for such payments. Indeed, it appears that the objective of the discovery here at issue would be to uncover such damning evidence. On a procedural level, the attorney discipline concerns addressed by Local Rule 83.6 relate generally to lawyers who have already been subject to discipline and the rule nowhere authorizes discovery aimed at finding grounds for discipline. Also, the court finds that there are no compelling circumstances in this instance that justify dispensing with the Local Rule 37.1 mandate that parties meet and confer prior to engaging in discovery motion practice. With respect to substantive grounds for the discovery the court finds that the request is lacking in persuasive factual support which might at least provide a foothold on which to justify allowing further inquiry into whether unlawful or unethical efforts to influence testimony were made by Insignia. Under these circumstances the court concludes that News America seeks to engage in an unwarranted fishing expedition, and the motion for permission to engage in discovery regarding payment of Emmel's legal fees is denied.