

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

BF LABS, INC., *et al.*

Defendants.

CASE NO. 4:14-cv-00815-BCW

**PLAINTIFF'S MOTION TO APPROVE FILTER REVIEW PROTOCOL**

Plaintiff, the Federal Trade Commission ("FTC") hereby respectfully requests that the Court approve its proposed protocol for filtering out potentially privileged materials contained in electronically stored information ("ESI") obtained by the FTC from Defendants' premises pursuant to the immediate access provisions of the Temporary Restraining Order. In support of its motion, the FTC states as follows.

On September 19, 2014, the FTC and the Receiver entered Defendants' business premises pursuant to the immediate access provisions of the Temporary Restraining Order. Pursuant to the same provisions, the FTC made copies of numerous documents including ESI. The documents are currently located in a Concordance database that has not yet been reviewed by FTC counsel of record.

To ensure that FTC counsel of record does not inadvertently view ESI protected by the attorney-client privilege, the FTC intends to have a filter team review the ESI and remove potentially privileged materials before counsel of record view the documents. The FTC proposes to use the following protocol in reviewing the materials:

(1) The filter team will consist of one or more attorneys who may be assisted by paralegals.

The attorneys and paralegals are located in a division separate from the division in which counsel of record are located.

(2) The filter team will run searches on the Concordance database using search terms to be agreed upon by the parties.

(3) All hits will be reviewed by the filter team to determine whether they contain potentially privileged materials.

(4) The filter team will stop their review of any particular document upon concluding that it is potentially privileged, and will make a good faith effort to refrain from reviewing the substance of any potentially privileged communication.

(5) All documents identified as being potentially privileged will be coded as such.

(6) When the filter team has completed their review, the FTC's litigation support personnel will segregate out those documents marked as potentially privileged into a separate password-protected database.

(7) Defendants' counsel will be provided with a copy of the database containing the potentially privileged documents. FTC counsel of record will be provided with only a log of the contents of the potentially privileged materials.

(8) Unless otherwise ordered by the Court or agreed to by the parties, FTC counsel of record will not have access to the database containing the potentially privileged materials.

The FTC believes that conducting the filter review using the above protocol will allow the FTC counsel of record access to the ESI obtained during the immediate access while ensuring that counsel of record does not view privileged materials.

WHEREFORE, the FTC respectfully requests this Court enter an order approving the above filter review protocols.

Respectfully submitted,

JONATHAN E. NUECHTERLEIN  
General Counsel

Dated: November 12, 2014

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on November 12, 2014, a true and correct copy of the foregoing was filed electronically with the United States District Court for the Western District of Missouri using the CM/ECF system, which sent notification to all parties of interest participating in the CM/ECF system.

/s/ Gregory A. Ashe  
Attorney for Plaintiff Federal Trade Commission