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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE
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11 CAMPAGNOLO, S.R.L., 12 Plaintiff, 13 v. 14 FULL SPEED AHEAD, INC., and TIEN 15 HSIN INDUSTRIES CO., LTD., 16 Defendants.	CASE NO. C08-1372 RSM ORDER DENYING MOTIONS TO REMOVE PROTECTIVE DESIGNATIONS FROM DEPOSITIONS AND DOCUMENTS

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18 This matter comes before the Court on two motions brought by Defendants to remove
19 "attorneys' eyes only" ("AEO") and "confidential" designations from depositions and
20 documents (Dkt. #s 192, 202). In October 2009, the Court entered a stipulated protective order
21 governing the confidentiality of information revealed during discovery. (Dkt. #142). The
22 order provided that the parties may designate certain evidence as confidential or AEO.
23 Confidential information may be revealed to the parties, but not to third parties or the public,
24 while AEO information may be revealed only to outside counsel and certain necessary persons,
25 such as experts, after they have agreed to the terms of the protective order. (*Id.* at 3-5). The
26 protective order provides that if the parties disagree as to whether information has been
27 designated properly, "they are obligated to negotiate in good faith regarding the designation."
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(*Id.* ¶ 13). It also provides that the party designating the information as protected "bear[s] the ultimate burden of proving that the information should be protected." (*Id.*).

The Court has reviewed the parties' declarations, which establish the following facts. During the week of January 11, 2010, Defendants deposed Plaintiff's officers in Milan, Italy. During the depositions, the parties agreed at Defendants' counsel's suggestion that the depositions should be designated AEO until the parties or the Court would decide otherwise. This was preferable to interrupting the depositions repeatedly to argue about the designation of each individual question and answer.

On January 25, 2010, the parties met in Seattle for the deposition of Defendant Full Speed Ahead ("FSA"). At the deposition, Defendants' counsel requested that the deposition transcripts of Plaintiff's deponents (the persons deposed in Milan) be redesignated as non-confidential. Plaintiff's counsel stated that he did not have the deposition transcripts with him and would not be able to address the issue until January 29 when he returned from travel. Plaintiff did not receive the final transcripts of the Milan depositions until January 24, 25, and 26 (each came on a separate day).

Defendants filed a motion to redesignate the deposition testimony, the first of the redesignation motions addressed in this order, three days later on January 28, 2010. Plaintiff's counsel wrote Defendants' counsel on February 2, asking Defendants to withdraw the motion so that the parties could confer as required by the stipulated protective order. Defendants' counsel responded the same day expressing the view that the parties had conferred at the FSA deposition on January 25 and stating that in view of the dispositive motions deadline looming in late February, Defendants "cannot await your pleasure for a response." (Dkt. #235-2 at 3). In the same letter Defendants' counsel stated that he would be filing a follow-on motion to remove the AEO designations from documents produced during discovery. On February 3, defense counsel e-mailed Plaintiff's counsel explaining that after reviewing all documents Plaintiff has produced in this case, Defendants concluded that none of the documents should be confidential. Plaintiff's counsel responded that Defendants should withdraw their motion and

1 meet and confer. Defendants then filed the motion to remove designations from documents on
2 February 4, 2010.
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4 **1. <u>Depositions</u>**

5 The stipulated protective order requires that the parties "negotiate in good faith" before
6 making a motion to the Court to resolve the status of a designation. (Dkt. #142 at ¶ 13).
7 Negotiation implies a back-and-forth conversation between the parties where each expresses its
8 position and the reasons supporting it and the parties work diligently to resolve their
9 differences before running to the courthouse. Like the meet and confer requirement
10 accompanying all discovery motions, "it mandates a genuine attempt to resolve the discovery
11 dispute through non-judicial means." *Shuffle Master, Inc. v. Progressive Games, Inc.*, 170
12 F.R.D. 166, 171 (D. Nev. 1996). Nothing like that occurred here. Defendants argue that a
13 "meet and confer" took place at the deposition on January 25, 2010, but one party's unilateral
14 pronouncement that it believes transcripts should be redesignated is by no means a negotiation.
15 It is improbable that a meet and confer took place on January 25 because Plaintiff had not yet
16 received the deposition transcripts, let alone had time to read them. And since Plaintiff's
17 counsel informed Defendants' counsel that he would not be able to address the issue until
18 January 29 at the earliest, Defendants could not reasonably have expected Plaintiff to have
19 responded before January 28, when Defendants filed their motion.

20 The Court will not address the underlying dispute before the parties have met in good
21 faith to resolve it. The requirement that the parties negotiate in good faith, like Rule 37's
22 meet and confer requirement, is not a mere formality. It promotes the speedy and inexpensive
23 resolution of disputes and avoids wasting judicial resources. Here, for example, the parties
24 appear to disagree about the designation of less than a dozen pages of deposition testimony.
25 (Dkt. #235-2 at 8-9). If the parties sat down to discuss these dozen pages, it is likely the
26 situation could be resolved fairly quickly. Instead, after thirty pages of motion practice, not
27 counting the numerous pages of declarations and exhibits, the underlying dispute is no closer
28 to being resolved than it was nearly six weeks ago.

2. Documents

The parties did even less to negotiate in good faith regarding the designation of documents. According to Defendants, Plaintiff produced 1,012 documents in this case, "a significant number of which" have been designated AEO. Defendants first raised the issue of their designation in a letter dated February 2, 2010. They filed their motion February 4, 2010. At no point did they indicate which of the "significant number" of documents they were challenging – it seems they simply sought to challenge all of them. The parties did not seriously discuss the documents between February 2 and February 4, nor could they have in such a short time period. Additionally, the Court is not persuaded that the parties negotiated in good faith on this issue on January 25. The record indicates that only deposition transcripts were mentioned at that time. But even if documents were mentioned at the deposition on January 25, the parties could not have had a meaningful negotiation at that point because Plaintiff had not had time to review the documents, having just been informed of the issue.

Accordingly, both motions (Dkt. #s 192, 202) are DENIED. The parties are instructed to meet and confer before bringing any future motions for redesignation.

The Clerk is directed to forward a copy of this Order to all counsel of record.

DATED this 5th day of March, 2010.

RICARDO S. MARTINEZ
UNITED STATES DISTRICT JUDGE