

DAA

BILL RISTEY, JR.
Governor

DONALD J. MARES
Executive Director

MICHAEL J. MCARDLE
Director of Labor



DEPARTMENT OF LABOR AND EMPLOYMENT DIVISION OF LABOR

633 17th Street, Suite 200, Denver, Colorado 80202-3611
Telephone (303) 318-8441 Toll Free 1-888-390-7936 Fax (303) 318-8400
www.colorado.gov/cdle/labor

REQUEST FOR MEDIATION THIS FORM MUST BE SIGNED AND DATED

CLAIM#	COMP OFFICER
--------	--------------

YOUR NAME Craig D. Buckley		YOUR HOME PHONE [REDACTED]	
MAILING ADDRESS [REDACTED]		YOUR CURRENT WORK PHONE ()	
CITY Longmont	STATE CO	ZIP CODE 80501	YOUR CELL PHONE [REDACTED]
YOUR E-MAIL ADDRESS [REDACTED]			
EMPLOYER/BUSINESS NAME Dream Stone, Inc.		EMPLOYER PHONE (303) 774-1122	
EMPLOYER MAILING ADDRESS 4040 Kodiak Ct.		OWNER OR SUPERVISOR'S NAME Scott Murphy	
CITY Longmont	STATE CO	ZIP CODE 80504	EMPLOYER E-MAIL ADDRESS emurphy@dreamstoneinc.com
TYPE OF CLAIM <input type="checkbox"/> SALARY <input checked="" type="checkbox"/> WAGES <input type="checkbox"/> COMMISSION <input checked="" type="checkbox"/> VACATION <input type="checkbox"/> DEDUCTIONS <input type="checkbox"/> OVERTIME <input type="checkbox"/> OTHER			
TYPE OF INDUSTRY Manufacturing		OCCUPATION/TITLE/JOB CLASSIFICATION/POSITION CNC Programmer	
DATE STARTED WORK July 10, 2006	DATE LAST WORKED September 30, 2008	PAY PERIOD (Daily, Weekly, Biweekly, Monthly) Biweekly	
ARE YOU STILL WORKING THERE? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	REASON FOR SEPARATION <input type="checkbox"/> FIRED <input type="checkbox"/> QUIT <input type="checkbox"/> LAY-OFF <input checked="" type="checkbox"/> OTHER Wrongful termination/C.R.S.8-78-108(4)(c)		
RATE OF PAY PER (Hour, Week, Month, Piece, Biweekly, etc.) \$ 20.50 / per hr.		TOTAL AMOUNT OF MONEY YOU ARE OWED \$ 820.00 + penalties	
HOW DID YOU ARRIVE AT THE AMOUNT YOU ARE CLAIMING? PLEASE BE SPECIFIC AND INCLUDE DATES. This is accrued vacation time pursuant to C.R.S. 8-4-109(1)(b). Vacation pay is within the definition of "wages or compensation". Hartman v. Freedman, 197 Colo. 275, 591 P.2d 1318 (1979).			
WERE YOU PAID AT THE TIME OF SEPARATION? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	DID YOU RECEIVE ITEMIZED PAY STATEMENTS? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	OUTSTANDING ADVANCES OR LOANS WITH EMPLOYER? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
WERE YOU ISSUED A UNIFORM? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	IF YES, WAS IT RETURNED? <input type="checkbox"/> YES <input type="checkbox"/> NO	ARE YOU HOLDING ANYTHING THAT BELONGS TO THE EMPLOYER? IF YES, PLEASE DESCRIBE. <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
Any person providing false information to the Division of Labor in order to obtain and/or retain anything of value may be subject to criminal prosecution under the laws of the State of Colorado with possible penalties of imprisonment, fines, or both. This form must be signed and dated.			
<ol style="list-style-type: none"> I hereby certify that this is a true statement of monies owed, and authorize the Division of Labor to investigate and assist in this matter. I understand that the Division of Labor does not guarantee a resolution to this dispute, and that I may have to pursue the matter further in court, with an attorney, with another agency, or through other methods. I also understand that any information supplied on this form may be provided to the employer, the agents of the employer involved in the dispute, and other agencies or individuals as the Division deems appropriate. 			
YOUR SIGNATURE		DATE	
Office Use Only RESOLUTION		DATE CLOSED	AMOUNT \$

ADDITIONAL COMMENTS:

This matter, in addition to the wrongful termination under C.R.S. 8-78-108(4)(c), as having been determined as a matter of law by the Industrial Claims Appeals Office, is currently before the Weld County District Court, Division 1, Case # 2009CV991.

The purpose of this report is not to initiate mediation, but to effect diligent investigation by the CDLE Director per, C.R.S. 8-4-111 (1), in support of civil and/or criminal penalties against the employer, Dream Stone, Inc., for willful and malicious violation of C.R.S. 8-4-109(1)(b), pursuant to those remedies provided by C.R.S. 8-4-113, and C.R.S. 8-4-114, respectively.

Claimants filing of civil action in the Weld County District Court should not preclude investigation of this matter by the CDLE, per C.R.S. 8-4-110(2)

I believe the employer has wrongfully denied numerous other former employees earned/accrued wages upon termination of employment, including my wife, who is also a former employee of Dream Stone, Inc.

AS GROUNDS:

I terminated employment with Dream Stone, Inc. on August 30, 2008 due to screaming, belittling, and a hostile work environment perpetuated by the employers. My wrongful termination, pursuant to C.R.S. 8-4-108(4)(c) was affirmed, as a matter of law, by the ICAO. (Exhibit - A)

On October 1, 2008, I initiated a phone conversation with Dream Stone CEO, Scott Murphy, during which time I informed him that he was to make my final paycheck payable by mail at my current address.

I had also informed Mr. Murphy that I had accrued 40 hours of vacation time, and that was also to be made payable, via USPS, to my current address, per my final pay stub indicating 40 hrs. of earned vacation. (Exhibit - B)

Mr. Murphy responded to my demand, which was compliant with C.R.S. 8-4-109(1)(b), by laughing at me, and saying, "Fuck you".

On October 20, 2008 I sent a letter to Dream Stone, Inc. secretary/treasurer, Ida E. Murphy, in which I demanded payment, per 8-4-109(3)(a), for the accrued vacation pay. To this date, January 21, 2010, Dream Stone, Inc. remains noncompliant with C.R.S. 8-4-109(1)(b). (Exhibit - C).

Due to the willful, malicious, and ongoing nature of the employer's violations, and the fact that they have unlawfully done this to numerous former employees, many of whom will be subpoenaed to testify in my Weld County District Court case, I would respectfully ask that the Director impose the maximum civil and/or criminal penalties upon the employer, as provided by law.

I swear under penalty of perjury that all statements contained herein are true and complete to the best of my knowledge.

Respectfully submitted this date, January 21, 2010:

Craig D. Buckley

██████████
Longmont, CO 80501
████████████████████

From: Eve Murphy [mailto:emurphy@dreamstoneinc.com]
Sent: Thursday, May 06, 2010 2:55 PM
To: Juanita Wright
Cc: 'Dan Goodwin'
Subject: Craig D. Buckley - Complaint 0444-10



Dear Juanita:

In our preliminary discussion yesterday you mentioned that if Mr. Buckley were pursuing the unemployment claim in his court case in weld Countyt that CDLE would not pursue it. I have talked to our attorney and yes, indeed, Mr. Buckley has made the CDLE part of his complaint in Court. I attached his latest pleadings that reference that fact, see paragraphs 6-9 of his Motion to Strike Answer to Amended Complaint, and also in his pleading Motion for Settlement Conference, paragraph 1. I can provide other documentation if you need it, but these are the latest pleadings received from him.

If you have any questions, or need further information, please contact me.

Eve Murphy

District Court, Weld County, Colorado Address: P.O. Box 2038 Greeley, CO 80632	
CRAIG D. BUCKLEY, an individual, v. DREAM STONE, INC., a Colorado corporation, SCOTT MURPHY, an individual, EVE MURPHY, an individual, RON MURPHY, an individual	▲ COURT USE ONLY ▲
Attorneys for Defendants: Daniel T. Goodwin, #2971 Blaine D. Bowne, #24481 Donelson Ciancio & Goodwin, PC 8001 Arista Place, Suite 400 Broomfield, Colorado 80021 Telephone: 303-450-1665 Fax: 303-457-1175 E-mail: dangoodwin@colo-law.com blainebowne@colo-law.com	Case No. 2009CV991 Division: 1 Courtroom: Judge Hartman
DEFENDANTS' RESPONSE TO MOTION FOR SETTLEMENT CONFERENCE	

Defendants, by and through their attorneys, Donelson, Ciancio & Goodwin, P.C., respond to Plaintiff's Motion for Settlement Conference, as follows:

1. The Plaintiff's motion amounts to nothing more than a continuing diatribe against the Defendants and their counsel. However, Plaintiff frames the sole issues which form the basis of his Complaint, i.e. his claims are limited to "approximately \$840.00 in vacation pay, and a few months of Unemployment Compensation." (See, Paragraph 1 of Plaintiff's Motion for Settlement Conference).

2. Plaintiff admits that he has "no reasonable chance of prevailing." (See, Paragraph 4 of Plaintiff's Motion for Settlement Conference). He is correct in that admission, but the reason is that his claims are not justified.

3. Plaintiff further admits that he has gained the advice of counsel and, after conferring with counsel, desires to "extricate himself from this case via a Settlement Conference before the Court," the purpose being to "end this matter." (See, Paragraph 5 of Plaintiff's Motion for Settlement Conference).

4. The Plaintiff actually requests that his case be dismissed as "allowing this case to continue will cause the loss of Plaintiff's home, as he is currently unemployed due to the rigorous, unrelenting demands of fighting the Defendants." (See, Paragraph 8 of Plaintiff's Motion for Settlement Conference).



5. Plaintiff has admitted in his previous pleadings that he sought, and has been awarded, unemployment benefits from Dream Stone, Inc. (See, Plaintiff's Complaint, especially Paragraphs 25 and 31; See, Plaintiff's First Amended Complaint Paragraph 18). Plaintiff's apparent claims for a further award of unemployment benefits from this Court is barred by res judicata.

6. Plaintiff has admitted that he has filed a claim with the Colorado Department of Labor and Employment seeking an award for payment of alleged vacation pay due him. A copy of Plaintiff's "Claimant Response" filed with the Colorado Department of Labor and Employment-Labor Relations seeking vacation pay from Dream Stone, Inc., in Claim Number: 0444-10 is attached hereto as Exhibit 1.

7. The Plaintiff did not file this action seeking review of the unemployment benefits award but rather filed it as a first party cause of action for additional benefits ("a few months of unemployment compensation") arising out of his employment with Dream Stone, Inc.

8. Further, as to the issue of vacation pay, Plaintiff chose the Colorado Department of Labor and Employment ("CDLE") as the forum to decide the issue. The CDLE has not issued an order which Plaintiff seeks to have this Court review. This Court lacks the subject matter jurisdiction to hear Plaintiff's claims regarding unemployment benefits or wage issues against Dream Stone, Inc. The Plaintiff's claims must be resolved by the proper administrative agency. Stacks v. The Industrial Commission, et al., 65 Colo. 20; 174 P. 588; (1918).

9. Even reading the Plaintiff's claims in a light most favorably to him, each and every one of his causes of action arise out of injuries he alleges to have sustained as a result of his status as an employee of Dream Stone, Inc. Plaintiff's sole and exclusive remedy for physical or mental injuries incurred in the workplace is Worker's Compensation, which has pre-empted judicial jurisdiction of workplace damages claims, except for review of agency awards. Again, the District Court lacks the subject matter jurisdiction to hear Plaintiff's suit.

10. Defendants' challenge to the Court's subject matter jurisdiction herein is timely brought. The Town of Carbondale v. GSS Properties, LLC, 169 P.3d 675 (Colo. 2007).

11. Though inarticulately pled, Plaintiff has requested that the Court dismiss this matter pursuant to C.R.C.P. 41(a). The Defendants do not object to dismissal of Plaintiff's case with prejudice. Plaintiff's request for dismissal is made after consultation with an attorney licensed in Colorado, and, as alleged by Plaintiff, upon the attorney's advice.

12. Plaintiff has not shown the necessity for a Settlement Conference to obtain a dismissal of his case, and Defendants do not request a Settlement Conference and advise the Court that a Settlement Conference will not resolve this case. Plaintiff's claims are unwarranted, frivolous, groundless and vexatious. Defendants are prepared to defend their reputations from all of Plaintiff's claims. A Settlement Conference would invariably be used by the Plaintiff as a bully pulpit to continue to disparage the Defendants on the record.



13. Plaintiff's Motion provides the Court with additional reason to grant Defendants' Motion to Dismiss Plaintiff's Suit With Prejudice Pursuant to C.R.C.P. Rule 37(d) and Rule 41(b), or in the Alternative for Entry of Default Judgment, and for Hearing.

WHEREFORE, Defendants confess Plaintiff's Motion for Settlement Conference to the extent that the relief granted is limited to dismissal of Plaintiff's case with prejudice.

Respectfully submitted this 7th day of May, 2010.

DONELSON CIANCIO & GOODWIN, P.C.

s/Daniel T. Goodwin, Esq.

Daniel T. Goodwin, Esq., 2971

Blaine D. Bowne, Esq., #24481

Attorneys for Defendants

Pursuant to C.R.C.P. 121 §1-26(9), a printed copy of this electronically-filed document with original signatures is being maintained at the offices of Donelson Ciancio & Goodwin, P.C. and is available for inspection by other parties or the court upon request.

CERTIFICATE OF SERVICE

I do hereby certify that on this 7th day of May, 2010, a true and correct copy of the foregoing **DEFENDANTS' RESPONSE TO MOTION FOR SETTLEMENT CONFERENCE** was served via Lexis/Nexis File & Serve:

Craig Buckley

[REDACTED]

Longmont, CO 80501

[REDACTED]

s/Janice Bennett



Juanita Wright

From: Eve Murphy [emurphy@dreamstoneinc.com]
Sent: Wednesday, May 12, 2010 9:18 AM
To: Juanita Wright
Cc: 'Dan Goodwin'
Subject: Craig Buckley

COPY

Hi:

I just wanted to confirm in writing our conversation this morning regarding the email I sent you May 6, 2010, regarding Mr. Buckley and the fact that he has made the vacation pay part of his Weld County lawsuit. During our discussion you asked if I had a problem if you forwarded what I sent you to Craig. I responded that it would not be a problem since these documents were created by him. I also indicated that I had other documents he has filed that substantiate that vacation pay is part of his lawsuit.

You also told me that after you had an opportunity to look over what I sent that you and I would talk.

Eve

Juanita Wright

From: Eve Murphy [emurphy@dreamstoneinc.com]
Sent: Wednesday, May 12, 2010 12:13 PM
To: Juanita Wright
Cc: 'Dan Goodwin'
Subject: RE: Craig D. Buckley - Complaint 0444-10

Dear Juanita:

Thanks for responding and clearing up my misunderstanding. I assumed that the vacation pay issue was with CDLE/unemployment. However, now knowing that you are with the Division of Labor does not affect anything. The "vacation" issue is part of his lawsuit in Weld County, as is evidenced by his own filings that I sent you. However, if Mr. Buckley did not divulge to you that the issue was not part of his lawsuit in Weld County, then he was not being truthful. I hope that these documents prove his dishonesty in dealing with your agency. For the record, Mr. Buckley has filed against our company with every agency in existence, made outrageous claims that we have disproved, all being part of his continued harassment of our company.

Also, again for the record, Craig Buckley is not due vacation pay. Had he been eligible for vacation, he would have been paid.

As I informed you, he has filed other paperwork in Court that clearly prove that his claim for vacation pay is part of that lawsuit. If you need copies, please email me. And, if you have any questions, please do not hesitate to contact me.

Eve

From: Juanita Wright [mailto:Juanita.Wright@state.co.us]
Sent: Wednesday, May 12, 2010 10:32 AM
To: Eve Murphy
Subject: RE: Craig D. Buckley - Complaint 0444-10
Importance: High

Just to provide clarification to your statement, " In our preliminary discussion yesterday you mentioned that if Mr. Buckley were pursuing the unemployment claim in his court case in weld County that CDLE would not pursue it".

During our discussion, you referenced the matter (unpaid vacation) being filed in court. I advised you that I had been informed the matter was not being handled through court. My recollection of my comment and/or statement to you was, "if you are telling me the unpaid vacation is being handled in court, the Division of Labor would not/does not have statutory authority to become involved". You then reiterated, the matter was in court and you would provide verification; which you recently emailed me.

Because I don't work for Unemployment Insurance, I would have no authority to get involved in Unemployment Insurance issues. However, since I work for the Division of Labor, we have statutory authority in administering the Colorado Wage Act (CRS 8-4-101 et. seq.). As you may already know, the Act requires Colorado employers to pay employees their earned wages in a timely manner. The law addresses deductions from wages, vacation, commissions, bonuses, final pay, pay periods, paydays, and pay statements.

Before I copy Mr. Buckley in this email, I wanted you to have the opportunity to read and provide any necessary comments, adjustments or any further discussion with me concerning my understanding of our conversation.

3/25/2011

Juanita Wright

From: Eve Murphy [emurphy@dreamstoneinc.com]
Sent: Wednesday, May 12, 2010 12:39 PM
To: Juanita Wright
Cc: 'Dan Goodwin'
Subject: RE: Craig D. Buckley - Complaint 0444-10



Hi:

I really need to proofread a little better. . . . I meant to say in my email just sent to you. . . "However, if Mr. Buckley did not divulge to you that the issue was part of his lawsuit in Weld County, then he was not being truthful." Sorry for the confusion. . .

Eve

From: Juanita Wright [mailto:Juanita.Wright@state.co.us]
Sent: Wednesday, May 12, 2010 10:32 AM
To: Eve Murphy
Subject: RE: Craig D. Buckley - Complaint 0444-10
Importance: High

Just to provide clarification to your statement, " In our preliminary discussion yesterday you mentioned that if Mr. Buckley were pursuing the unemployment claim in his court case in weld County that CDLE would not pursue it".

During our discussion, you referenced the matter (unpaid vacation) being filed in court. I advised you that I had been informed the matter was not being handled through court. My recollection of my comment and/or statement to you was, "if you are telling me the unpaid vacation is being handled in court, the Division of Labor would not/does not have statutory authority to become involved". You then reiterated, the matter was in court and you would provide verification; which you recently emailed me.

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Before I copy Mr. Buckley in this email, I wanted you to have the opportunity to read and provide any necessary comments, adjustments or any further discussion with me concerning my understanding of our conversation.

Juanita E. Wright
Compliance Officer
303.318.8444 w#
303.318.8400 f#

The Division of Labor (DOL) within the Colorado Department of Labor and Employment functions only in an administrative capacity for the State. Neither general information nor the specific answer to any question by DOL, should be accepted as a legal opinion. Only an attorney may provide a legal opinion and the writer is not an attorney.

From: Eve Murphy [mailto:emurphy@dreamstoneinc.com]
Sent: Thursday, May 06, 2010 2:55 PM
To: Juanita Wright

10/12/2010

Craig Buckley

From: "Juanita Wright" <Juanita.Wright@state.co.us>
To: "Craig Buckley" [REDACTED]
Sent: Wednesday, May 12, 2010 4:23 PM
Attach: Dream Stone Marble - #2 Buckley_09-340504MOTNMotion for Settlement Conference552010154324.pdf
Subject: LC# 0444-10

The conference call between your former employer, Eve, and I did not take place yesterday as scheduled. However, I did speak with her today.

Do you remember me stating if the matter of your complaint regarding unpaid vacation was being handled in court, the Division of Labor (DOL) lacks statutory authority? Therefore and because your claim has been filed/appears to be filed through court, DOL lacks the ability to become and/or to stay involved; DOL does not have statutory authority over the court(s). DOL is required to close your claim for unpaid vacation pay.

I am scheduled to be out of the office tomorrow, Friday, May 14. I should be unavailable Tuesday, May 18, if you should need to speak directly to me.

Juanita E. Wright
Compliance Officer
303.318.8444 w#
303.318.8400 f#

The Division of Labor (DOL) within the Colorado Department of Labor and Employment functions only in an administrative capacity for the State. Neither general information nor the specific answer to any question by DOL, should be accepted as a legal opinion. Only an attorney may provide a legal opinion and the writer is not an attorney.

Weld County, Colorado, District Court P.O. Box 2038 Greeley, CO 80632-2038 (970) 351-7300	FILED Document -- District Court 2009CV991 CO Weld County District Court 19th JD Filing Date: Jun 17 2010 3:37PM MDT Filing ID: 31703281 <hr/> Case No: 09CV991 Div. 1
CRAIG D BUCKLEY, Plaintiff, v. DREAM STONE, INC, SCOTT MURPHY, EVE MURPHY, and RON MURPHY, Defendants.	
ORDER RE: PLAINTIFF'S MOTION TO COMPEL DISCOVERY	

This matter is before the court on the Plaintiff's Motion to Compel Discovery, filed with the court on April 26, 2010. Defendants have filed a response and Plaintiff has filed a reply.

Plaintiff presented the Defendants with written request for discovery on March 31, 2010. Plaintiff's request for discovery contained twenty sections, number 1-20. See Exhibit 1 of Plaintiff's Motion. The Defendants provided a response to Plaintiff objecting to Discovery Requests 1, 2, 4, 5, 6, 7, 8, 10, 13, 14, 16, 17, 18, 19 and 20, stating that the requests were immaterial and irrelevant to Plaintiff's claims for wrongful termination and nonpayment of vacation pay.

Plaintiff's Discovery Request 9 seeks a witness list from Defendants and Defendants have agreed to provide the actual list of witnesses to Plaintiff at the time the witness list is to be disclosed under the Colorado Rules of Civil Procedure. Defendants recognize their obligation to provide a witness list to Plaintiff within the time requirements of the rules, and no order from the court is necessary at this time.

Defendant informed Plaintiff that the documents requested in Discovery Request 12 did not exist.

Plaintiff has withdrawn Discovery Requests 2, 6, and 15.

Plaintiff challenges Defendants' claims of immateriality and lack of relevance for Discovery Requests 1, 3, 4, 5, 7, 8, 10, 11, 12, 13, 14, 16, 17, 18, 19, and 20, and Plaintiff seeks an order from this court compelling Defendants to provide the items listed in each of those discovery requests.

I. LEGAL STANDARD

Colorado Rule of Civil Procedure 26 provides that “parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party”. It further provides that “[t]he information sought need not be admissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence”. Thus, so long as information is relevant, it is discoverable. Colorado Rule of Evidence 401 defines relevant evidence as evidence “having any tendency to make the existence of any fact that is a consequence to the determination of the action more probable or less probable than it would be without the evidence.”

II. ANALYSIS

Plaintiff has raised several claims for relief in his complaint, including, but not limited to, wrongful discharge from employment, breach of implied contract, negligent and intentional infliction of emotional distress, undue influence, and extortion. Plaintiff alleges that the Defendants forced Plaintiff, under threat of termination and financial ruin, to: (1) engage in software piracy and unlawfully distributing pirated computer software internationally; (2) assist Defendants with committing fraud against the Internal Revenue Service, the Colorado Department of Revenue, and the Colorado Department of Labor and Employment; (3) testify untruthfully at another employee’s unemployment benefits hearing; (4) aid Defendants with defrauding numerous customers; and (5) to ignore Defendants’ theft of a Ricoh copier.

The court will consider Plaintiff’s discovery request letter to Defendants as a request for production of documents pursuant to C.R.C.P. 34(a).

Plaintiff filed for unemployment benefits with the Colorado Department of Labor and Employment (“CDLE”) and he was initially awarded unemployment benefits. Defendant’s challenged the award of unemployment benefits and Plaintiff was then denied benefits. Plaintiff appealed and was awarded unemployment benefits. Plaintiff currently has a claim pending before the CDLE for vacation pay he believes Defendants owe to him.

A. Plaintiff’s Discovery Request 1

Plaintiff’s Request 1 seeks copies of all of Dream Stone’s security logs for the period of November 2007 through January 2008, including when the security system was armed or disarmed, and all documents pertaining to monitoring the Dream Stone premises. Plaintiff argues that this information is or may lead to relevant information to show that he was continuously employed by Defendants from July 2006 through September 2008. Plaintiff states that Defendants have asserted in CDLE vacation pay action that Plaintiff worked for Defendants from July 2006 until December 6, 2007, when he quit his job, and then again from December 11, 2007 until October 3, 2008. Plaintiff believes that Defendants are claiming that he was not employed by the company from December 6-10, 2007, in an attempt to avoid paying Plaintiff vacation pay in the CDLE case. Plaintiff

states that the security logs would confirm that he worked for the company between December 6, 2007 and December 11, 2007.

Whether Defendants owe Plaintiff payment for accrued vacation pay is an issue before the CDLE and not this court. The court agrees with Defendants that the security logs and other security documents are not relevant to any of Plaintiff's claims in this case, and the court denies Plaintiff's request to compel production of items listed in Discovery Request 1.

B. Plaintiff's Discovery Request 3

Plaintiff requests copies of all unemployment filings, reports, replies, and correspondence written by any former employee to/from CDLE, for all employees terminated by Defendants between January 2005 and March 2010.

Defendants responded to Plaintiff that they would provide all information related to Plaintiff's unemployment claim but not for any other employee.

Plaintiff has claimed that he was forced by Defendants, under threat of job termination, to testify untruthfully at an unemployment compensation hearing concerning another employee of Dream Stone. Plaintiff has not provided court with the name of this former Dream Stone employee. The court finds that information pertaining to this other employee's unemployment claim is relevant and the court will order the Defendants to provide this information to Plaintiff. Plaintiff is to provide the Defendants with this person's name.

The court finds that unemployment claims made by employees of Defendants, other than Plaintiff and the employee referenced in the previous paragraph, is not relevant and the Defendants are not required to provide that information to Plaintiff.

C. Plaintiff's Discovery Request 4

Plaintiff seeks copies of all inspections and findings made by the Occupational Safety and Health Administration ("OSHA") for the period of July 2006 through March 2010. At the outset, the court notes that Plaintiff has requested OSHA reports for October 4, 2008 through March 2010, which is a period of time when Plaintiff was not even employed by Defendants. The Plaintiff has not provided why OSHA reports from this period of time is relevant to his claims against Defendants.

Regarding the period from July 2006 until October 3, 2008, which is when Plaintiff was employed by Defendants, Plaintiff has not established why OSHA reports are relevant to his claims for relief. Therefore the court will not compel Defendants to provide OSHA reports to Plaintiff.

D. Plaintiff's Discovery Request 5

Plaintiff has requested copies of the time cards and check stubs for all employees for the period between November 2007 and January 2008. Plaintiff argues that this

information is relevant to show that Plaintiff was employed by Defendants between December 6, 2007 and December 11, 2007. Plaintiff states that these time cards and pay stubs will confirm that no other employee worked 48 ½ hours between December 3 and 5, 2007, and this will show that Defendants' claims that he quit on December 6, 2007 and was rehired on December 11, 2007 are false.

This information may be relevant to Plaintiff's CDLE vacation pay claim, but the court fails to see the relevance to the issues raised by Plaintiff in this case. Plaintiff's request for discovery of other employees' time cards and pay stubs is denied.

E. Plaintiff's Discovery Request 7

In Discovery Request 7, Plaintiff seeks copies of all contracts, receipts, bills, invoices, and e-mails pertaining to Etemplate Systems, Tri-Tech Solutions, Paul Hansen, and Elaine Hansen.

Plaintiff states in paragraph 52 of his motion that the Defendants and witnesses to be called in this case "have admitted that the software may have been pirated". On November 17, 2009, Plaintiff filed a motion for expedited discovery in which Plaintiff asserted that Defendants purchased the Etemplate program from Paul Hansen. Plaintiff and another Dream Stone employee attended a training seminar in North Carolina on the use of the Etemplate program. Plaintiff claimed that Defendant Scott Murphy was upset that the software could only be used on a single machine and he sought a way for the Sentinel security device preventing duplication could be circumvented. Plaintiff states that Scott and Eve Murphy directed Plaintiff to contact a source in Russia to obtain software to "crack" the Etemplate Sentinel security device. Plaintiff indicates that Eve Murphy provided Plaintiff \$400 to purchase the software from Russia and she directed Plaintiff to purchase the software through Plaintiff's personal Paypal account. Plaintiff purchased the software for \$322.95 and informed Eve Murphy that the price was less than \$400. Plaintiff stated that Eve Murphy told him to keep the difference because it was important that the amounts did not match. Plaintiff asserts that he kept a copy of the cracking software and a record of his actions. Plaintiff also asserts that Scott Murphy has provided pirated copies of Etemplate software to other persons.

If these allegations are true, Plaintiff, under threat of being fired from his job, assisted Defendants with copyright violations of protected software belonging to Paul Hansen and/or Etemplate Systems. In the present motion, Plaintiff states that witnesses admitted that the software "may" have been pirated. The use of the word "may" by Plaintiff in his motion for discovery is far less assertive and certain than the language used by Plaintiff in his November 17, 2009 to describe the software piracy. Nonetheless, the court finds that Plaintiff has provided a sufficient basis for the court to compel the Defendants to provide the information requested in Request 7.

F. Plaintiff's Discovery Request 8

Defendant requests copies of all licensing agreements and/or celebrity endorsements for any company held by Defendants to include, but not limited to, those of Americanacouture.com, and celebrities Halle Berry, Jessica Simpson, Drew Barrymore,

Spike Lee, Christina Aguilera, Alicia Keys, Jennifer Aniston, Sarah Michelle Gellar, Sheryl Crow, and others not specifically mentioned. Plaintiff refers to the motion he filed on November 17, 2009, and incorporates the content of that motion as part of his motion to compel discovery.

The court has again reviewed Plaintiff's motion of November 17, 2009, and in that motion Plaintiff refers to civil and criminal actions in Arizona involving a company called Americana Couture and the owners of that company, Mark and Maryanne Chisholm. The Chisholms were found liable for fraud in the civil case in 2002, and convicted of fraud and theft from investors in the criminal cases in 2009. The Chisholms were sentenced to lengthy terms of incarceration and ordered to pay restitution in the criminal cases. Millions of dollars in civil judgments have been entered against the Chisholms in the civil case.

Americana Couture appears to have been an enterprise specializing in clothing sales, primarily through internet marketing. The celebrities referenced by Plaintiff in his motion appeared in advertisements featuring Americana Couture line of clothing.

Plaintiff has provided copies of electronic mails between Mark Chisholm and Defendant Eve Murphy. Eve Murphy owned, or was affiliated with, companies called Luxestar and Darkhorse Duplication. These companies apparently contracted with the Chisholms and/or Americana Couture to market, produce, distribute, or sell Americana Couture clothing. It is not entirely clear from the information provided by Plaintiff what exactly Eve Murphy or her companies did for or with Americana Couture or the Chisholms. Eve Murphy was not a party in the civil case in Arizona.

Plaintiff has established that there was a business relationship between Eve Murphy and the Chisholms and Americana Couture, but Plaintiff has failed to show how this relationship is relevant to his claims in this case. The documents submitted by Plaintiff prove that the Chisholms misappropriated funds from investors to the tune of millions of dollars; however, Plaintiff has tendered no information to show that Eve Murphy was involved in any way with the Chisholm's criminal or fraudulent acts. More importantly, Plaintiff has failed to show how the acts of the Chisholms, and Eve Murphy's business relationship with them, relate in any way to Plaintiff's claims that Defendants unlawfully terminated his employment. For these reasons the Plaintiff's Discovery Request 8 shall be denied.

G. Plaintiff's Discovery Request 10

Plaintiff requests complete manufacturing, production, templating, and installation schedules for Dream Stone for the period of time between November 2007 and January 2008. Plaintiff asserts that this information is relevant to rebut Defendants' claims that Plaintiff quit employment on December 6, 2007 and was rehired on December 11, 2007. This information may be relevant in Plaintiff's CDLE claim for vacation pay, but the court fails to see the relevance in this case. Plaintiff's Discovery Request 10 is denied.

privacy by bank depositor in the bank's records of depositor's financial transactions). Tax returns are also confidential in most instances. "In light of this strong policy in favor of protecting confidentiality of tax returns, we have held that the party seeking the release of a tax return bears the burden of showing a 'compelling need' for the return. Absent a compelling need, a subpoena for a tax return should be quashed." *Alcon v. Spicer*, 113 P.3d 735, 743 (Colo.2005). "We now hold that, because of their confidential nature, tax returns may not be ordered disclosed unless a court finds that they are relevant to the subject of the action and there is a compelling need for information contained in the returns because the information sought is not otherwise readily available." *Stone v. State Farm Mutual Auto Insurance Company*, 185 P.3d 150, 159 (Colo. 2008).

Plaintiff has not shown that Defendants' bank records and tax returns are relevant, which is a far lower standard than showing a compelling need for these records. Plaintiff's Discovery Request 12 is denied.

J. Plaintiff's Discovery Request 13

Plaintiff requests "copies of all Defendants' medical records, psychological evaluations, doctor prescribed prescriptions, and all other discoverable documents which may indicate, including, but not limited to: bipolar disorder, manic-depressive behavior, and any other psychological diagnosis."

Defendant's responded by stating that these requests are irrelevant and immaterial to Plaintiff's claims for wrongful termination and nonpayment of vacation pay.

Plaintiff argues that these documents are relevant because they relate to Plaintiff's claims that Defendant Scott Murphy displayed wild fits of rage towards Plaintiff and these fits of rage form the basis of Plaintiff's claims for emotional distress. Plaintiff believes that Scott Murphy may suffer from a bipolar disorder.

Plaintiff's claim is based upon outward manifestations of Scott Murphy towards Plaintiff, and it Mr. Murphy's behaviors that are relevant to Plaintiff's claim of emotional distress. Whether Mr. Murphy has or has not been diagnosed with a psychological or personality disorder is not relevant in this case. Medical and psychological records are privileged, and that privilege can only be pierced if the patient has waived the privilege. *People v. Wittrein*, 221 P.3d 1076 (Colo. 2009). A waiver of the privilege can be express or implied. *People v. Sisneros*, 55 P.3d 797 (Colo. 2002). Mr. Murphy has not injected his psychological condition into this case and Plaintiff has not otherwise established that Scott Murphy expressly or impliedly waived this privilege.

Plaintiff's Discovery Request 13 is denied.

K. Plaintiff's Discovery Request 14

Plaintiff requests "copies of all .jpg, .pmr, and .est files generated on any Dream Stone computer by any Dream Stone employee from November 2007 through January 2008.

Defendants responded by stating that these requests are irrelevant and immaterial to Plaintiff's claims for wrongful termination and nonpayment of vacation pay.

Plaintiff asserts that this information is relevant to show that he was employed between December 6, 2007 and December 11, 2007. This information may be relevant in Plaintiff's CDLE claim for vacation pay, but the court fails to see the relevance in this case. Plaintiff's Discovery Request 14 is denied.

L. Plaintiff's Discovery Request 16

Plaintiff requests that Defendants provide copies of all files or executables containing the name "SENTEMUL", which Plaintiff states have been installed on a minimum of five computers belonging to Defendants.

Defendants responded by stating that these requests are irrelevant and immaterial to Plaintiff's claims for wrongful termination and nonpayment of vacation pay.

Plaintiff argues that "SENTEMUL" is the illegally obtained licensing software purchased from Russia that was used to bypass the security device for the Etemplate software. Plaintiff states that he assisted Defendants with obtaining the "SENTEMUL" software for the purpose of using the Etemplate program on more than one of Defendants' computers without paying the licensing fee to Etemplate. Plaintiff indicates that he assisted Defendants because Defendants threatened his job if he did not comply.

The court finds that this information is relevant to Plaintiff's claims and orders Defendants to provide to Plaintiff the information requested in Discovery Request 16.

M. Plaintiff's Discovery Request 17

Plaintiff requests copies of any bookings, reservations, travel accommodations, hotel accommodations, electronic mail correspondence, which in any way relate to Mr. Bal Silva's travel to Colorado between July 2006 and September 2008. Defendants responded that this information is not relevant or material to Plaintiff's claims in this case.

Plaintiff believes that Mr. Silva received three pirated versions of Etemplate from Scott Murphy, which were "burned" onto three of Mr. Silva's laptop computers by Plaintiff. Plaintiff states that he installed this software onto Mr. Silva's computer because Defendants threatened termination from employment if Plaintiff did not comply.

The court finds that this information is relevant to Plaintiff's claims and orders Defendants to provide to Plaintiff the information requested in Discovery Request 17.

N. Plaintiff's Discovery Request 18

Plaintiff has requested copies of handwriting samples, predating September 2008, of Eve Murphy, Scott Murphy, and Juan Mireles. Defendant responded to Plaintiff that these requests were not relevant to Plaintiff's claims.

Plaintiff believes that Defendants will attempt to introduce testimony at trial from these three people that can be refuted by handwriting samples existing prior to September 2008. Plaintiff has not articulated why he believes these handwriting samples will refute the testimony of these three witnesses. Plaintiff's Discovery Request 18 is denied.

O. Plaintiff's Discovery Request 19

Plaintiff seeks a copy of the complete .txt formatted job log file contained on the computer Plaintiff used while employed with Defendant. Plaintiff believes this file will contain a record of all work he performed for Defendants from October 2006 through September 2008. Plaintiff asserts that this information is relevant to disprove Defendant's claims that Plaintiff is ineligible to collect earned and accrued wages under the Colorado Wage Act. This information is relevant in Plaintiff's CDLE cases, but does not appear to be relevant to his claims in this case. Plaintiff's Discovery Request 19 is denied.

P. Plaintiff's Discovery Request 20

Plaintiff seeks all documents, including motions, discovery materials, and pleadings related to the case of *Todd Coday v. Dream Stone, Inc.*, Weld District Court case 09CV334. Plaintiff believes that information from the *Coday* case is relevant to show that Defendants routinely abused employees at Dream Stone.

It appears that Plaintiff seeks information contained in the court file for the *Coday* case. Plaintiff can obtain copies of documents filed with the court in the *Coday* case through the court clerk's office. There is a fee charged by the court for the search, retrieval, and copying of information from a court file. Plaintiff may be able to view the file through Lexis/Nexis as well.

The court will not order Defendants to provide Plaintiff with the documents contained in the court file in the *Coday* case because Plaintiff can obtain those directly through the court or Lexis/Nexis.

III. ORDER

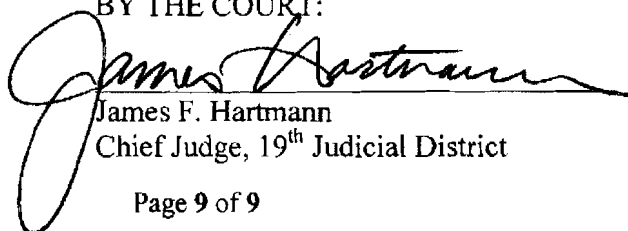
Plaintiff's Discovery Requests 1, 4, 5, 8, 10, 12, 13, 14, 18, 19, and 20 are DENIED.

Plaintiff's Discovery Requests 3 and 11 are GRANTED IN PART, as set forth in this order.

Plaintiff's Discovery Requests 7, 16, and 17 are GRANTED.

Dated: June 17, 2010

BY THE COURT:


James F. Hartmann
Chief Judge, 19th Judicial District

Juanita Wright

From: Eve Murphy [emurphy@dreamstoneinc.com]
Sent: Thursday, August 05, 2010 12:25 PM
To: Juanita Wright
Cc: 'Dan Goodwin'; 'Blaine D. Bowne'
Subject: Craig D. Buckley
Attachments: Mtn to reconsider dismissal with prejudice_842010161513.PDF

Dear Ms. Wright:

We have just received this pleading from Mr. Buckley. In Paragraph 12 he states that he filed a complaint (Exhibit "1") with CDLE on January 21, 2010, "solely as a means to gather evidence". Also, Exhibit "1" contains the statement "Claimant's filing of civil action in Weld County District Court should not Preclude investigation of this matter by the CDLE," indicating that he had made CDLE aware of the lawsuit pending in Weld County. There are many allegations/statements made by Mr. Buckley in this legal pleading against our company that we are in violation of several sections of C.R.S. 8-4-109. However, Exhibit "1" is not signed.

By his submitting the Request for Mediation dated January 21, 2010, as Exhibit "1", I can only presume that he would have no problem in your official verification that this form is true and correct in its entirety, including the page titled "Additional Comments".

Eve Murphy
Dream Stone, Inc.

10/12/2010

1 A Yes.

2 Q Okay. During that litigation, did you, as Defendants,
3 or your attorney work a fraud upon the Court or commit any
4 illegal acts?

5 A No.

6 Q You did not? Okay.

7 A No, we did not.

8 Q I will refer you to Plaintiffs' Exhibit No. 2, which
9 states:

10 "You have sworn and managed to convince the Weld
11 County District Court that my earned accrued wage
12 claim was before the Colorado Division of Labor, and,
13 therefore, the Court has no jurisdiction."

14 Is that true, Mr. Murphy?

15 A That's true.

16 Q Okay.

17 "You have simultaneously sworn and managed to
18 convince the" -- "convince the Colorado Division of
19 Labor that my earned accrued wage claim was before
20 the Weld County Court, and, therefore, the DOL had no
21 jurisdiction."

22 Is that also true?

23 A As far -- to my knowledge, that's true, yes.

24 Q That is true. So you have simultaneously managed to
25 convince both the DOL and the Court that neither has --