COURT OF COMMON PLEAS
CLERMONT COUNTY, OHIO

UTTER CONSTRUCTION, INC.	:	
Plaintiff	:	**CASE NO. 2017 CVH 00869**
vs.	:	**Judge McBride**
STEVEN D. TURNER, ET AL.	:	**DECISION/ENTRY GRANTING MOTION FOR LEAVE TO ADD ADDITIONAL EXPERTS, GRANTING IN PART AND DENYING IN PART MOTION TO COMPEL, AND GRANTING IN PART AND DENYING IN PART MOTION FOR PROTECTIVE ORDER**
Defendants	:	

Stites and Harbison PLLC, William G. Geisen and Andrew J. Poltorak, counsel for the plaintiff Utter Construction, Inc. and the third party defendant Terry D. Utter, 100 East RiverCenter Boulevard, Suite 450, Covington, Kentucky 41011.

Lewis Brisbois Bisgaard & Smith LLP, Judd R. Uhl, Timothy Chai, and Christopher Konitzer, counsel for the defendants Steven D. Turner, American Environmental Group Ltd., Tetra Tech, Inc., Tetra Tech EC, Inc., and John David Gartin, II, 201 East Fifth Street, Suite 1900, Office 1975, Cincinnati, Ohio 45202.

This cause is before the court for consideration of (1) the defendants' motion for leave to identify additional experts filed on November 1, 2018, (2) the plaintiff Utter Construction Inc.'s motion to compel filed on February 20, 2019, and (3) the defendants' motion for protective order filed on March 12, 2019.[1] The parties waived oral argument on the defendants' motion for leave to identify additional experts when they did not

[1] On February 20, 2019, the plaintiff also filed a motion to deem its second set of requests for admissions to defendant Steven Turner admitted. However, at the March 15, 2019 hearing, the plaintiff withdrew that motion.

request oral argument. The court heard oral argument on the remaining motions on March 15, 2019, after which it took the motions under advisement.

Upon consideration of the motions, the record of the case, the oral and written arguments of counsel, and the applicable law, the court now renders this written decision.

FACTS OF THE CASE AND PROCEDURAL BACKGROUND

The plaintiff Utt er Construction, Inc. is an Ohio company that specializes in providing construction services, including civil site development, ash pond installations, and landfill closures, to the power and energy industry. The defendant Steven D. Turner was the plaintiff's employee from 2008 to 2016. At the time Turner terminated his employment with the plaintiff, his position was Chief Operating Officer.

The defendant left the plaintiff to work for the defendant American Environmental Group Ltd. (hereinafter referred to as "AEG") as the Vice President of its construction services division. AEG is one of North America's largest suppliers and installers of geosynthetic materials for coal, ash, and landfill containment applications. The defendant Tetra Tech, Inc. (hereinafter referred to as "Tetra Tech") owns AEG as its subsidiary.

The plaintiff generally alleges that AEG, in collaboration with Tetra Tech, orchestrated a scheme to steal and utilize the plaintiff's employees, confidential information, and/or trade secrets to create a new AEG Construction Services Division to compete directly with the plaintiff.

After the original complaint was filed but before the plaintiff filed its amended complaint, on October 3, 2018, counsel for the defendants moved for leave to withdraw

as counsel. On October 5th, due to the substitution of counsel, the parties submitted and the court granted an order amending the January 3, 2018 case management order. Per the order, all discovery other than oral depositions was to be complete by November 30, 2018, and depositions were to be complete by February 28, 2019. Per the earlier pre-trial order, the trial remained scheduled for January 6, 2020 to January 24, 2020. On October 16, 2018 the defendants substituted counsel.

Three days after the substitution of the defendants' counsel, the plaintiff filed its first amended complaint against the defendants on October 19, 2018, adding Tetra Tech EC, Inc. and David Gartin, II as defendants and including twelve causes of action: (1) breach of non-disclosure agreement, (2) breach of Turner non-compete agreement, (3) promissory estoppel, (4) common law breach of fiduciary duties, (5) misappropriation of trade secrets pursuant to R.C. 1333.62, *et seq.*, (6) fraudulent misrepresentation, (7) tortious interference with contract, prospective contractual relations, and/or business relationships, (8) tortious interference with business relationships, (9) civil conspiracy, (10) declaratory judgment, (11) breach of Gartin non-compete agreement, and (12) injunctive relief.

The defendants Steven D. Turner, American Environmental Group Ltd., and Tetra Tech Inc. filed a motion for leave to identify additional experts on November 1, 2018. The plaintiff filed a response in opposition on November 15th. On November 29th, the defendants filed a reply in support. None of the parties requested oral argument on the motion.

The plaintiff filed motion to compel discovery responses on February 20, 2019. On March 12th, the defendants filed a motion for protective order. The court held an oral

hearing on the motions to compel and for protective order on March 15th, after which it took all motions under advisement.

I. DEFENDANTS' MOTION FOR LEAVE TO IDENTIFY ADDITIONAL EXPERTS

The Civil Rules of Procedure are intended "to prevent surprise to either party at the trial or to avoid hampering either party in preparing its claim or defense for trial."[2] To accomplish this, the Rules establish "a discovery procedure which mandates a free flow of accessible information between the parties upon request, and which imposes sanctions for failure to timely respond to reasonable inquiries."[3] Civ.R. 26(E)(1)(b) provides that a party has the duty to supplement its answers to discovery inquiries as to "the identity of each person expected to be called as an expert witness at trial and the subject matter on which he is expected to testify."

"A trial court may exclude evidence when the failure to produce that evidence results from an intentional noncompliance with the rules of discovery."[4] Moreover, the "court may also exclude evidence even when the failure to comply with the discovery rules results merely from neglect, a change in trial strategy, or inadvertent error."[5] However, "[a]lthough the trial court *may* exclude evidence as a sanction for a party's failure to provide discovery or comply with an applicable court order, it is not required to do so."[6]

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[2] *Huffman v. Hair Surgeon, Inc.*, 19 Ohio St.3d 83, 86, 482 N.E.2d 1248 (1985), quoting *Jones v. Murphy*, 12 Ohio St.3d 84, 87, 465 N.E.2d 444 (1984) (Brown, J., dissenting).
[3] *Huffman*, 19 Ohio St.3d at 85.
[4] *McKinney v. Schlatter*, 12th Dist. Warren No. CA98-05-101, 1999 WL 17800, *3 (Jan. 19, 1999), citing *Jones*, 12 Ohio St.3d 84.
[5] *McKinney*, 1999 WL 17800 at *3, citing *Huffman*, 19 Ohio St.3d 83.
[6] (Emphasis original.) *McKinney*, 1999 WL 17800 at *3, citing *Barhorst v. Sonoco Products Co.*, 2d Dist. Miami No. 96CA28, 1997 WL 568015 (Sept. 12, 1997).

Trial courts enjoy broad discretion in deciding whether to exclude evidence,[7] but should be mindful that "exclusion of reliable and probative evidence is a severe sanction and should be invoked only when clearly necessary to enforce willful noncompliance or to prevent unfair surprise."[8]

So too, "[t]rial courts have broad discretion in managing their dockets, setting case schedules and imposing discovery sanctions for violations of court rules and scheduling orders, including the exclusion of expert witnesses who are not timely disclosed."[9] When dealing with the untimely disclosure of expert witnesses, a trial court's primary concern is the "existence and effect of prejudice resulting from noncompliance with the disclosure rules."[10] However, cases that have excluded belatedly disclosed experts typically do so when the expert is disclosed close to the trial date, typically a matter of days or weeks before trial.[11]

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[7] *McKinney*, 1999 WL 17800 at *3.

[8] *McKinney*, 1999 WL 17800 at *3, citing *Nickey v. Brown*, 7 Ohio App.3d 32, 34, 454 N.E.2d 177 (9th Dist. 1982).

[9] *Sonis v. Rasner*, 2015-Ohio-3028, 39 N.E.3d 871, ¶ 40 (8th Dist.), citing *Nakoff v. Fairview Gen. Hosp.*, 75 Ohio St.3d 254, 662 N.E.2d 1 (1996), at the syllabus. *See Paugh & Farmer, Inc. v. Menorah Home for Jewish Aged*, 15 Ohio St.3d 44, 45-46, 472 N.E.2d 704 (1984); *Hardy v. Newbold*, 4th Dist. Gallia No. 02CA12, 2003-Ohio-3995, ¶ 15 ("Because it is a severe sanction, the exclusion of expert testimony should be invoked only when clearly necessary to enforce willful noncompliance or to prevent unfair surprise.").

[10] *Sonis*, 2015-Ohio-3028 at ¶ 41, quoting *Huffman*, 19 Ohio St.3d at 85.

[11] *See Huffman*, 19 Ohio St.3d at 83-86 (affirming exclusion of expert disclosed on September 8th when trial was set to begin on September 12th); *Paugh & Farmer, Inc.*, 15 Ohio St.3d at 46-47 (affirming exclusion of expert report where attorney furnished expert report one week prior to trial); *Sonis*, 2015-Ohio-3028 at ¶ 42 (affirming exclusion of expert disclosed two days before trial and noting that the belated disclosure would leave little time for the opposing party to prepare, as she would be unlikely be able to have her own expert assist with preparation for deposition and cross-examination or to rebut the opposing expert's testimony); *Oliver v. Oliver*, 5th Dist. Tuscarawas No. 2012 AP 11 0067, 2013-Ohio-4389, ¶ 47 (affirming exclusion of expert made on May 21st for a trial set in June as it would not provide the adverse party an opportunity to respond to the expert testimony); *Dover v. R.J. Corman RR. Co. Cleveland Line*, 181 Ohio App.3d 31, 2009-Ohio-562, 907 N.E.2d 1198, ¶ 42 (5th Dist.) (affirming exclusion of expert where expert was disclosed at 4:00 p.m. on the eve of trial); *Kolidakis v. Glenn McClendon Trucking Co.*, 7th Dist. Mahoning No. 03 MA 64, 2004-Ohio-3638, ¶ 31 (affirming exclusion of expert disclosed seven

In turning to the present case, the defendants Turner, Tetra Tech, and AEG request 60 days to identify two experts. The deadline to identify anticipated experts was June 1, 2018. The defendants submit that they need an extension because they substituted counsel on October 16, 2018 and have shown good cause for a further extension. Prior counsel only identified a handwriting expert. However, the defendants' new counsel believes that they need experts on the construction industry/bidding and forensic accounting. They stress that these experts are particularly important for evaluating the alleged damages, including lost profits. The defendants note that the plaintiff also has three experts.

The plaintiff opposes the extension for several reasons. The plaintiff highlights that an extension would unfairly prejudice it because the discovery deadlines for this case have passed, and the plaintiff's counsel has already cooperated with defense counsel to accommodate the transition of new attorneys and allow the defense more time for discovery and depositions. Furthermore, the plaintiff posits that additional delays will jeopardize the trial date, which is presently scheduled for January 6, 2020 to January 24, 2020. Finally, the plaintiff maintains that it will be prejudiced because it will have limited time to depose the two new experts, it will incur additional expenses to challenge them, and it would have identified Terry D. Utter as an additional industry expert to rebut the defendants' experts, but it now cannot do so.

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days before trial because of unfair prejudice to opposing party); *Poppy v. Whitmore*, 8th Dist. Cuyahoga No. 84011, 2004-Ohio-4759, ¶ 24 (affirming exclusion of expert made 20 days before trial where the opposing party did not have an expert available to assist in the deposition, to assist in cross-examination, or to rebut the expert's testimony). *But see Biro v. Biro*, 11th Dist. Lake No. 2006-L-068, 2007-Ohio-3191, ¶ 23 (affirming decision to allow expert disclosed on October 29th for a trial that began on November 3rd where there was no expert cut-off date in the court's scheduling order and discovery was ongoing up to the date of the trial).

The court finds that the defendants have shown good cause for an extension of time to identify two additional experts. The court believes that the defendants are likely correct in believing that they need an expert on the construction industry and a forensic accountant to speak to the alleged damages in this case. Because this case is not set for trial until January of 2020, the court finds that the plaintiff will not be unfairly prejudiced by surprise. This is not a case where the defendants are disclosing an expert a week or even a month prior to trial. There will be adequate time for the plaintiff to depose the new experts and challenge them. Although depositions and motions challenging experts add expenses for the plaintiff, these are expenses the plaintiff would have incurred even if the defendants had timely identified their experts.

The defendants have 30 days from the date of this decision to identify their two additional experts. They have 60 days from the date of this decision to disclose opinions of those experts.

If the plaintiff believes it needs additional experts to rebut the defendants' new experts, it may identify rebuttal experts. The plaintiff shall identify rebuttal experts 30 days from the date that the defendants identify their two new experts. The plaintiff then has 60 days from the date the defendants identify their two new experts to disclose the opinions of the new experts for the plaintiff.

II. PLAINTIFF'S MOTION TO COMPEL AND DEFENDANTS' MOTION FOR PROTECTIVE ORDER

The scope of discovery is provided for in Civ.R. 26(B):

> "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 is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence."[12]

Thus, under Civ.R. 26, the concept of relevancy for discovery is "not limited to the issues in the case, but to the subject matter of the action, the latter being broader than the former."[13] "Generally, a party may obtain discovery regarding any matter concerning the pending litigation."[14] "In the discovery phase, documents are irrelevant when the information sought will not reasonably lead to the discovery of admissible evidence."[15] Although the discovery rules are liberal, the trial court "is vested with authority to limit pretrial discovery in order to prevent an abuse of the discovery process."[16] Indeed, the "regulation of discovery is committed to the sound discretion of the trial court * * *."[17] The court may order a protective order under Civ.R. 26(C) to prevent "fishing expeditions,"

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[12] Civ.R. 26(B).

[13] *Nilavar v. Osborn*, 137 Ohio App.3d 469, 499, 738 N.E.2d 1271 (2d Dist. 2000), quoting Klein & Darling, Civil Practice (1997) 6, Section 26-1.

[14] *See Crosby v. Rose*, 4th Dist. Pike No. 97CA594, 1998 WL 51603, *5 (Feb. 11, 1998), citing Civ.R. 26(B)(1). *See First Bank of Marietta v. Mitchell*, 4th Dist. Washington No. 82 X 5, 82 X 14, 1983 WL 3307, *12 (Nov. 29, 1983) (Citation omitted.) ("The Civil Rules and the commentators are in unanimous agreement that the scope of discovery under Civ.R. 26(B)(1) is not limited to matters which are admissible into evidence, but extend to all matters not privileged, which is relevant to the subject matter involved in the pending action.").

[15] *Fifth Third Bank v. Jones-Williams*, 10th Dist. Franklin No. 04AP-935, 2005-Ohio-4070, ¶ 13, citing *Tschantz v. Ferguson*, 97 Ohio App.3d 693, 715, 647 N.E.2d 507 (8th Dist. 1994).

[16] *Alpha Benefits Agency, Inc. v. King Ins. Agency, Inc.*, 134 Ohio App.3d 673, 680, 731 N.E.2d 1209 (8th Dist. 1999), citing *Arnold v. Am. Natl. Red Cross*, 93 Ohio App.3d 564. 575, 639 N.E.2d 484 (8th Dist. 1994).

[17] *Air-Ride, Inc. v. DHL Express (USA), Inc.*, 12th Dist. Clinton No. CA2008-01-001, 2008-Ohio-5669, ¶ 7, quoting *Henderson Elec. Co. of Ohio, Inc. v. Elan Constr. Mgt. Serv.* 92 Ohio App.3d 98, 101, 634 N.E.2d 267 (1st Dist. 1993). *See Nilavar*, 137 Ohio App.3d at 499, citing Klein & Darling, Civil Practice (1997) 6, Section 26-1.

where a discovery request is broad and the party requesting the discovery fails to demonstrate a likelihood that relevant evidence will be obtained.[18]

Civ.R. 26(C) provides:

> "Upon motion by any party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending may make any order that justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (1) that the discovery not be had; (2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place; * * * (4) that certain matters not be inquired into or that the scope of the discovery be limited to certain matters * * *."[19]

Furthermore, Civ.R. 26(C) also requires the movant to make "a reasonable effort to resolve the matter through discussion with the attorney or unrepresented party seeking discovery."[20] In doing so, the motion for a protective order must "be accompanied by a statement reciting the effort made to resolve the matter in accordance with this paragraph."[21]

As with discovery generally, the "decision whether to grant or deny the protective order is within the trial court's discretion * * *."[22] If the court denies the motion for a protective order in whole or in part, then the court may order that a party provide discovery on "terms and conditions as are just."[23] Moreover, Civ.R. 26(C) states that awards for

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[18] *Drawl v. Cleveland Orthopedic Ctr.*, 107 Ohio App.3d 272, 277-278, 668 N.E.2d 924 (11th Dist. 1995).
[19] Civ.R. 26(C).
[20] Id.
[21] Id.
[22] *Cargotec, Inc. v. Westchester Fire Ins. Co.*, 155 Ohio App.3d 653, 2003-Ohio-7257, 802 N.E.2d 732, ¶ 9 (6th Dist.), citing *Ruwe v. Springfield Twp. Bd. of Trustees*, 29 Ohio St.3d 59, 61, 505 N.E.2d 957 (1987).
[23] Civ.R. 26(C).

expenses incurred from the motion for a protective order are governed by Civ.R. 37(A)(5), which is discussed below.

While Civ.R. 26 provides a mechanism to protect a responding party from answering interrogatories or producing documents, Civ.R. 37 provides a mechanism for the party seeking discovery to compel the responding party to answer interrogatories or produce documents.[24] A party may make a motion to move the court to compel an opposing party to respond to discovery requests when the opposing party fails to answer an interrogatory or fails to permit the inspection of documents.[25] For purposes of a motion to compel, "an evasive or incomplete answer or response shall be treated as a failure to answer or respond."[26]

The procedure for moving the court to compel discovery is provided for in Civ.R. 37:

> "On notice to other parties and all affected persons, a party may move for an order compelling discovery. The motion shall include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make discovery in an effort to obtain it without court action."[27]

Courts may deny a motion to compel where the movant fails to attempt to "resolve the matter prior to filing the motion to compel," as required in Civ.R. 37.[28] The purpose of this requirement is "to endorse and enforce the view that, in general, discovery is self-

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[24] *See Papadelis v. Charter One Bank, F.S.B.*, 8th Dist. Cuyahoga No. 84581, 2005-Ohio-288, ¶ 16 ("Civ.R. 37(A) authorizes motions to compel discovery.").
[25] Civ.R. 37(A)(3).
[26] Civ.R. 37(A)(4).
[27] Civ.R. 37(A)(1).
[28] *See Image Sciences, Inc. v. Design Linc Corp.*, 12th Dist. Warren No. CA95-07-074, 1996 WL 56049, *3 (Feb. 12, 1996). *See Crosby*, 1998 WL 51603 at *6 (finding that in the absence of efforts by the movant to resolve the discovery dispute, a trial court may properly deny a motion to compel).

regulating and should require court intervention only as a last resort."[29] Furthermore, the party opposing the discovery bears "the burden of demonstrating to the trial court that the required information would not reasonably lead to the discovery of admissible evidence."[30]

If the court grants a motion to compel, the court shall require the opposing party that necessitated the motion, and/or the party's counsel, to pay for the movant's "reasonable expenses incurred in making the motion, including attorney's fees."[31] However, the court shall not order payment if the movant filed the motion before attempting in good faith to obtain the discovery without judicial intervention, the opposing party's response or objection was substantially justified, or other circumstances would make the award unjust.[32] If the movant's motion to compel is denied, the court shall require the movant and/or the movant's counsel to pay the party "who opposed the motion its reasonable expenses incurred, including attorney's fees."[33] "If the motion is granted in part and denied in part, the court may * * * apportion reasonable expenses for the motion."[34]

In turning to the present case, the parties have represented that they have tried to resolve their discovery dispute on several occasions but have been unsuccessful. Neither party followed the court's directives in its case management order, instructing the

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[29] *Studer v. Seneca County Humane Society*, 3d Dist. No. 13-99-59, 2000 WL 566738, *6 (May 4, 2000), citing 1994 Staff Note, Civ.R. 37.
[30] *Bennett v. Martin*, 186 Ohio App.3d 412, 2009-Ohio-6194, 928 N.E.2d 763, ¶ 44 (10th Dist.), citing *Patterson v. Zdanski*, 7th Dist. No. 03 BE 1, 2003-Ohio-5464, ¶ 19.
[31] Civ.R. 37(A)(5).
[32] Civ. R. 37(A)(5)(a).
[33] Civ.R. 37(A)(5)(b).
[34] Civ.R. 37(A)(5)(c).

parties on how to raise discovery disputes.[35] Having reviewed the requested discovery, the court finds the vast majority of the plaintiff's discovery requests are reasonable, narrowly tailored, and relevant. In other words, most requests are not a fishing expedition. The only requests that appear overly broad and unduly burdensome are Nos. 47, 49, and 50, which state:

> "REQUEST NO 47: Produce all income statements for Tetra Tech EC, Inc. between January 1, 2012 and the present. * * *
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> REQUEST NO 49: Produce all income statements for AEG between January 1, 2012 and the present. * * *
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> REQUEST NO 50: Produce all income statements for AEG Construction Services between January 1, 2012 and the present."

The defendants, in their briefing and at oral argument, posit that these requests in particular are overly broad, unduly burdensome, vague, invasive, and potentially seek privileged information. The defendants also argue that they are not reasonably calculated to lead to the discovery of admissible evidence because damages will be calculated based upon the plaintiff's lost profits, not the defendants' profits.

However, as the plaintiff pointed out, damages for trade secret claims can be calculated using the defendants' profits. Under the Ohio Uniform Trade Secret Act, a party can recover damages for misappropriation of its trade secrets.[36] R.C. 1333.63 provides: "(A) * * * Damages may include both the actual loss caused by misappropriation and the unjust enrichment caused by misappropriation that is not taken into account in

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[35] *See* Jan. 3, 2018 Case Management Order, ¶ 10. Paragraph 10 requires a discovery chart which lists the specific interrogatory or request for documents that is in dispute, a statement as to its relevance, the response or answer provided thus far, an explanation of what additional response is necessary, and argument as to that request. Alternatively, parties can provide the information in a different format, provided the court can discern all of the above information.

[36] *Becker Equip., Inc. v. Flynn*, 12th Dist. Butler No. CA2002-12-313, 2004-Ohio-1190, ¶ 11.

computing actual loss. * * *"[37] The term "actual loss" is undefined, but courts have found that "the award cannot be based upon the gross revenue amount; rather, the total gross billings must be reduced by 'any costs and expenses * * *'" that would have been incurred "in producing income on the accounts and which should have been deducted from the gross revenue figure * * *."[38]

Thus, Tetra Tech EC, Inc., AEG, and AEG Construction Services Division's income derived from the alleged trade secret misappropriation is relevant to the plaintiff's damages calculation for trade secrets. The court will narrow Request Nos. 47, 49, and 50 so they are not unduly burdensome for the defendants to produce and so they only pertain to relevant information.

Accordingly, the defendants must produce all income statements for Tetra Tech, EC, Inc., AEG, and AEG Construction Services Division between January 1, 2012 and the present that relate to any customer or project at issue in this case. If any of the information is privileged, the defendants shall create a privilege log and produce it to the plaintiff. The privilege log shall include a general description what the document is, who authored it, the document's date, and a general description of the document's subject matter.

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[37] (Emphasis added.) R.C. 1333.63. *See Try Hours, Inc. v. Swartz*, 6th Dist. Lucas No. L-07-1077, 2007-Ohio-1328, ¶ 23 (stating that proper means for measuring damages include the profits the plaintiff lost or the profits gained by the defendant); *Wiebold Studio, Inc. v. Old World Restorations, Inc.*, 19 Ohio App.3d 246, 484 N.E.2d 280, (1st Dist. 1985), at paragraph four of the syllabus (holding that the measure of damages for trade secret violations is either the profits lost by the plaintiff through the misappropriation of trade secrets or the profits gained therefrom by the defendant).

[38] *Bernadi's French Roast, Inc. v. PMD Ents., Inc.*, 8th Dist. Cuyahoga No. 93920, 2010-Ohio-5124, ¶ 27, citing *Try Hours, Inc.*, 2007-Ohio-1328 at ¶ 23 and *Wiebold Studio, Inc.*, 19 Ohio App.3d at 251.

Given the fact that the plaintiff filed a motion to compel and the defendants filed a motion for protective order, both of which will be granted in part and denied in part, the court finds that neither party shall pay the other party for the reasonable expenses associated with either motion.

CONCLUSION

For the foregoing reasons, the court finds:

(1) The defendants Steven D. Turner, American Environmental Group Ltd., and Tetra Tech Inc.'s motion for leave to identify additional experts is well-taken and is hereby granted, except that the court will allow the defendants an additional 30 days instead of 60 days. Therefore the defendants have 30 days from the date of this decision to identify their two additional experts. They have 60 days from the date of this decision to disclose opinions of their experts. If the plaintiff believes it needs additional experts to rebut the defendants' new experts, it may identify rebuttal experts. The plaintiff shall identify rebuttal experts 30 days from the date that the defendants identify their two new experts. The plaintiff then has 60 days from the date the defendants identify their two new experts to disclose the opinions of the new experts for the plaintiff.

(2) The plaintiff Utter Construction, Inc.'s motion to compel is granted in part and denied in part. The defendants must comply with all requests and the court's modified Request Nos. 47, 49, and 50 within 21 days of this entry.

(3) The defendants' motion for protective order is granted in part, insofar that it does not have to respond to the plaintiff's Request Nos. 47, 48, and 49 as written. Instead, it must comply with the court's modified version, as detailed above.

IT IS SO ORDERED.

DATED: 3-26-19

Judge Jerry R. McBride

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order were sent on this 26th day of March 2019 by e-mail to William G. Geisen, at wgeisen@stites.com, and Andrew G. Poltorak, at apoltorak@stites.com, Attorneys for the Plaintiff, and Judd R. Uhl, at judd.uhl@lewisbrisbois.com, Timothy Chai, at Timothy.chai@lewisbrisbois.com.

Judicial Assistant to Judge McBride