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16 UNITED STATES DISTRICT COURT
17 DISTRICT OF NEVADA

18 HALO ELECTRONICS, INC.,
19
20 Plaintiff,

21 v.

22 PULSE ELECTRONIC, INC., and
23 PULSE ELECTRONICS, CORP.,
24 Defendants.

2:07-cv-00331-PMP (PAL)

**HALO'S TRIAL BRIEF REGARDING
SUBMISSION OF EVIDENCE TO THE
JURY ROOM**

1 On November 13, 2012, the Court allowed the admission of certain evidence in the form of
2 emails from and between T.K. Luk and others at XFMRS for the purpose of showing Mr. Luk's
3 bias in this action. This trial brief addresses the question raised regarding the permissibility of
4 allowing the admitted exhibits to be provided to the jury in the event the jury requests the trial
5 exhibits in this matter.

6 **I. INTRODUCTION**

7 On November 8, 2012, Halo responded to Pulse's Renewed Motion to Preclude Plaintiff
8 From Using Unverified Testimony. (Dkt. 436). On November 13, 2012, the Court denied Pulse's
9 Renewed Motion and held that Halo may move exhibits PTX-413 and PTX-414 (the "Exhibits")
10 into evidence for the purpose of showing Mr. Luk's bias in the event that Pulse chooses to play Mr.
11 Luk's deposition testimony in this trial.

12 **II. ARGUMENT**

13 As an initial matter, "[f]ederal law is clear that a decision whether to send exhibits to the
14 jury room is within the discretion of the trial judge." *Canton v. Hardamon*, 496 F.2d 6, 8 (7th Cir.
15 1974); *United States v. DeCoito*, 764 F.2d 690, 695 (9th Cir. 1985) ("Jurors are generally entitled
16 to examine documents properly admitted in evidence; the decision to send such exhibits to the jury
17 room during deliberation is within the discretion of the trial court."). *See also, United States v.*
18 *Jackson*, 477 F.2d 879, 880 (8th Cir. 1973); *Dallago v. United States*, 427 F.2d 546, 553 (D.C.Cir.
19 1969). Because PTX-413 and PTX-414 will be properly admitted as exhibits, the Court can and
20 should send these exhibits to the jury room along with the rest of the exhibits. *See id.* In *Canton*,
21 the Seventh Circuit affirmed the district court's decision to allow the impeaching exhibits into the
22 jury room, noting that because the exhibits were duly admitted the court was free to submit them to
23 the jury. In affirming the district court's reasoning, the Seventh Circuit cited the oral ruling of the
24 court and noted its agreement with the underlying reasoning:

25 I feel the legal profession owes a duty to update some of the antiquated practices,
26 techniques; and I think allowing the jury to have before them the exhibits while they are in
27 deliberation is an updating of an archaic practice that obtained and still obtains in many,
28 many courts. Lawyers do not want juries to actually predicate their verdict upon the actual
concrete evidence if it doesn't fall in their favor. They would rather have the jury guess for
the other side. Now, each feels that way. Each side feels that way. If the evidence is not so
concretely in favor of that particular side in regard to a particular issue; rather than have the

1 jury base its verdict upon the evidence, the real evidence, they would rather have the jury to
2 operate in the dark and guess as to what was said during the trial three days earlier as to
3 what particular pictures show or what particular exhibit indicated, what some lawyer said
4 during the trial. They would rather have the jury to have one broad, glossy impression of
5 what transpired during the trial, and then go forth and guess, and come to a conclusion.

6 *Id.*; see also *U.S. v. De Rodriguez*, 508 F.2d 41, 412 (9th Cir. 1974) (better practice to allow
7 relevant portion of exhibit used for impeachment into jury room with the other exhibits).

8 Similarly, the Court has found that PTX-413 and PTX-414 are admissible to show Mr.
9 Luk's bias against Halo in the event that Mr. Luk's videotaped deposition testimony is presented to
10 the jury. In that event, the jury should be allowed to rely upon this evidence in evaluating the
11 weight to be given to Mr. Luk's testimony. Thus, it is particularly important in this case for the
12 jury to have available all relevant information regarding Mr. Luk and his credibility and bias
13 against Plaintiff and Plaintiff's patents. PTX-413 and PTX-414 should go back to the jury room
14 with all other properly admitted evidence.

1 Dated: November 14, 2012

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4 By: /s/ Craig E. Countryman

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on November 14, 2012 to all counsel of record who are deemed to have consented to electronic service via the Court's CM/ECF system per Civil Local Rule 5005 (b)(2). Any other counsel of record will be served by electronic mail, facsimile and/or overnight delivery.

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