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August 13, 2019

E-FILED

Hon. William K. Sessions, III
United States District Court
for the District of Vermont
P.O. Box 928
Burlington, VT 05402

Re: Janet Jenkins, et al v. Kenneth L. Miller, et al.
Docket No. 2:12-cv-184

Dear Judge Sessions:

We are in receipt of the letter filed August 7, 2019 from Ms. Jenkins' counsel offering a strained explanation for why counsel failed to disclose they had reached an agreement with counsel for Christian Aid Ministries allowing for the production of documents without a protective order, while representing to the Defendants that a protective order was essential to the production of those same documents. We are not in the habit of writing letters to the Court, and don't know if the Court will even consider communications of this sort on substantive issues, but since Ms. Jenkins' counsel has submitted a letter we believe to be incomplete, we feel it is necessary to respond.

The facts surrounding this aspect of the discovery dispute are straightforward, and are laid out in our submission of August 6, 2019, including the sworn (and unrefuted) affidavit of Hillary Borcharding, one of the attorneys for Mr. Zodiates, Response Unlimited, and Ms. Hyden. As stated in our submission:

On May 3, 2019, Plaintiff's counsel stated that they held documents from a third party that could only be shared if there were a protective order in place.

This statement by Plaintiff's counsel was not true. On April 1, 2019, counsel for Christian Aid Ministries had agreed to produce the documents without a protective order so long as CAM could redact the non-responsive, confidential portions of those documents. Plaintiff's counsel indicated that they would be satisfied with redacted versions. For unknown reasons, on April 24, 2019, CAM produced non-redacted documents on the guarantee from Plaintiff's counsel that a protective order was imminent and would apply to these documents. This matters because no such offer to receive redacted documents in lieu of a protective order was made with regard to



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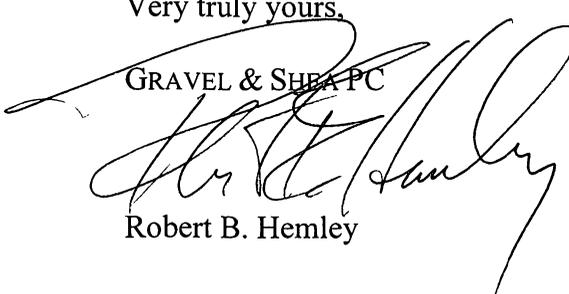
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documents Plaintiff has been withholding from the Defendants. Rather, Plaintiff insists that documents, most of which were not confidential, can only be produced if there is a protective order, and they misrepresented the position of CAM to support that position. Just as egregious, Plaintiff's counsel did not disclose that they had negotiated a variance from the original subpoena to CAM. Had they done so, Defendants would have been informed as they developed a position on Plaintiff's failure to produce documents that are relevant to their defense. Further, while counsel's letter of August 7 states categorically that "with the exception of the 14 pages of documents marked confidential by CAM, Plaintiff has supplied all defendants with all documents produced in response to Plaintiff's subpoenas, as evidenced by the discovery certificates on the docket", they do not mention that the production of the non-confidential documents was inexplicably delayed nearly three months, from April 24, 2019 until July 12, 2019, or offer a reasonable justification for withholding documents they now possess but continue to withhold. Similarly, Plaintiff's counsel did not provide documents they subpoenaed from Liberty University or Internet Archives until a demand was made.

We apologize in advance for submitting our position in this way, but feel it is necessary for the Court to have the full picture.

Very truly yours,

GRAVEL & SHEA PC


Robert B. Hemley

RBH:lbb

cc: All Counsel through CM/ECF