

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

MELISSA NELSON,)
)
)
Plaintiff,)
)
)
v.) Case No. 16 C 3490
)
DIRKSEN AUTO SALES, INC. d/b/a)
J.D. BYRIDER-SPRINGFIELD, et al.,)
)
)
Defendant.)

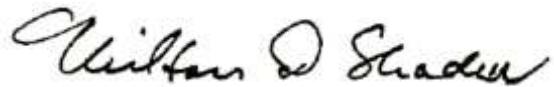
MEMORANDUM ORDER

This action has been reassigned from the calendar of this Court's colleague Honorable John Darrah to this Court, and the limited group of prior filings in the case that has been delivered to this Court's chambers includes the attached brief January 19, 2017 order entered by another of its colleagues, Honorable Amy St. Eve. This Court will adhere to the schedule set by Judge St. Eve's order, but this *sua sponte* memorandum order is called for by some problematic aspects of the Answer and Affirmative Defenses (Dkt. No. 25) filed back in July of last year by defendant Dirksen Auto Sales, Inc. ("Dirksen").

Dirksen's counsel are among the unfortunately sizeable group of lawyers who fail to make proper use of the Fed. R. Civ. P. ("Rule") 8(b)(5) disclaimer that may be called into play when neither an admission nor an outright denial is appropriate in responding to an allegation in a complaint. There is simply no warrant for departing from the straightforward path marked out by Rule 8(b)(5), as Dirksen's counsel have done in Answer ¶¶ 5, 7, 8, 19-22 and 29 (see App'x ¶ 5 to State Farm Mut. Auto. Ins. Co. v. Riley, 199 F.R.D. 276, 279 (N.D. Ill. 2001)). Moreover,

Dirksen's counsel compound that error by impermissibly following their variant on that Rule with the assertion "and therefor denies the same."

It is of course oxymoronic for a party to assert (presumably in good faith) that it lacks even enough information to form a belief as to the truth of an allegation in a complaint, then proceed to deny it. Because such a denial is at odds with the pleader's obligations under Rule 11(b), the quoted language is stricken sua sponte from each of the cited paragraphs of the Answer. Leave is granted, however, to file an amendment to the Answer in proper form on or before March 15, 2017.



Milton I. Shadur
Senior United States District Judge

Date: February 27, 2017

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS**

)
Melissa Nelson) Case No: 16 C 3490
)
v.) Judge: Amy J. St. Eve
)
J.D. Byrider)
)

ORDER

Status hearing held. Parties to exchange the information required by Rule 26(a)(1) by 2/15/17. All written discovery to be issued by 3/1/17. Fact discovery ordered closed on 8/1/17. Dispositive motions to be filed by 10/15/17. Status hearing set for 4/12/17 at 9:30 a.m. before Judge Darrah.

(T:) 00:05

Date: 1/19/17

/s/ Judge Amy J. St. Eve

ATTACHMENT