

EXHIBIT 4

David Yerushalmi

From: David Yerushalmi [dyerushalmi@americanfreedomlawcenter.org]
Sent: Monday, December 02, 2013 2:49 PM
To: 'Christian E. Hildebrandt'
Cc: 'Gordon, Avery'; 'rmuise@americanfreedomlawcenter.org'; 'emersino@thomasmore.org'
Subject: RE: Meet and Confer

Chris: I will be willing to extend this through tomorrow COB, as a professional courtesy to you and to Avery. We put you on notice last week and it is not like we all don't know these facts inside out. My problem is that Rob and I are on notice that the court is considering the cross motions and possibly laboring under a false impression (and we presume of course not one induced intentionally by you or SMART). An honest mistake. It happens. But there is no reason why Avery cannot pick up the phone given the seriousness of a misrepresentation made in open court to a federal judge. This must be fixed and fixed immediately. "Later in the week" does not cut it.

Sent from my BlackBerry® wireless handheld

David Yerushalmi*

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From: Christian E. Hildebrandt [mailto:CHildebrandt@VGpcLAW.com]
Sent: Monday, December 02, 2013 2:44 PM
To: dyerushalmi@americanfreedomlawcenter.org
Cc: 'Gordon, Avery'; rmuise@americanfreedomlawcenter.org; emersino@thomasmore.org
Subject: RE: Meet and Confer

Thank you David. I'm trying to remain professional in this regard but I'm afraid I haven't given this the analysis it deserves to be able to participate in a meet and confer yet this afternoon. In addition to having to read this information, I will need more time to confer with SMART. I suggest a meet and confer later this week.

I really just need the time to address this new information received just minutes ago. I don't think that's an unreasonable position.

Chris.

From: David Yerushalmi [mailto:dyerushalmi@americanfreedomlawcenter.org]
Sent: Monday, December 02, 2013 2:22 PM
To: Christian E. Hildebrandt
Cc: 'Gordon, Avery'; rmuise@americanfreedomlawcenter.org; emersino@thomasmore.org
Subject: RE: Meet and Confer

Chris: I must say I am a bit flabbergasted that Avery (i.e., speaking for the client) would have responded in the way you suggest. Our COB deadline today remains but Rob and I are committed to attempting to work this out collegially. To that end, see the attached, the first of which represents either our Joint Notice to the Court or effectively our sur-reply to your motion for summary judgment to be attached to Plaintiffs' unilateral mot for leave to file sur reply. We have also attached what will be ex 1, which is the entire hearing transcript for your convenience. (You are only authorized to use Ex 1 in the context of this meet and confer until and unless it is also filed with the court [otherwise you should order your own copy].)

Chris, this is not rocket science. Beth Gibbons could have told CBS there was no problem with ad and to run it--thus, a decision maker, or she could turn to her supervisor (which she did) or to legal. Or, yet again, she could have "collaborated" in the decision making. But to the point whether she was one of the decision makers in the process, the testimony is just too clear. To attempt to run from this fact is to draw a bulls eye for the court. If you choose to do so, fine, but I'd strongly recommend that you come clean and let's move on.

Please call me today to have the meet and confer so we can file one way or the other. Thank you.

Sent from my BlackBerry® wireless handheld

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From: Christian E. Hildebrandt [<mailto:CHildebrandt@VGpcLAW.com>]

Sent: Monday, December 02, 2013 11:21 AM

To: dyerushalmi@americanfreedomlawcenter.org

Cc: 'Gordon, Avery'; rmuise@americanfreedomlawcenter.org; emersino@thomasmore.org

Subject: RE: Meet and Confer

As I told you I would, I spoke with SMART this morning on the issue you have raised. SMART does not agree there was a misrepresentation to the Court based on what has been provided by you. I still think, however, that I need more information to address this. To that end, I have contacted the court reporter, Cheryl Daniel, to order the transcript. I am told she is on vacation until next Monday, but her office will do what it can to provide me with an electronic copy if possible.

I can't address this issue until I receive the ordered transcript. I am happy to take this up when I receive it, and suggest that we have our meet and confer sometime next week.

Thank you.

[Christian E. Hildebrandt](#)

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