

EXHIBIT B

Numbers, Robert

From: Craft, Lauren
Sent: Thursday, October 13, 2011 10:13 AM
To: 'LWBETTIS@hotmail.com'
Cc: Numbers, Robert
Subject: SirsiDynix v. CPC Regional Library System- 4:11-cv-00059-BO
Attachments: SirsiDynix - October 13 2011 Letter to Bettis.pdf; SirsiDynix - Draft Protective Order.pdf

Mr. Bettis:

Please review the attached documents with regard to the above referenced matter.

Best Regards,
Lauren Craft

Legal Assistant to Todd Sullivan, Theresa Sprain & Robert Numbers
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October 13, 2011

Via E-mail

Lee Bettis
The Bettis Law Firm, PLLC
PO Box 848
New Bern, NC 28560

Re: *Sirsi Corporation d/b/a SirsiDynix v. Craven-Pamlico-Carteret Regional Library Systems Responses to SirsiDynix's First Set of Interrogatories*

Dear Lee:

I recently received and reviewed Craven-Pamlico-Carteret Regional Library Systems' ("CPC Regional") Responses to SirsiDynix's First Set of Interrogatories. Based upon existing law, a number of the objections raised by CPC Regional are inappropriate or inadequate. Additionally, a number of CPC Regional's responses fail to adequately address the interrogatory to which they respond.

I am writing to ask CPC Regional to supplement its responses to bring them into compliance with the requirements of the federal rules without court intervention. Please consider this letter to be SirsiDynix's good faith attempt to confer in an attempt to resolve this matter without court action as required by Rule 37(a) of the Federal Rules of Civil Procedure.

Failure to Respond to SirsiDynix's First Set of Requests for Production of Documents

On September 6, 2011, SirsiDynix served its First Set of Request for Production on CPC Regional. Pursuant to Rule 6(d) and Rule 34(b)(2)(A) of the Federal Rules of Civil Procedure, absent consent of the parties or an order of the court, CPC Regional's responses were due on October 10, 2011. As of the date of this letter I have not received a response to this discovery request, agreed to an extension of time for CPC Regional to respond, or received a court order enlarging CPC Regional's time to respond. If I do not receive a response to this discovery request by 5:00 p.m. on Friday, October 14, 2011, I will file a motion with the court seeking an order compelling CPC Regional to respond to this discovery request.

Boilerplate Objections

In response to Interrogatories 2, 3, 4, 5, 6, 13, 14, 15, 16, 17, and 20 CPC Regional asserts a variety of boilerplate objections. These vague objections violate Rule 33(b)'s requirement that "[t]he grounds for objecting to an interrogatory must be stated with specificity." Fed. R. Civ. P. 33(b). "Mere recitation of the familiar litany that an interrogatory or a document production request is overly broad, burdensome, oppressive, and irrelevant' does not suffice as a specific objection." *Mainstreet Collection, Inc. v. Kirkland, Inc.*, 270 F.R.D. 238, 240 (E.D.N.C. 2010) (quoting *Momah v. Albert Einstein Med. Ctr.*, 164 F.R.D. 412, 417 (E.D.Pa.1996)). *Accord Hy-Ko Prods. Co. v. Hillman Group, Inc.*, No. 5:09MC32, 2009 WL 3258603, at *2 (E.D.N.C. Oct. 8, 2009) ("In the usual instance, objections to discovery which simply recite stock phrases are not colorable. Generally, the mere cry of burdensomeness or irrelevance without any statement in support of these objections is disfavored by the court." (internal citation omitted)); *Nester v. Poston*, 200 F.R.D. 268, 271 (W.D.N.C. 2001); *Kinetic Concepts, Inc. v. ConvaTec, Inc.*, 268 F.R.D. 226 (M.D.N.C. 2010); *Ayers v. Continental Cas. Co.*, 240 F.R.D. 216, 221 (N.D. W. Va. 2007) ("Mere recitation of familiar litany that interrogatory is 'overly broad, burdensome, oppressive, and irrelevant' does not suffice as specific objection."); *O'Bar v. Lowe's Home Centers, Inc.*, Case No. 5:04-cv-00019, 2007 WL 1299170 (W.D.N.C. May 2, 2007).

Please supplement these responses by 5:00 p.m. on October 21, 2011, or I will file a motion with the court seeking an order that (1) declares these objections to be insufficient and therefore waived and (2) requires CPC Regional to respond fully to these discovery requests.

Response that Information is Equally Available to Each Party

In response to Interrogatories 2, 13, 14, 15, 16, 17, and 18 CPC Regional objects on the ground that "[t]he informantion [sic] requested is equally available to both parties." The fact that information may be equally available to both parties is an insufficient ground for objection. See *Wilson Land Corp. v. Smith Barney, Inc.*, 5:97-cv-519, 2000 WL 33672980, *3 (E.D.N.C. Dec. 8, 2000). *Accord Jackson v. West Virginia University Hospitals, Inc.*, 1:10-cv-107, 2011 WL 1831591, *2 (N.D. W.Va. May 12, 2011); *ABT, Inc. v. Juszcyk*, Case No. 5:09-cv-119, 2011 WL 650537, *2 (W.D.N.C. Feb. 11, 2011); *Wooten v. Lincoln Nursing Center*, 5:09-CV-097, 2011 WL 381608, *2 (W.D.N.C. Feb. 2, 2011); *Susko v. City of Weirton*, 5:09-CV-1, 2010 WL 1881933, *2 (N.D.W.Va. May 7, 2010); *Alberts v. Wheeling Jesuit University*, 2010 WL 1539852 at *2 (N.D.W.Va. April 19, 2010); *Rogers v. Tri-State Materials Corp.*, 51 F.R.D. 234, 245 (N.D. W.Va. 1970).

Please supplement these responses by 5:00 p.m. on October 21, 2011, or I will file a motion with the court seeking an order that requires CPC Regional to respond appropriately to these discovery requests.

Inadequate Response to Interrogatory 2

In Interrogatory 2, SirsiDynix requests that CPC Regional identify all communications between the parties from January 1, 2009 until the present. In addition to the use of boilerplate objections, CPC Regional's response to this request is inadequate for three reasons.

First, in response to Interrogatories 2, CPC Regional refers SirsiDynix to information contained in its Initial Disclosures. This response fails to comply with Rule 33's requirement that interrogatories be answered fully in writing. Specifically, Rule 33 requires that "interrogatory responses must be complete in and of themselves; other documents and pleadings may not be incorporated into an answer by reference." *Mahoney v. Kempton*, 142 F.R.D. 32, 33 (D. Mass 1992). *Accord Stabilus v. Haynsworth, Baldwin, Johnson and Greaves, PA*, 144 F.R.D. 258, 263-64 (E.D. Pa. 1992) ("Plaintiffs cannot avoid answering interrogatories by referring the defendant to the complaint, no matter how detailed."); *J.J. Delaney Carpet Co. v. Forrest Mills, Inc.*, 34 F.R.D. 152, 153 (S.D.N.Y. 1963) ("Incorporation by reference of portions ... of allegations of a pleading is not a responsive answer [to an Interrogatory]."); *Smith v. Logansport Community School Corp.*, 139 F.R.D. 637, 650 (N.D. Ind. 1991) ("It is well established that an answer to an interrogatory 'must be responsive to the question. It should be complete in itself and should not refer to the pleadings, or to depositions or other documents...."); *Dipietro v. Jefferson Bank*, 144 F.R.D. 279, 282 (E.D. Pa. 1992) ("The general rule is that answers to interrogatories should be complete in and of themselves, and should not refer to pleadings, depositions, or other documents."); *Atlanta Coca-Cola Bottling Co. v. Transamerica Ins. Co.*, 61 F.R.D. 115, 120 (N.D. Ga. 1972) ("Defendant is correct in stating that incorporation by reference of the allegations of a pleading is not a responsive and sufficient answer to an interrogatory."); *Piling v. General Motors Corp.*, 45 F.R.D. 366, 369 (D. Utah 1968) ("Material outside the [Interrogatory] answers and their addendum ordinarily should not be incorporated by reference."); *Equal Rights Center v. Post Properties, Inc.*, 246 F.R.D. 29, 34 (D.D.C. 2007) ("[I]t is technically improper and unresponsive for an answer to an interrogatory to refer to outside material, such as pleadings, depositions, or other interrogatories."); *Williams v. Sprint/United Management Co.*, 235 F.R.D. 494, 501 (D. Kan. 2006) ("Plaintiffs may not answer the interrogatory by generally referring Defendant to the pleadings filed in this case, documents produced, opt-in questionnaires, depositions, or declarations."); *DL v. District of Columbia*, 251 F.R.D. 38, 48 (D.D.C. 2008) ("Because Rule 33(b)(1) requires a party to answer each interrogatory 'fully,' it is technically improper and unresponsive for an answer to an interrogatory to refer to outside material, such as pleadings, depositions, or other interrogatories."); *Ayers v. Continental Cas. Co.*, 240 F.R.D. 216, 221 (N.D. W.Va. 2007) (referring to other documents in response to an interrogatory "is inappropriate where the interrogatory calls for 'the exercise of particular knowledge and judgment on the part of the responding party.'").

Second, CPC Regional objected to this interrogatory on the ground that it is "ambiguous as to what it is requesting." It strains credulity to claim that CPC Regional cannot determine what is sought by this interrogatory when it asks for all "communications" between the parties. If the meaning of the term "communication" is not self-evident, the term was defined in the

Definitions section of the interrogatories. Additionally, CPC Regional uses this term throughout its responses to SirsiDynix's Interrogatories.

Third, the response states "CPC provided all responsive information in its initial disclosures and has no further responsive information." In addition to inappropriately referring to documents outside of the interrogatory responses, CPC Regional's Initial Disclosures do not identify responsive documents in the manner requested by the interrogatories.

Please supplement this response by 5:00 p.m. on October 21, 2011, or I will file a motion with the court seeking an order that requires CPC Regional to respond appropriately to this discovery request.

Inadequate Response to Interrogatory 3

In Interrogatory 3, SirsiDynix requests that CPC Regional identify all communications between the parties from January 1, 2009 until the present. In addition to the use of boilerplate objections, CPC Regional's response to this request is inadequate for three reasons.

First, CPC Regional claims that the interrogatory "is not designed to lead to discoverable information ... [and is] not relevant to the controverted issues." A simple review of the pleadings demonstrates that this assertion is incorrect. SirsiDynix's Complaint alleges that during the time CPC Regional had a binding contract with SirsiDynix, it was engaged in negotiations with OCLC and ultimately entered into an agreement with OCLC that resulted in the breach of CPC Regional's contract with SirsiDynix. Compl. ¶¶ 11-13. Given these allegations, communications between OCLC and CPC Regional are reasonable calculated to lead to the discovery of admissible evidence related to this issue.

Second, CPC Regional claims that the interrogatory seeks "privileged business information which would potentially reveal protected trade secrets or practices." I am unaware of any general privilege accorded to business information and cannot determine what "trade secrets or practices" a public library may have. In any event, an interrogatory is not objectionable because it requests the disclosure of trade secrets or confidential business information. Instead, the party who wishes to prevent discovery must move for a protective order from the court. *See Moseley v. Fillmore Co., Ltd.*, 1:09-CV-221, 2010 WL 272642, *3 (W.D.N.C. Jan. 14, 2010) ("The parties are respectfully advised that any potential objection to discovery requests or questions premised on confidentiality or trade secrets should be remedied before the objection through filing a motion for Protective Order."). *See generally* Fed. R. Civ. P. 26(c)(1)(G).

However, in the interest of avoiding filing unnecessary motions with the court, I have enclosed a draft protective order. Please let me know as soon as possible if you will consent to this protective order or would like to make modifications. Once we have agreed to the terms of a protective order, I will file a motion with the court asking it to enter the protective order.

Third, although the Interrogatory requests information on communications between CPC Regional and OCLC, CPC Regional has responded to this interrogatory by stating, "CPC has not signed a contract with OCLC." This answer is in no way responsive to the Interrogatory.

To the extent that you can supplement this response without disclosing information that you contend is a trade secret or otherwise confidential, please do so by 5:00 p.m. on October 21, 2011. If we have not agreed to the terms of a protective order and otherwise resolved the issues outlined above by that time, I will file a motion with the court seeking an order that requires CPC Regional to respond appropriately to this discovery request.

Inadequate Response to Interrogatory 4

In Interrogatory 4, SirsiDynix requests that CPC Regional identify all individuals involved in the decision for CPC Regional to become a pilot library for OCLC's Web-scale Management Services. In response, CPC Regional merely refers SirsiDynix to its response to Interrogatory 3. As discussed above, CPC Regional's response to Interrogatory 4 is inadequate.

The objections raised in response to Interrogatory 3 are even more inappropriate when applied to Interrogatory 4. For example, there is no way that identifying the individuals involved in the "decision for CPC Regional to become a pilot library for OCLC's Web-scale Management Services" would reveal privileged business communications or reveal protected trade secrets or practices." Similarly, the response contained in Interrogatory 3 that "CPC has not signed a contract with OCLC" is not responsive to Interrogatory 4.

To the extent that you can supplement this response without disclosing information that you contend is a trade secret or otherwise confidential, please do so by 5:00 p.m. on October 21, 2011. If we have not agreed to the terms of a protective order and otherwise resolved the issues outlined above by that time, I will file a motion with the court seeking an order that requires CPC Regional to respond appropriately to this discovery request.

Inadequate Response to Interrogatory 5

In Interrogatory 5, SirsiDynix requests that CPC Regional identify all contracts or agreements entered into between OCLC and CPC Regional. In response, CPC Regional refers SirsiDynix to its response to Interrogatory 4 and provides some limited information. As discussed above, CPC Regional's response to Interrogatory 4 is inadequate and, by extension, its response to Interrogatory 5 is inadequate.

Interrogatory 5(c) requests "[t]he consideration provided in return for entering in to the contract or agreement." In response to this interrogatory, after acknowledging that CPC Regional entered into the Web-Scale Management Services Agreement with OCLC on September 1, 2009, CPC Regional states "CPC has not signed a contract." This response does not address the information sought by Interrogatory 5(c).

To the extent that you can supplement this response without disclosing information that you contend is a trade secret or otherwise confidential, please do so by 5:00 p.m. on October 21,

2011. If we have not agreed to the terms of a protective order and otherwise resolved the issues outlined above by that time, I will file a motion with the court seeking an order that requires CPC Regional to respond appropriately to this discovery request.

Inadequate Response to Interrogatory 6

In Interrogatory 6, SirsiDynix requests that CPC Regional identify all contracts or agreements entered into between OCLC and CPC Regional. As part of its response response, CPC Regional refers SirsiDynix to its responses to Interrogatories 3, 4, & 5 and provides some limited information. As discussed above, CPC Regional's responses to Interrogatories 3, 4, & 5 are inadequate and, by extension, its response to Interrogatory 6 is inadequate.

To the extent that you can supplement this response without disclosing information that you contend is a trade secret or otherwise confidential, please do so by 5:00 p.m. on October 21, 2011. If we have not agreed to the terms of a protective order and otherwise resolved the issues outlined above by this time, I will file a motion with the court seeking an order that requires CPC Regional to respond appropriately to this discovery request.

Inadequate Response to Interrogatory 7

In Interrogatory 7, SirsiDynix requests that CPC Regional state specifically and in detail the injury or injuries that CPC Regional Claims to have suffered as a result of the allegations set out in Paragraphs 27-111 of the Answer and Counterclaim. CPC Regional's response is inadequate for a number of reasons.

CPC Regional asserts that the Interrogatory is not answerable in its present form because "Paragraphs 28 through 111 contain allegations as well as affirmative defenses." Rule 8(c) of the Federal Rules of Civil Procedure requires that "a party must affirmatively state any avoidance or affirmative defense." Fed. R. Civ. P. 8(c)(1). There are no affirmative defenses contained in Paragraphs 28-111. Instead, these paragraphs are labeled as counterclaims.

CPC Regional also asserts that it cannot respond because the Interrogatory "calls for a legal opinion/analysis which Defendant is not qualified to render" and that "Defendant has not quantified its damages in full yet." Both of these statements are contradicted by CPC Regional's statement in its initial disclosures that it "estimates damages of \$146,844.90, as well as attorneys fees and costs associated with this litigation."

Please supplement this response by 5:00 p.m. on October 21, 2011, or I will file a motion with the court seeking an order that requires CPC Regional to respond appropriately to this discovery request.

Response to Interrogatory 16

In response to Interrogatory 16, CPC Regional stated, “see attached documents regarding such communications.” However, no documents were attached to the Interrogatory Responses.

Please supplement this response by 5:00 p.m. on October 21, 2011, or I will file a motion with the court seeking an order that requires CPC Regional to respond appropriately to this discovery request.

Inadequate Response to Interrogatory 18

In Interrogatory 18, SirsiDynix requests that CPC Regional “[d]escribe in detail all facts related to CPC Regional’s allegation in the Answer and Counterclaim that SirsiDynix failed to mitigate its damages.” In response CPC Regional objects on the ground that the interrogatory “calls for a legal opinion/analysis which Defendant is not qualified to render.” However, Interrogatory 18 does not call for a legal opinion or analysis, but instead seeks facts related to an affirmative defense raised by CPC Regional. Rule 26(b)(1) specifically provides for discovery of this kind of information.

Please supplement this response by 5:00 p.m. on October 21, 2011, or I will file a motion with the court seeking an order that requires CPC Regional to respond appropriately to this discovery request.

Inadequate Response to Interrogatory 19

In Interrogatory 19, SirsiDynix requests that CPC Regional “[d]escribe in detail all facts related to CPC Regional’s allegation in the Answer and Counterclaim that SirsiDynix’s claims are barred by the doctrine of waiver or laches.” In response CPC Regional objects on the grounds that the interrogatory “calls for a legal opinion/analysis which Defendant is not qualified to render, calls for privileged attorney work product and information protected by the attorney client privilege.” This response is inadequate for several reasons.

Interrogatory 19 does not call for a legal opinion or analysis, but instead seeks facts related to an affirmative defense raised by CPC Regional. Rule 26(b)(1) specifically provides for discovery of this kind of information.

Additionally, as CPC Regional has asserted attorney work product doctrine and attorney client privilege as an objection to these requests, it must produce a privilege log that complies with Rule 26. *See United States v. \$118,000.00 in U.S. Currency*, 5:08-CV-566 2011 WL 1675179, *2 (E.D.N.C. May 3, 2011) (“ To validly claim a privilege, claimant must expressly assert it in response to the particular discovery request involved and serve with his discovery responses a privilege log in conformance with Rule 26(b)(5)(A) that is duly signed by claimant’s counsel pursuant to Rule 26(g). Failure to timely serve a duly signed privilege log meeting the requirements of Rule 26(b)(5)(A) shall be deemed a waiver of the privilege otherwise claimed.”); *Neighbors Law Firm, P.C. v. Highland Capital Management, L.P.*, 5:09-cv-352, 2011 WL

761480, *3 (E.D.N.C. Feb. 24, 2011). Please produce a privilege log immediately so SirsiDynix may assess the validity of CPC Regional's assertion of privilege.

Please supplement this response by 5:00 p.m. on October 21, 2011, or I will file a motion with the court seeking an order that requires CPC Regional to respond appropriately to this discovery request.

Inadequate Response to Interrogatory 20

In Interrogatory 20, SirsiDynix requests that CPC Regional "[i]dentify all individuals involved in 'pricing servers' as stated by Jackie Beach" in an article published online.

In response, CPC Regional objects on the ground that the Interrogatory is "vague and ambiguous as to what it is requesting[.]" As the interrogatory's request to "identify all individuals" cannot be argued to be vague and ambiguous and the term "pricing servers" was used by Ms. Beach, this objection is inappropriate.

Additionally, CPC Regional objects on the ground that the Interrogatories "not designed to lead to discoverable information." As Ms. Beach's statement was made in the context of the decision to become part of OCLC's Web-scale Management Services and, as discussed above, SirsiDynix's Complaint alleges that during the time CPC Regional had a binding contract with SirsiDynix, it was engaged in negotiations with OCLC and ultimately entered into an agreement with OCLC that resulted in the breach of CPC Regional's contract with SirsiDynix, Compl. ¶ 11-13, this interrogatory is reasonably calculated to lead to the discovery of admissible evidence.

Please supplement this response by 5:00 p.m. on October 21, 2011, or I will file a motion with the court seeking an order that requires CPC Regional to respond appropriately to this discovery request.

Inadequate Response to Interrogatory 21

In response to Interrogatory 21, SirsiDynix seeks all facts that support CPC Regional's estimate of damages set out in CPC Regional's Initial Disclosures. In response, CPC Regional objects on the ground that it "calls for a legal opinion/analysis which Defendant is not qualified to render."

However, the interrogatory does not seek a legal opinion or analysis, but instead seeks facts in support of a claim made by CPC Regional. Rule 26(b)(1) specifically provides for discovery of this kind of information.

Please supplement this response by 5:00 p.m. on October 21, 2011, or I will file a motion with the court seeking an order that requires CPC Regional to respond appropriately to this discovery request.

It is my sincere hope that we can resolve these issues without involving the court. Please feel free to contact me if you would like to discuss these matters further.

Sincerely,

WOMBLE CARLYLE SANDRIDGE & RICE
A Limited Liability Partnership



Robert T. Numbers II

rtn

cc: Scott Askew
Pressly M. Millen