

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA**

Gene Kellogg and Eda Kellogg,)
)
 Plaintiffs,)
)
 vs.)
)
 Daniel J. Smith, and individual, DDA)
 Inc., an Indiana corporation, Brenda)
 McGinley, an individual, International)
 Investigators Inc., an Indiana corporation,)
 C. Tim Wilcox, an individual, and Recon)
 Avionics, Corporation, an Indiana)
 Corporation,)
)
 Defendants.)

**ORDER GRANTING MOTION
TO RECONSIDER AND
COMPELLING DISCOVERY**

Case No. 1:16-cv-016

Plaintiffs initiated the above-entitled action in February 2016, asserting claims against some or all of defendants for breach of contract, breach of express warranty, breach of implied warrant of merchantability, breach of implied warrant of fitness for a particular purpose, unjust enrichment, rescission, fraud and/or deceit, aiding and abetting fraud, civil conspiracy, and violation of North Dakota's Consumer Fraud Law.

On September 1, 2016, plaintiffs filed a “Motion to Compel Discovery.” Defendants International Investigators, Inc., Brenda McGinley (“McGinley”), C. Tim Wilcox (“Wilcox”), who at the time were jointly represented, filed a response in opposition. Defendant Recon Avionics, Corporation (“Recon”) also opposed the motion. Neither Defendant Daniel Smith (“Smith”) nor Defendant DDA Inc. (“DDA”) filed a response. Smith is proceeding *pro se* and no one has entered an appearance on behalf of DDA.

On March 1, 2017, the court issued an order denying the motion as moot as plaintiffs had

settled with parties from whom the disputed discovery was sought.

On March 6, 2017, plaintiffs filed a motion for reconsideration of the court's March 1, 2017. They advise that they have reached settlement agreement with International Investigators, Inc., McGinley, Wilcox, and Recon but that their claims against Smith and DDA remain outstanding. Consequently, they request that the court vacate its March 1 order as it pertains to Smith and DDA and order Smith and DDA to respond to their discovery requests.

Smith and DDA did not respond to the initial motion to compel discovery and have not responded now to the motion for reconsideration. Under D.N.D. Civ. L. R. 7.1(F), the failure to respond to a motion may be deemed an admission that the motion is well taken. For this reason, the court **GRANTS** the motion for reconsideration (Docket No. 56) and directs Smith and DDA to produce the discovery information that has been requested by plaintiffs and that is the subject of the motion to compel at Docket No. 34.

Dated this 28rd day of March, 2017.

/s/ Charles S. Miller, Jr.
Charles S. Miller, Jr., Magistrate Judge
United States District Court