

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

John Doe,

PLAINTIFF,

vs.

SexSearch.com, et al.,

DEFENDANTS.

Case No.: 3:07-cv-604

Judge Jack Zouhary

MOTION TO CLARIFY ORDER REGARDING
SHARING OF ALL DISCOVERY MATERIAL

Now comes Plaintiff, John Doe, by and through his undersigned Counsel and respectfully requests this court clarify its order issued verbally at the April 11, 2007 phone status conference upon Plaintiff.

BRIEF

This Honorable Court held a phone status conference on April 11, 2007 where in all parties were represented by Counsel. This court granted Plaintiff's request to engage in limited discovery with then-Defendant Moniker Online Services, Inc. (Dkt. # 64). On April 6, 2007, Plaintiff's counsel indicated to all parties and the court that it had received that discovery. (Dkt. # 85). "Finally, the memoranda are moot as the discovery this court ordered (Dkt. #64) has already been provided." (Id. at 2).

During the phone status conference on April 11, 2007, Plaintiff's counsel again reiterated to all parties present and the court that Moniker had provided the requested discovery. In fact, Moniker had been voluntarily dismissed by Plaintiff from the litigation prior to the phone status conference as well. (Dkt. # 86).

During the phone status conference, the court ordered that Plaintiff "share" all material it had received in discovery from Moniker. Following the phone status conference, the parties continued to discuss a variety of issues in order to streamline matters for the upcoming hearing. During that conversation, Defendants' counsel indicated they were gathering documents in preparation for the hearing, but were not willing to share those documents with Plaintiff. In addition, confusion arose as to whether the parties were required, consistent with the court's order regarding Plaintiff, to share all discovery documents, e.g. both case-in-chief evidence as well as purely impeachment or rebuttal evidence. Finally, Plaintiff requested that all Defendants share with Plaintiff all documents they had received from each other thus far in preparation for the April 16, 2007 hearing.

Plaintiff seeks clarification as to the court's order regarding the sharing of information. Essentially, the clarification seeks an answer to the following questions:

1. Are all parties expected to share all documents received from any other parties in this matter?

2. Are all parties expected to share both evidence that supports arguments they anticipate making at the April 16, 2007 hearing as well as evidence they anticipate using solely as impeachment or rebuttal in the event it is necessary at the hearing?

This clarification is necessary because the information received by Plaintiff from former Defendant Moniker is to be used by Plaintiff solely for impeachment or rebuttal, if necessary, at the hearing. The information is not part of Plaintiff's case-in-chief argument. The information is known or easily obtainable by Defendants as it is their domain name information and has been openly sought by Plaintiff from former Defendant Moniker for nearly 4 weeks now. (See Motion to Engage in Limited Discovery with Moniker, filed March 16, 2007, Dkt. #44).

In the event the court clarifies its order requiring all parties to share both case-in-chief evidence as well as all potential impeachment evidence, Plaintiff respectfully requests this court set a deadline of Friday, April 13, 2007 at 5:00 pm Eastern Time for the exchange of such material in order for its use to be permitted by any party at the April 16, 2007 hearing. This deadline is necessary for all parties to have sufficient time, albeit over a weekend, to review such evidence and prepare for the hearing and avoid surprise exhibits, unfilled and undisclosed, from being offered at the April 16, 2007 hearing.

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CERTIFICATE OF SERVICE

A copy of the foregoing was served by operation of the court's electronic filing system on all parties on the date of its filing.

/s/Dean Boland
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