

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

GENERAL CONFERENCE CORPORATION
OF SEVENTH-DAY ADVENTISTS, *et al.*,

Plaintiffs,

v.

No. 1:06-cv-01207-JDB-egb

WALTER MCGILL d/b/a CREATION
SEVENTH DAY ADVENTIST CHURCH, *et al.*,

Defendants.

MOTION TO COMPEL AND FOR EXTENSION OF TIME TO FILE REPLY

Come Plaintiffs General Conference Corporation of Seventh-Day Adventists and General Conference of Seventh-Day Adventists and move the Court pursuant to Fed. R. Civ. P. 37 for entry of an order compelling Defendants, including specifically Defendant Walter McGill to produce to the Plaintiffs what was requested in his deposition taken on November 9, 2015, which deposition was taken pursuant to Court Order and Notice, late-filed Exhibit 8 – a mailing list with names of 100 to 300 people with their email addresses and any other information contained on the mailing list; late-filed Exhibit 22 – Mr. McGill’s email communications with Mr. Aguilar which relate to any aspect of the Plaintiffs’ pending Motion; late-filed Exhibit 23 – a list of all of the email addresses that Mr. McGill has used and that his wife has used, his wife having operated one of the websites at issue in the pending Motion; and late-filed Exhibit 24 – follow-up communications (this would include emails) Mr. McGill has had with the persons listed on the

mailing list after he sent them a copy of the Plaintiffs' pending Motion to Add Further Specifics to the Court's Permanent Injunction.¹

Grounds for this Motion are as follows:

1. In his deposition, Mr. McGill was asked if he discussed the Motion or sent it to anyone after being served with it (same being the pending Motion to Add Further Specifics to the Court's Permanent Injunction, D.E. No. 195). Mr. McGill responded, "I sent it to everybody I know, probably". (McGill Dep. Page 54, Line 13). He testified that he sent it to Mr. Aguilar, and that he sent it to everyone on his "mailing list", which included Mr. Aguilar. He identified the mailing list as being a written list which may be electronically stored, and in order to send a copy of the Motion, "all I do is hit the send button." (McGill Dep. Page 55, Lines 10-11). He stated that the mailing list is, "web-based" and contains a large number of peoples' names, which he estimated to be between 100 and 300 people, and he believes that he probably sent copies of Plaintiff's pending Motion to Add Further Specifics to everyone on the list. (McGill Dep. Page 56). He identified those persons on the list as friends and Seventh-Day Adventist members. (McGill Dep. Page 57). Mr. McGill confirmed that Mr. David Aguilar does have a website which is one of the subjects of Plaintiffs' pending Motion to Add Further Specifics. (McGill Dep. Page 57). He also testified that he engaged in follow-up emails beyond simply his emailing copies of the Motion to his email list recipients, and he assumes there are possibly copies of those email communications which he has. (McGill Dep. Page 58). Plaintiffs' counsel requested a copy of the mailing list with email addresses and any other information contained on the list of the 100 to 300 people as late-filed Exhibit 8. (McGill Dep. Page 58). When asked for the names of those persons on the list having some affiliation with the Creation Seventh Day Adventist

¹ Copies of excerpts of the November 9, 2015, deposition of Mr. McGill cited herein are attached as collective Exhibit 1 hereto.

Church or Creations Seventh Day Adventist religion, he stated that he did not feel comfortable giving names of people that are his friends and that may adhere to the Creation Seventh Day Adventist religion. (McGill Dep. Page 60). Mr. McGill also testified that he believes his mailing list (late-filed Exhibit 8) does contain the email addresses of the 100 to 300 people within the list. (McGill Dep. Page 66).

2. Mr. McGill testified that he had follow-up email communications with Mr. Aguilar with regard to the Motion filed in the instant case, and Plaintiffs' counsel requested copies of those follow-up communications as late-filed Exhibit 22.

3. Plaintiffs' counsel also requested as late-filed Exhibit 23 a list of the email addresses that Mr. McGill has used and those he currently uses, as well as a list of email addresses that his wife has used and those she currently uses as late-filed Exhibit 23. (McGill Dep. Pages 106-107).

4. With regard to the objection/response memorandum filed by Mr. McGill in response to the Plaintiffs' pending Motion to Add Further Specifics, Mr. McGill testified that he received assistance in preparing the objection from Lucan Chartier. (McGill Dep. Page 115).

5. Plaintiffs' counsel also requested copies of any follow-up communications with any of the people on the mailing list after he sent copies of Plaintiffs' pending Motion to Add Further Specifics to them, as late-filed Exhibit 24.

6. With each requested late-filed exhibit, Plaintiffs' counsel inquired as to whether Mr. McGill would agree to provide these materials voluntarily. Mr. McGill equivocated, and Plaintiffs' counsel has not received the requested late-filed exhibits. The Plaintiffs' wish to have this discovery to review and utilize in connection with the preparation and filing of their reply memorandum. Plaintiffs' motion to take the deposition of Mr. McGill and then be allowed to

file a reply memorandum was granted by the Court, and Plaintiffs requested three weeks within which to file the reply. Given that Plaintiffs' counsel has not received the requested late-filed exhibits from Mr. McGill, Plaintiffs' can only surmise that he refuses to produce them. The information and documentation sought by this Motion is relevant on the issue of those persons with whom the Defendants including Mr. McGill are in active concert or participation, including by way of email communications. Therefore, it is necessary for Plaintiffs to file this Motion to Compel in order to seek a Court order compelling the production of the exhibits in order that Plaintiffs can then review them and use them in the forthcoming reply. Additionally, given the apparent refusal of Mr. McGill to provide these documents and information contained therein, it is necessary for the Plaintiffs to request an extension of time within which for Plaintiffs to prepare and file the reply memorandum. This extension is not made to unduly delay these proceedings, as the Plaintiffs would have preferred to receive the requested materials promptly, which should not be burdensome to Mr. McGill given that they should be electronically stored information which he could print and provide, but which he has thus far refused to produce. Accordingly, Plaintiffs request along with the order compelling production that Plaintiff's be granted an extension of time of two weeks from the date of receipt of all of the documents which are the subject of this Motion to Compel within which to file their reply memorandum. The extension is requested within the original time granted by the Court of three weeks from the deposition of Mr. McGill taken November 9, 2015.

Undersigned counsel certifies that during the deposition of Mr. McGill, Plaintiffs' counsel asked Mr. McGill to voluntarily submit the documents which comprise the late-filed exhibits which are the subject of this Motion. Additionally, prior to filing this Motion Plaintiffs' counsel wrote to Mr. McGill in a good faith effort to resolve the issues presented in this Motion

by agreement (copy of which correspondence is attached as Exhibit 2), but has not been able to do so. Mr. McGill has not responded as of the date and time of the filing of this Motion, and the documents at issue have not been received by Plaintiffs' counsel. Accordingly, the instant Motion is necessary.

A proposed order granting this Motion is submitted simultaneously with the filing of this Motion. The Plaintiffs further move for such other further and general relief to which the Court deems Plaintiffs entitled under Rule 37, including attorneys' fees if hereafter deemed appropriate by the Court.

Respectfully Submitted,

/s/ Philip M. Kirkpatrick
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CERTIFICATE OF SERVICE

Undersigned counsel for the Plaintiffs hereby certifies that a true and correct copy of the foregoing Motion has been sent via Electronic Mail and First Class Mail this 30th day of November, 2015 to:

Walter McGill
PO Box 424
Idyllwild, CA 92549

Sda_trademark_lawsuit@yahoo.com

/s/ Philip M. Kirkpatrick