UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Charlottesville Division

ELIZABETH SINES, SETH WISPELWEY, MARISSA BLAIR, APRIL MUNIZ, MARCUS MARTIN, NATALIE ROMERO, CHELSEA ALVARADO, JOHN DOE, and THOMAS BAKER, Plaintiffs, v. JASON KESSLER, et al., Defendants.	**Civil Action No. 3:17-cv-00072-NKM-JCH**

PLAINTIFFS' MOTION FOR DIRECT ACCESS TO CERTAIN DISCOVERY OF DEFENDANT VANGUARD AMERICA

Plaintiffs respectfully submit this Motion requesting that the Court order the Third Party Discovery Vendor to directly provide Plaintiffs with certain discovery produced by Dillon Ulysses Hopper ("Hopper") in his capacity as a corporate representative of Defendant Vanguard America ("Vanguard").

After more than ***two years*** since Plaintiffs first served Vanguard with their initial discovery requests, more than ***one year*** since the Court granted Plaintiffs' motion to compel, and more than ***six months*** after Hopper represented his intention to submit his current mobile device to Third Party Discovery Vendor at his court-ordered deposition, Hopper finally provided his current mobile device to the Third Party Discovery Vendor for imaging on or about January 23, 2020—a

mere 14 days before the February 5, 2020, deadline for the parties to produce their documents.[1] (*See* Ex. 2 (Email from K. Kim to D. Roy dated January 24, 2020)); Ex. 3 (Excerpt of Hopper Deposition Transcript).) This interminable delay comes as no surprise. As the Court previously recognized in granting in part Plaintiffs' motion for sanctions against Vanguard, Vanguard has "continually failed to fulfil even [its] most basic obligations to this Court, [its] counsel, and other parties to this case," and Vanguard's calculated "refusal to meaningfully participate in discovery . . . despite repeated court orders directing [it] to do so" has effectively "stalled" this litigation, to Plaintiffs' severe detriment. (Dkt. 539 at 2.) Based on Vanguard's record of "clearly sanctionable" conduct throughout the entirety of the discovery process, and especially Hopper's repeated pattern of endless obfuscation and delay, Plaintiffs simply have no basis to believe that Hopper will suddenly undertake a good faith effort to timely review documents from his mobile device before producing them to Plaintiffs.[2] (*Id.*) Moreover, Plaintiffs are faced with a compressed timeframe in which to prepare for party depositions, which must be completed by July 17, 2020, per the Court's Order of November 27, 2019. (Dkt. 597.) Plaintiffs simply cannot afford additional delay while Hopper purportedly reviews documents which may be necessary to Plaintiffs' preparation for party depositions.

As the Court is aware, Judge Hoppe has instituted a "process whereby Defendants were required to submit their electronic devices and social media accounts to the Third-Party Discovery Vendor for collection of electronically stored information or 'ESI.'" (Dkt. 638 at 2; *see also* Dkt.

[1] Hopper previously submitted his old mobile device to the Third Party Discovery Vendor, but the Third Party Discovery Vendor determined that the device was completely inoperable and its data unrecoverable. (Ex. 1 (Email from K. Kim to D. Roy dated December 5, 2019).)

[2] Plaintiffs note that Hopper the parties' February 5, 2020 deadline to complete productions has now since passed. It is accordingly of even greater import that Plaintiffs are able to access Hopper's documents swiftly and directly in order to "move this case forward." (Dkt. 628 (quotation marks and citation omitted).)

383.) Once submitted, "[t]he Third-Party Discovery Vendor would apply search terms and date ranges to the ESI collected. The Vendor would then provide that limited subset of documents to each Defendant, who would review the results of the collection and produce to Plaintiffs those non-privileged Documents that are responsive to the Discovery Requests." (Dkt. 638 at 2 (internal quotation marks and citations omitted).) Vanguard's flagrant misconduct to date has undermined the integrity of the discovery process, which is necessarily "predicated upon one's prompt and good faith compliance with discovery obligations." (Dkt. 638 at 2; *see also Poole ex rel. Elliott v. Textron, Inc.*, 192 F.R.D. 494, 507 (D. Md. 2000) ("The rules of discovery must necessarily be largely self-enforcing. The integrity of the discovery process rests on the faithfulness of parties and counsel to the rules—both the spirit and the letter."); *Soler v. Staffmark E., LLC*, 2006 WL 8438609, at *2 (E.D.N.C. June 22, 2006).) Plaintiffs accordingly submit that Hopper has "forfeited any right to review whatever documents the third-party discovery vendor collects from his devices and accounts prior to their production to Plaintiffs," and respectfully request that the Court order the Third Party Discovery Vendor "to provide directly to Plaintiffs' counsel any and all documents collected from [Hopper] that contain the agreed-upon search terms within the applicable date range." (Dkt. 638 at 2 (quotation marks and citation omitted).) Plaintiffs further represent that they will comport with their ethical obligations and undertake to return any privileged documents to Hopper.

Dated: February 12, 2020

Respectfully submitted,

/s/ Alan Levine

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CERTIFICATE OF SERVICE

I hereby certify that on February 12, 2020, the foregoing was filed with the Clerk of Court through the CM/ECF system, which will send a notice of electronic filing to:

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I further hereby certify that on February 12, 2020, I also served the following non-ECF participants, via electronic mail, as follows:

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