

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY
Civil Division

FILED
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2020 FEB 21 AM 10:15

JOHN T. FREY
CLERK, CIRCUIT COURT
FAIRFAX, VA

UNDER WILD SKIES, INC.)

Plaintiff,)

v.)

CL 19-12530

NATIONAL RIFLE ASSOCIATION)
OF AMERICA)

Defendant.)

PLAINTIFF'S MOTION TO COMPEL

COMES NOW your Plaintiff, Under Wild Skies, Inc. ("Plaintiff"), by counsel, and for its Motion to Compel discovery, pursuant to Rule 4:12, states as follows:

1. Plaintiff served its First Interrogatories, Requests for Production of Documents, and Request for Admissions on the Defendant, National Rifle Association of America ("Defendant" or "NRA") upon counsel, by fax and courier on January 17, 2020. The fax receipt is attached hereto and made a part hereof as Exhibit 1. Defendant's discovery responses were due on or before February 7, 2020.

2. Defendant served blanket objections to all of the discovery requests by electronic mail on February 7, 2020 at 10:18 PM. Exhibit 2. Plaintiff's counsel never agreed to service by electronic mail as required by Rule 1:12. This matter does not fall within the scope of Rule 1:17. Defendant also served the objections via first-class mail postmarked on February 10, 2020. Exhibit

3. Thus, Defendant's objections were not timely and must be struck. Without waiving this position, Plaintiff will proceed to discuss more fully the "substance" of the objections and the basis for its motion.

3. Defendant's discovery responses are attached hereto as Exhibits 4, 5, and 6.

4. On February 13, 2020, Plaintiff sent a letter to Defendant's counsel detailing the extreme deficiencies in Defendant's objections and addressing Defendant's complete lack of responses. Plaintiff's letter is attached as Exhibit 7 and is incorporated herein. Plaintiff's letter further requested that Defendant inform Plaintiff if it intends to properly answer discovery by February 14, 2020, and to fully answer said discovery, without frivolous objections, by February 21, 2020.

5. In Plaintiff's February 13, 2020 letter, Plaintiff also informed Defendant that if no response was received on February 14, 2020, that a Motion to Compel would be filed and set for March 6, 2020.

6. On February 18, 2020, Defendant sent a letter to Plaintiff's counsel stating that Defendant would be standing on all of their objections and that the deadline for completion of discovery is not until June 19, 2020. Exhibit 8. Trial is set to begin July 20, 2020, just one month after Defendant's counsel believes discovery is due. Additionally, Defendant's counsel failed to inform Plaintiff of his availability on March 6, 2020.

7. Defendant's objections and responses show a complete lack of respect and complete disregard for Rule 4:1(g) in that most, if not all, objections were not made in good faith, were made to harass and cause unnecessary delay, and increase the cost of the litigation. The responses and objections are unreasonable given the nature of this litigation.

8. To take just one example of Defendant's bad faith filing, Plaintiff requested Defendant identify who was answering the interrogatories on behalf of the corporate Defendant. The Defendant objected to this request as vague, ambiguous and/or unintelligible as well as it seeks attorney/client privileged information. This information cannot be privileged as the person answering must sign an affidavit under oath attesting to their answer. As demonstrated by Exhibits

4, 5, and 6, Plaintiff's discovery requests are standard issue, narrowly tailored, and reasonably calculated to lead to discoverable evidence. See Ex. 4-6.

9. To that end, Defendant's February 18, 2020 letter standing on the objections, can be seen as nothing other than bad faith and unreasonable given the simplicity of the propounded discovery. Ex. 8.

10. Furthermore, as to the Requests for Admission, Exhibit 6, while Defendant admitted or denied most of the Requests, all of the responses are, at a minimum, subject to their "General Objections". Rule 4:11 requires "a written answer or objection addressed to the matter". Given the lack of an "and/or" in the Rules, it is clear the Defendant must choose one or the other. As Defendant has provided a written answer, the objections are waived by having answered.

11. The remaining objections and deficiencies are addressed in Plaintiff's letter to Defendant. Ex. 7 which is incorporated herein by reference.

12. More specifically, without waiving reference to Exhibit 7, and as already noted above, Defendant asserts "General Objections" to each of the Interrogatories, Document Requests, and Admissions Requests. Rules 4:8(d), 4:9(b)(ii), and 4:11 require specific responses and the "incorporation" General Objections to each and every response necessarily asserts objections that do not apply to particular requests. Such pleadings cannot be said to be in good faith. See Loudoun County Asphalt v. Wise Guys, 79 Va. Cir. 605 (Loudoun 2009).

13. As to the Interrogatory Responses, all interrogatory questions (1 through 12) are relevant, clear, not burdensome, are not vague, and do not seek privileged communications as more fully set forth in Exhibit 7. All objections should be overruled for the reasons fully stated in Exhibit 7. As to the Document Requests, all Document Requests (1 through 12) are relevant, clear, not burdensome, are not vague, and do not seek privileged communications as more fully set forth in Exhibit 7. All objections should be overruled for the reasons fully stated in Exhibit 7. The

Admissions Requests are more specifically addressed in paragraph 9 of this pleading as well as Exhibit 7.

14. Further, the Defendant claims attorney/client privilege in both their general objections and in numerous other requests; however, Defendant has failed to provide any privilege log.

15. Additionally, insofar as some of the document requests responses assert that the requests are "premature" and based on statements made by counsel in Exhibit 5, it appears that counsel is asserting the position that even if Defendant currently has responsive documents or information in its possession, custody, and control at this time, Defendant is not required to produce such information at this time until the close of discovery on June 19, 2020. Defendant's position is patently absurd. Defendant is required to produce requested information now, subject to a duty to supplement any *after acquired* information.

16. On February 20, 2020, the NRA produced another copy of Defendants Responses and Objections to Plaintiff's First Set of Interrogatories only identifying them as "updated" in an email to counsel but without specifically identifying any supplementation. Upon a comparison of the prior interrogatory answers it appears that Interrogatory 1 was changed to remove the specific privilege objection and identify Defendant's Outside Counsel, as well as Secretary and General Counsel as the persons answering the interrogatories. A verification from Mr. Frazer is also provided. However, the "General Objections" to this most basic of questions is maintained. It also appears that the answer to Interrogatory #4 now makes reference to the answer provided to Interrogatory #2. All other objections and responses continue to be maintained. A copy of the "updated" interrogatory answers is attached hereto as Exhibit 9.

17. Defendant's failure to grasp the importance of the legal process and the rules of good faith within the discovery process is troubling, especially considering the animosity toward

Plaintiff and contempt for the discovery process demonstrated by the NRA. This behavior should not be tolerated.

18. In addition to overruling objections and granting Plaintiff's motion to compel, Plaintiff specifically requests attorney's fees as provided in Rule 4:12.

WHEREFORE, for the foregoing reasons Plaintiff requests this honorable Court for the following remedies:

- A. Strike each of the Defendant's objections to all discovery as they are not timely filed; and
- B. Overrule all of Defendants objections; and
- C. Grant Plaintiff's Motion to Compel, requiring fully responsive answers to all discovery by close of business on March 20, 2020, including but not limited to complete interrogatory answers provided affirmed under oath; including but not limited to the immediate delivery to Plaintiff's counsel's office of all responsive documents to all discovery currently in Defendant's possession, custody or control; and
- D. Deem all admissions admitted; and
- E. Award reasonable attorney's fees to Plaintiff, pursuant to Rule 4:12(a)(4); and
- F. Any further relief which this Court deems to be reasonable and just.

Respectfully Submitted,
Under Wild Skies, Inc.
By Counsel

DYCIO & BIGGS

By: 

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was served on February 21, 2020 via facsimile and email to:

James Hundley, Esq.
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Danielle A. Quinn, Esq.