

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ROGER HALL, et al., :
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 Plaintiffs, :
 :
 v. : Civil Action No. 04-0814 (HHK)
 :
 CENTRAL INTELLIGENCE AGENCY, :
 :
 Defendant :

UNOPPOSED MOTION FOR EXTENSION OF TIME TO OPPOSE
DEFENDANT'S MOTION FOR A PROTECTIVE ORDER
AND MOTION TO VACATE COURT'S NOVEMBER 6, 2006
MINUTE ORDER GRANTING MOTION FOR PROTECTIVE ORDER

Come now the plaintiffs, Roger Hall and Studies Solutions, Results, Inc., and move this Court for an extension of time, to and including November 13, 2006, within which to oppose defendant's motion for a protective order. Plaintiffs further move the Court to vacate its November 6, 2006 minute order granting defendant's motion for a protective order. As grounds for these motions, plaintiffs represent to the Court as follows:

1. On October 24, 2006, defendant moved for a protective order protecting them from some discovery initiated by plaintiffs.

2. Under any interpretation of the Federal Rules of Civil Procedure, plaintiffs opposition was due at its earliest on November 6, 2006. See Local Civil Rule 7(b), providing that a party served with a motion has eleven days to file an opposition, and Federal Rule of Civil Procedure 6(a), which provides that if the last day of such period is a Saturday or Sunday or legal holiday, the period runs until the end of the next day. As the eleventh day

from October 24th was Saturday, November 4th, the due date for the opposition was, at its earliest, midnight, Monday, November 6th, rendering the Court's November 6th order premature.

3. However, Fed.R.Civ.Pro. 6(e) provides that an extra three days shall be added for qualifying methods of service, and by virtue of Fed.R.Civ.Pro. 5(b)(2)(D), this would seem to apply to electronically served pleadings. This would make plaintiffs' opposition due November 7, 2006.

4. On the morning of November 6th, plaintiffs' counsel telephoned the office of AUSA Merceded Momeni and left a message indicating that he intended to move for a one week extension of time to oppose the motion for a protective order, and asked that she indicate whether or not her client opposed the motion.

5. Around 2:30 p.m., plaintiffs' counsel went to his office and retrieved a message, which AUSA Momeni had left at 12:37 p.m. stating that her client did not oppose the motion for an extension of time. To draft and file the motion, plaintiffs' counsel needed to return to his home office where his files are electronically stored and he can access to the PACER system. On the way home, he stopped at the University of the District of Columbia Law School Library to do some legal research. As a result of a decision that he and his wife would dine out, counsel did not start work on the motion for an extension of time until around 10:00 p.m. In the process, he checked his email and learned that the the Court had entered a order granting the motion for a protective order a little after 3:00 p.m.

6. Plaintiffs' counsel was stunned by this development. He recognizes that there is case law supporting the argument put forward by defendant that discovery normally awaits the outcome of a summary judgment motion. However, in this case he believes that an genuine issue of material fact in dispute already exists with respect to the adequacy of defendant's search for materials responsive to Item 6 of the request, and this meets the threshold for discovery in FOIA cases.

7. In essence, as would be shown in the opposition to the motion for a protective order, in responding to Item 6 of Hall's request at issue in this case, the CIA has produced no records at all documenting the search costs which it tried to charge him in Hall I. This raises, inter alia, the distinct possibility that the CIA, in an effort to obstruct Hall's access to the records he sought, simply concocted the varying figures which it gave in Hall I as the amounts of search fees incurred. This necessarily has implications for other issues involved in this case, including not only the adequacy of the CIA's search for records responsive to Item 6, but also the credibility of its fee estimates for the requests at issue in this case, and whether the CIA's bad faith deprives it of credi-bility on other issues in this case.

8. The Court's November 6, 2006 minute order prematurely decided the discovery issue without having heard the relevant facts and argument put forth. This would be done in plaintiffs' opposition in much greater detail than can be done here. Thus, the Court's November 6th Order uld be vacated, and plaintiff should be

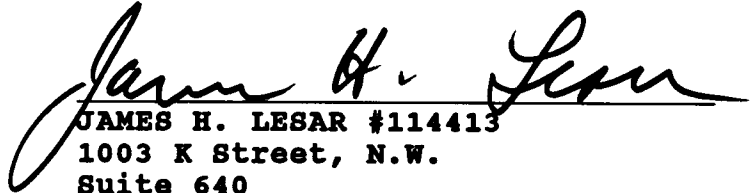
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granted an extension of time to respond to defendant's motion for a protective order.

9. Defendant's counsel stated that her client did not oppose plaintiffs' motion for an extension of time to oppose the motion for a protective order. However, that position was made before the Court's order granting the protective order was issued.

10. Because of the hour at which the motion to vacate the Court's November 6, 2006 order is made, counsel for defendant has not been contacted regarding its position on that motion.

Respectfully submitted,



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O R D E R

Upon consideration of plaintiffs' unopposed motion for an extension of time to oppose defendant's motion for a protective order and plaintiffs' motion to vacate this Court's November 6, 2006 order, it is by this Court this _____ day of November, 2006, hereby,

ORDERED, that plaintiffs Roger Hall and Studies Solutions Results, Inc. shall have until November 13, 2006, to oppose defendant's motion for a protective order; and it is further

ORDERED, that this Court's November 6, 2006 order be, and hereby is, VACATED.

UNITED STATES DISTRICT JUDGE