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FILED IN UNITED STATES DISTRICT
COURT, DISTRICT OF UTAH
MAR 19 2004
BY **MARKUS B. ZIMMER, CLERK**
DEPUTY CLERK

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

World Wide Association of Specialty Programs, a Utah Corporation,	:	SUBSTITUTE REDACTED PLEADING
Plaintiff,)	(Reply to Plaintiff's Opposition to Motion
	:	To Compel Answers to Interrogatories and Requests
)	for Production of Documents and For Sanctions)
v.	:	
)	
PURE, Inc., PURE Foundation, Inc.	:	Case Number:2:02-cv-00010PGC
Sue Scheff, and Does I through 10,)	
Defendants.	:	Judge Paul G. Cassell
)	

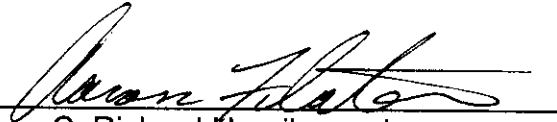
COME NOW the Defendants above named and hereby file the following substitute redacted pleading for in place of the Reply to Plaintiff's Opposition to Motion to Compel Answers to Interrogatories and Requests for Production of Documents and For Sanctions with Exhibit A. The redacted pleading is attached hereto as Exhibit "1"

This document was originally filed with the court on January 23, 2004.

The docket number of the original pleading is 128.

128

DATED this 19 day of March, 2004.



C. Richard Henriksen, Jr.
Aaron W. Flater
Attorneys for Defendant

CERTIFICATE OF MAILING

I hereby certify that on the 19th day of March, 2004, a true and correct copy of the foregoing **SUBSTITUTE REDACTED PLEADING REPLY TO PLAINTIFF'S OPPOSITION TO MOTION TO COMPEL ANSWERS TO INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS AND FOR SANCTIONS WITH EXHIBIT A** was hand delivered, to the following:

Fred Silvester
Spencer Siebers
Silvester & Conroy L.c.
230 South 5th East, Suite 590
Salt Lake City, Utah 84102

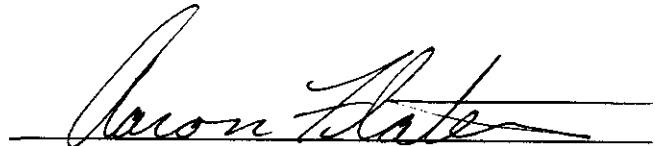


EXHIBIT “1”

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

World Wide Association of Specialty Programs, a Utah Corporation,)	REPLY TO PLAINTIFF'S OPPOSITION
	:	TO MOTION TO COMPEL ANSWERS
)	TO INTERROGATORIES AND
Plaintiff,	:	REQUESTS FOR PRODUCTION OF
)	DOCUMENTS AND FOR SANCTIONS
v.	:	
)	
PURE, Inc., PURE Foundation, Inc.	:	Case Number:2:02-cv-00010PGC
Sue Scheff, and Does I through 10,)	
	:	
Defendants.)	Judge Paul G. Cassell

COME NOW the Defendants, PURE, Inc., Sue Scheff and Jeff Berryman by and through counsel and hereby respectfully submit this Reply to Plaintiff's Opposition to Motion to Compel Answers to Interrogatories and Requests for Production of Documents and For Sanctions. Although the Plaintiff in this case vehemently complains that the Defendants have not produced discovery and have concealed documents it is obvious in

this case that it is the Plaintiff who is guilty of these practices. The Plaintiff appears to believe that it should be held to a lesser discovery standard than it imposes on the Defendants. This is not appropriate and the Plaintiff must be accountable for the information and documents it has failed or refused to produce.

INTERROGATORY NO. 2: The information requested in this Interrogatory about the owners, operators and shareholders of WWASP programs is relevant as it is reasonably calculated to lead to the discovery of admissible evidence. In attempting to resolve these discovery disputes the court and the Defendants relied on the Plaintiff's false and misleading statements that it was unaware of the information requested in Interrogatory No. 2, thus in its Order dated May 16, 2003 the court stated "the court notes that World Wide indicated in its response that it did not know the names of the owners of the real estate, incorporators and directors of the schools it named, therefore this Interrogatory has been sufficiently answered." (See Order attached as Exhibit "A") It was not until the deposition of Robert Litchfield, a trustee and member of the board of directors of WWASP, that it was revealed that the Plaintiff had not been honest in providing its prior response. It was very clear from the deposition of Robert Litchfield that he had much more knowledge about WWASP programs and their owners, operators, shareholders, members, managers, incorporators, partners, trustees and the owners of real property and physical facilities. The truth is that Robert Litchfield's brother owns some of the programs and that his own family partnership owns some of the real estate on which these programs are located.

WWASP did not and still has not provided all of the information it knows about these programs and must be compelled to do so. This information is very relevant because the Plaintiff complains that the Defendants have made defamatory remarks and statements about its programs and business practices throughout the world, including overseas programs in Mexico, Jamaica and Samoa, where it would be a burdensome and time consuming process to attempt to have these Subpoenas recognized and enforced by foreign courts. The difficulty and burden the Defendants would encounter in attempting to obtain this information themselves emphasizes the need for the Plaintiff's to provide the information it has within its control. Therefore WWASP must be ordered to completely and honestly answer this Interrogatory. Contrary to the Plaintiff's assertion, there is no heightened burden because this has not been a running discovery dispute. The court and the Defendants simply relied on the Plaintiff's false statement that it was not aware of any further information about the programs.

INTERROGATORY NO. 3: This Interrogatory requests information about lawsuits about lawsuits in which WWASP, its programs or employees of its programs were involved. After the Plaintiff had fully responded and supplemented its answer to this Interrogatory, the Defendants pointed out omissions of which they were aware. The Plaintiff acknowledged that it had not provided information about these cases and then affirmed that they are aware of no other cases. However the Defendants have a reasonable belief that this information is not complete. Newspaper articles indicate that criminal charges

were filed in Costa Rica against Narvin Litchfield, the brother of WWASP director, Robert Litchfield. Additionally newspaper articles indicate that criminal charges were filed against the directors of the Morova Academy, a WWASP program in Czechoslovakia. WWASP has demonstrated a pattern of providing partial information in an attempt to demonstrate that it has complied with discovery requests. The partial information that is provided is not sufficient and WWASP should be compelled to fully and completely answer each Interrogatory and Request for Production.

INTERROGATORY NO. 6: The Plaintiff's complaint makes it clear that they are seeking compensatory damages for direct economic loss and for general damages for damage to it's reputation as well as damages to it's business relationships, loss good will, loss profits and loss business opportunities, thus the information sought is directly related to those claims of damages. Until WWASP agrees not to seek any compensation for these claimed damages, the Defendants must persist in obtaining all of the information and all of the documents related to the Plaintiff's claimed damages. Jean Foye is the individual identified by the Plaintiff that will testify regarding these damages. Ms. Foye is the President of Teen Help, WWASP's marketing organization, and in her deposition she admitted that she did not produce the documents that supported the Plaintiff's claimed damages. In a conversation between Defendants counsel and Plaintiff's counsel, who represented Jean Foye and Teen Help, Plaintiff's counsel stated that he was not aware that those documents had not been produced and the parties agreed to take approximately

a one hour break to allow Jean Foye to go to her office and get those documents. WWASP's attorney redacted the names and identifying information from the documents and produced those to the Defendants. As the deposition continued, Jean Foye admitted that she had additional documents and notes that she had not produced. WWASP claims that they are willing to produce those documents but still has not done so despite the fact that Jean Foye's deposition was on December 1, 2003.

INTERROGATORY NO. 9: WWASP unsuccessfully tries to divert attention away from the fact that it has not provided the address, phone number or reason for termination for any of the employees it identified. It was apparent at the depositions of Kenneth Kay and Robert Litchfield that both of these individuals were well aware of Amberly Knight and why she terminated her employment with Carolina Springs Academy, however this information was not provided in response to this Interrogatory. All of this information should be provided for all of the former employees. WWASP must be compelled to provide all of this information for all of the former employees of which WWASP is aware and WWASP should be required to make a reasonable investigation into the facts and documents within its own possession and control, including the knowledge held by its employees and directors.

INTERROGATORY NO. 13: WWASP continues to be vague and conclusory in answering these Interrogatories. WWASP has not provided any notes from telephone conversations or time records from employees involved with employees who have

disseminated corrections, instead WWASP provides only a conclusory statement that "Mr. Kay estimates that WWASP well over 100 hours specifically engaged in responding to Defendants allegations." Mr. Kay's vague estimation does not rise to the level of providing every fact, document, statement or witness or other evidence that supports its claims of economic loss associated with disseminating corrective information.

INTERROGATORY NO. 15: The Defendants acknowledge that WWASP was not required to disclose the names, addresses and telephone numbers of parties to confidentiality agreements, however the court did order that WWASP should provide the typical contents of any such agreements. The Defendants in this case have stated that parents and students have complained about practices and abuses in WWASP programs and the Plaintiff has claimed that all of these statements are false and misleading. The only conceivable reason WWASP would enter into a full or partial tuition refund to a parent in exchange for a confidentiality agreement would be that the parent or student has dissatisfaction or complaints with the WWASP program. If these dissatisfaction or complaints were made known, they would verify statements made by the Defendants about the improper treatment of children at WWASP facilities. Therefore these documents are highly relevant and at the very least WWASP should be compelled to provide "the typical contents of these confidentiality agreements" as ordered by the court.

REQUEST FOR PRODUCTION NO. 6: Regarding this Request, the Plaintiff spends substantial time misdirecting the courts attention away from the simple premise that a party

has a duty to provide documents in its possession when those documents have been specifically requested by the other party. Once again the Plaintiff attempts to apply a double standard to discovery in this case complaining that the Defendants have not produced documents while it refuses to produce the documents it has in its possession. The Plaintiff's claim that they should not have to produce documents they obtained or downloaded on the internet is disingenuous. The world wide web is a static and ever changing medium and documents that are posted may be here one day and gone tomorrow. To the extent that the Plaintiff have documents in their possession that are responsive to this request they should be required to produce any and all such documents. Furthermore the cases cited by the Plaintiff do not support the Plaintiff's position and in those cases cited the documents had already been produced and the attorneys objected to producing their organization of the documents that had already been produced. See Sporck v. Peil 759 F.2d 312, 315 (3rd Cir 1985) and James Julian, Inc. v. Raytheon, Co. 93 FRD 138, 144 (D.DEL.1982) In this case the Defendants are not seeking to discover how the Plaintiff has organized the documents he has in his possession but the Defendants are seeking and are entitled to all of the documents that are discoverable and responsive to this request for production. With regards to the documents that WWASP has in its possession from C.B. , the Plaintiff paid C.B. \$12,500.00 to obtain possession of her computer and download numerous documents. The Defendants have not been able to have the same opportunity to access C.B. computer and

download the same material that the Plaintiff has in its possession. The Plaintiff has intentionally failed to produce these documents but instead used them on a piece meal basis to support its own claims and allegations. The Defendants are entitled to more than a piece meal production of documents. Included in those materials may be documents helpful to the Defendants and their defenses and these documents must be produced. The Defendant, Sue Scheff, has attempted to cooperate with the Plaintiff regarding the production of Trekkers E-mails and postings. After receiving those E-mails, the Defendants did produce a disk containing those E-mails to the Plaintiff. Just as the Plaintiff has so adamantly argued, the Defendants are only required to produce the documents in their possession and control. To the extent that these documents may be available from a third party, the Defendants have no power or control over that third party and the Defendants are entitled to seek those from third party witnesses. Nevertheless there is no justification for the Plaintiff's failure to produce the documents they received from the computer of C.B. . Finally the Defendants are unaware of what other documents may also be in the Plaintiff's possession that they are refusing to produce for one reason or another. If in fact the Plaintiff has additional documents responsive to this discovery request, it must indicate what those are produce them.

REQUEST FOR PRODUCTION NO. 7: The Defendants first served their Requests for Production of Documents in March of 2003, therefore, the Plaintiff has known since that time that the Defendants had requested all of its policies and procedures manuals. The

Plaintiff finally produced a policy and procedure manual, but it was not until the deposition of Bob Litchfield on December 4, 2003 that the Defendants became aware that WWASP had a much more extensive policies and procedures manual that it had failed to produce. WWASP now pretends to be cooperative in producing this discovery by stating that they offered to provide it in a letter dated December 22, 2003. It has now been over a month since that letter was sent and WWASP has still not provided the additional policies and procedures manuals.

REQUEST FOR PRODUCTION NO. 10: The Plaintiff misstates the order of the Court.

The Court held that these documents did not need to be produced until the parties had reached an agreement to protect confidentiality of individuals involved or until the parties had briefed the confidentiality issue to the Court. Since the time of that order, there has been an implicit agreement between the attorneys and parties that when documents are produced that contain confidential information that names and other identifying information about individuals can and should be redacted from those documents. Therefore, the Plaintiff's failure to produce these documents is without basis and they should be produced. Furthermore, these letters of complaint are highly relevant as they would support and verify the truth of the Defendants' statements that parents and children have complained of abuses in WWASP programs.

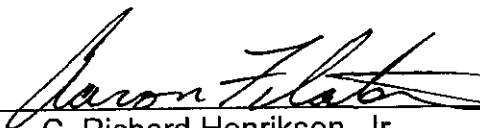
REQUEST FOR PRODUCTION NO. 11: Although WWASP initially objected to this request, the Court ordered WWASP to produce the documents responsive to this request.

This request not only requests correspondence between WWASP and governmental entities, but between any governmental entities and any WWASP programs. The Defendants never limited this request to copies of correspondence between governmental entities and the Dundee Ranch Academy. The Plaintiff now argues that it is willing to produce those documents but as of today still has not done so. Furthermore, the Defendants have now received evidence that the WWASP president, Ken Kay, was sent correspondence from the state of South Carolina regarding Carolina Springs Academy but he has failed to produce or identify this correspondence. See Letter attached as Exhibit "A" (showing a 'cc' to Ken Kay). All of this correspondence must be looked for and produced by the Plaintiff.

CONCLUSION

The Defendants' Motion to Compel is appropriate and it is obvious that the Defendants have withheld many documents and much information from the Defendants. Therefore, the Plaintiff should be ordered to completely and honestly respond to each of the Defendants' request for production and interrogatories and the Defendants should be granted their reasonable attorney's fees in bringing this Motion.

DATED this 23 day of January, 2004.

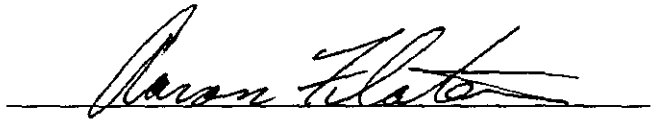


C. Richard Henriksen, Jr.
Aaron W. Flater
Attorneys for Defendant

CERTIFICATE OF MAILING

I hereby certify that on the 23 day of January, 2004, a true and correct copy of the foregoing **REPLY TO PLAINTIFF'S OPPOSITION TO MOTION TO COMPEL ANSWERS TO INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS AND FOR SANCTIONS**, was mailed, first class, postage pre-paid, to the following:

Fred Silvester
Spencer Siebers
Silvester & Conroy L.c.
230 South 5th East, Suite 590
Salt Lake City, Utah 84102
Facsimile (801) 532-2270

A handwritten signature in cursive script, appearing to read "Aaron Flato", is written over a horizontal line.

Exhibits/
Attachments
to this document
have **not** been
scanned.

Please see the
case file.
