

FILED

IN THE DISTRICT COURT OF THE CHEROKEE NATION 2017 FEB 14 PM 1:02

CHEROKEE NATION EDUCATION
CORPORATION, d/b/a CHEROKEE
NATION FOUNDATION,
Plaintiff,

Case No. CV-2016-397

CHEROKEE NATION
DISTRICT COURT
KRISTI MORCOOYEA
COURT CLERK

vs.

KIMBERLIE GILLILAND,
Defendant.

MOTION TO COMPEL DISCOVERY

COMES NOW the Plaintiff, Cherokee Nation Education Corporation, d/b/a Cherokee Nation Foundation ("Foundation") by and through its legal counsel, Ralph F Keen II, who, pursuant to the Federal Rules of Civil Procedure (FRCP) as made applicable to Cherokee civil actions by the Cherokee Code of Civil Procedure, LA-16-16 §5, moves this Court for an order compelling Defendant to respond to outstanding discovery and to produce items being withheld from Foundation. Defendant has failed or refused to provide the required discovery responses in this matter, has failed or refused to communicate with counsel regarding discovery, leaving Foundation no other alternative than to seek Court intervention. Foundation therefore, respectfully requests the Court enter an order compelling Defendant to produce the requested discovery responses and for its reasonable expenses incurred in making this motion, including attorney fees, and in support thereof, would show the Court as follows:

On July 27, 2016, Foundation served on Defendant, by private process server, written discovery in the form of Interrogatories and Requests for Production of Documents, attached hereto as Exhibits "A" and "B" respectively.¹ Under FRCP 33 and 34, Defendant had an affirmative duty to answer separately and fully, in writing and under oath and serve a copy upon

¹ Foundation also served Request for Admissions, which is the subject of a separate motion being filed with the Court contemporaneous with this motion.

counsel for the Foundation within thirty (30) days of service. To date, Defendant has failed, refused, or neglected to provide discovery responses, leaving Foundation with no other recourse than to seek this Court's intervention and an Order Compelling Discovery.

AUTHORITIES

The Federal Rules of Civil Procedure permit parties in litigation to *"obtain discovery regarding any non-privileged matter that is relevant to any party's claim or defense."* FRCP 26(b)(1). Specifically relating documents to in their possession, FRCP 34(a)(1)(A) requires that parties subject to a request must produce:

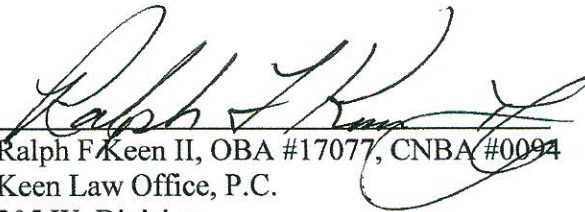
(A) Any designated documents or electronically stored information - including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations - stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form; or (B) any designated tangible things... .

Regarding such requests for production, the Sixth Circuit has emphasized that *"the rules are broad, and litigants are required to comply with all properly propounded document requests."* Varga v. Rockwell Int'l Corp., 242 F.3d 693, 697 (6th Cir. 2001) (citing FRCP 34).

Similarly, with respect to written interrogatories, FRCP 33(b)(2) requires: *"The responding party must serve its answers and any objections within 30 days after being served with the interrogatories. A shorter or longer time may be stipulated to under Rule 29 or be ordered by the court."* Failure to comply with these Rules subjects the party to sanctions under FRCP 37, including the payment of the movant's reasonable attorney's fees. In light of these rules, their broad construction, and Foundation's reasonable requests for relevant discovery items, Defendant stands in clear violation of the rules governing document production and responding to written interrogatories.

WHEREFORE, for these reasons and considering the nature of the Defendant's blatant disregard for her duty to respond to discovery in this case, Foundation respectfully requests the Court enter an order compelling the Defendant to comply with discovery, and to pay the expenses and attorney's fees incurred by Foundation in prosecuting this motion.

Respectfully submitted,

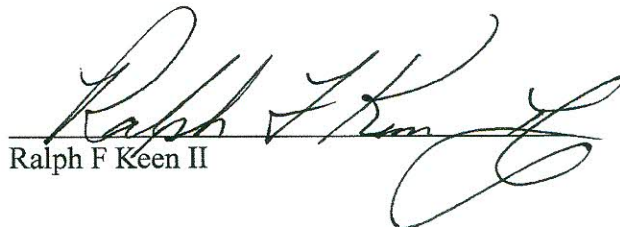


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Attorney for Foundation

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing *Motion to Compel Discovery* was emailed and/or mailed, postage pre-paid, this 14th day of February, 2017, to the following:

James J. Proszek
HALL, ESTILL, HARDWICK, GABLE,
GOLDEN & NELSON, P.C.
320 South Boston Avenue, Suite 200
Tulsa, OK 74103
Attorney for Defendant



Ralph F. Keen II

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PLAINTIFF'S FIRST SET OF INTERROGATORIES TO THE DEFENDANT

Plaintiff, Cherokee Nation Education Corporation d/b/a Cherokee Nation Foundation (hereinafter "Foundation"), by its undersigned attorney and pursuant to Rule 33 of the Federal Rules of Civil Procedure as amended, hereby serve the following interrogatories to be answered separately and fully in writing, under oath and signed by said defendant within 30 days after service.

In answering these interrogatories please furnish such information as is available to you, not merely information you now have of your own personal knowledge. This means you are to furnish information which is in the possession of any of your agents or attorneys or otherwise subject to your custody or control. In order to simplify the issues and resolve as many matters of fact as possible before trial, the plaintiff further requests that if you cannot answer any of these interrogatories in full, please answer to the extent possible, specifying the reason for your inability to answer the remainder and stating whatever information or knowledge you have concerning the unanswered portion.

INSTRUCTIONS

1. In answering these Interrogatories you are requested to furnish all information which is in your possession, custody or control, including information in the possession of your



attorneys or other persons directly or indirectly employed or retained by you, or anyone else acting in your behalf or otherwise subject to your control.

2. In requesting the identity of individuals, persons or experts, you are requested to include your employees, agents, contractors, subcontractors or consultants.

3. If any of the following Interrogatories cannot be answered in full, please answer them to the fullest extent possible, explaining why you cannot answer the remainder, and stating any information or knowledge which you have concerning the unanswered portion.

4. In construing these Interrogatories the singular shall include the plural and the plural shall include the singular. Any pronoun means the masculine or feminine gender and the singular or plural as in each case may be appropriate. The use of a verb in any tense shall be construed as the use of the verb in all tenses as is necessary that might otherwise be construed to be outside its scope.

5. These Interrogatories shall be deemed continuing so as to require further and supplemental answers if you obtain information with respect to the subject matter of any of these Interrogatories, which renders your answers thereto incomplete, inaccurate or in any way misleading, pursuant to Rule 26(e) of the Federal Rules of Civil Procedure.

6. If you currently lack information to answer any Interrogatory completely, state:
- (a) The responsive information currently available;
 - (b) The responsive information currently unavailable;
 - (c) Efforts which you intend to make to secure the information currently unavailable; and
 - (d) When you anticipate receiving the information currently unavailable.

DEFINITIONS

1. When used in these Interrogatories, the pronouns "you," "your" and "yours" and the term "Defendant" are intended to and shall embrace and include, Kimberlie A. Gilliland and any other person acting or purporting to act on behalf of Kimberlie A. Gilliland, her counsel and all of her agents, servants, employees, representatives, private investigators and others who are in possession of or may have obtained information for or on behalf of the party to whom these Interrogatories are directed.

2. "Foundation" shall refer to the named plaintiff, Cherokee Nation Education Corporation d/b/a Cherokee Nation Foundation.

3. The words "person" and "persons" include, without limitation, individuals, associations, partnerships and corporations.

4. The term "document" is used herein in its customary broad sense and means any kind of printed, recorded, written, graphic or photographic matter (including tape recordings), however printed, produced, reproduced, coded or stored, of any kind or description, whether sent or received or not, including originals, drafts, copies, nonidentical copies or reproductions, summaries, reports, data compilations and tabulations, whether stored by mechanical, photographic or electronic means (including electronic data storage media of all types). The term "documents" shall also include, but not be limited to, the following: any writing, drawing, graph, chart, plat, map, photograph, motion picture film, phonograph record, tape and video recording, or any other records or data compilations from which information can be obtained. The term "document" shall also include, without limitation, each note, memorandum, letter, work paper, minutes, book, diary, forecast, blueprints, index, microfilm, account, opinion, appraisal, brochure, pamphlet, circular, telegram, release, article, analysis, transcript, agreement, deposit slip, bank

statement, check, front and back, check stub, receipt, stock certificate, bond, bond coupon statement, confirmation, magnetic tape data sheet, data processing card or disk and any other written, recorded, transcribed, punched, taped, filmed or graphic matter, however produced or reproduced and any other document or writing of whatever description, including, but not limited to, any information contained in any computer although not yet printed out.

5. "Describe" when used with respect to any statement or communication means to identify the person making the statement or communication, the date it was made, the person or persons to whom the communication was made and who witnessed the same, the contents of the communication and the place where it was made.

6. "Describe" when used in connection with an act means to provide the identity of the actor, the specific nature of the act, the date and place of the act and the identities of the individuals present.

7. "Identify" or "identity" or "identification:"

7.1. When used in reference to a natural person, requires statement of the person's full name, present or last known address and present or last known telephone number.

7.2. When used with a person other than a natural person, these terms require statement of the full name of the organization, and present or last known location.

7.3. When used with reference to a document, these terms require the title or character of the document (such as "letter," "memorandum" or "receipt"); the author and every person signing the document; every recipient of the document; the date the document was prepared, executed and transmitted; a description of the general subject matter of the document; and the identification of every person in whose custody the document is now being kept. At your option, complete and legible copies of any document may be attached to your answers to these

interrogatories, appropriately labeled to correspond to the interrogatory in response to which it is being produced.

7.4. When used in reference to a meeting, conference, conversation or other communication, these terms require statement of the date and time, the identification of each person involved and the location of each party to the meeting, conference, conversation or other communication at the time it took place.

8. "And" and "or" shall be construed both disjunctively and conjunctively.

9. Persons upon whom you "rely" for an Interrogatory answer means any and all of the following: (i) persons who are the source of the information upon which the answer is based; and (ii) persons who have information which supports the answer.

INTERROGATORIES

INTERROGATORY NO. 1: Please identify all person(s) (by name, relationship, address, and phone number) who you may rely upon as a witness in your defense, or who may otherwise have factual knowledge or information concerning the matters and allegations contained in plaintiff's petition.

INTERROGATORY NO. 2: For each person identified in the preceding interrogatory, please provide a summary of the expected testimony, or the count or counts in plaintiff's petition to which that witness may have knowledge or information.

INTERROGATORY NO. 3: Please disclose the nature and extent of both your pecuniary interest, and your ownership interest, in Cherokee Media Limited a/k/a Cherokee Media Ltd.

INTERROGATORY NO. 4: Please disclose what offices, positions and responsibilities you hold, or have held, in Cherokee Media Limited a/k/a Cherokee Media Ltd.

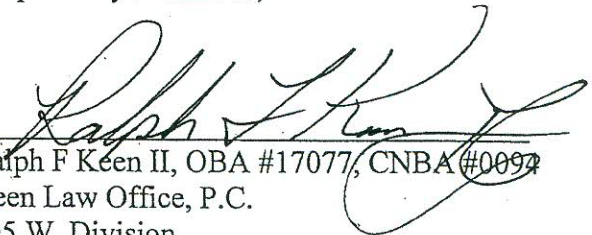
INTERROGATORY NO. 5: Please disclose the location the Hewlett-Packard Designjet Z3200PS 44" Photo Printer and software disks were delivered to after being removed from the Foundation corporate offices in June of 2013.

INTERROGATORY NO. 6: Please disclose the names of all individuals serving on the Board of Directors of the Foundation at the time you accepted the position of Executive Director, and the names of any additional individuals who were appointed to the Board during your tenure as Executive Director up until your departure from Foundation employment in July of 2013.

INTERROGATORY NO. 7: Please disclose the terms, conditions and consideration given for any and all contracts or agreements entered, written or oral, between Foundation and Cherokee Media Limited a/k/a Cherokee Media Ltd. during your tenure as Executive Director.

INTERROGATORY NO. 8: Please disclose the name and address of the attorney with whom you consulted concerning the Foundation and violation of the Sunshine Ethics Act as referenced in the Cherokee Phoenix article dated October 2, 2014.

Respectfully submitted,


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Attorney for Plaintiff

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CHEROKEE NATION EDUCATION
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Plaintiff,

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KIMBERLIE GILLILAND,
Defendant.

**PLAINTIFF'S FIRST REQUEST FOR PRODUCTION
TO THE DEFENDANT**

TO: Kimberlie A. Gilliland
28177 S Boat House Ln.
Park Hill, OK 74451

Pursuant to FRCP Rule 34, Plaintiff, Cherokee Nation Education Corporation d/b/a Cherokee Nation Foundation (hereinafter "Foundation"), requests that defendant, Kimberlie A. Gilliland, respond within thirty (30) days to this request to produce documents and/or things which are in her possession, custody or control, by producing the documents and/or things at the offices of KEEN LAW OFFICE, P.C., 205 West Division, Stilwell, OK 74960, or at such other time and location as the parties agree.

INSTRUCTIONS

1. This request shall be deemed continuing pursuant to Rule 26(e) of the Federal Rules of Civil Procedure, so as to require amended response if you obtain information on the basis of which you know that any response made was incorrect when made or, although correct when made, is no longer true.

2. If any document and/or thing is withheld for any reason, including but not limited to any alleged claim of privilege, confidentiality or trade secret or for any other reason or



objection, please provide a description of the document and/or thing being withheld which includes the following: (a) the date of the document; (b) the author of the document; (c) the recipient of the document; (d) all persons to whom copies of the document have been furnished; (e) the subject matter of the document and/or thing; (f) the file in which the document is kept in the normal course of business; (g) the current custodian of the document and/or thing; and (h) the nature of the privilege or other reason for not producing the document and/or thing and sufficient description of the facts surrounding the contents of the document and/or thing to justify withholding the document and/or thing under said privilege or reason.

3. If any document and/or thing responsive to this request was, but is no longer in your possession, custody or control, or in existence, state whether it (a) is missing or lost; (b) has been destroyed; (c) has been transferred voluntarily or involuntarily to others; or (d) has been otherwise disposed of, and in each instance explain the circumstances surrounding the authorization of such disposition and state the date or approximate date thereof.

DEFINITIONS

1. "You" or "your" shall refer to Kimberlie A. Gilliland, her agents, employees, accountants, investigators, and employees, and anyone else acting on Kimberlie A. Gilliland's behalf.

2. "Foundation" shall refer to the named plaintiff, Cherokee Nation Education Corporation d/b/a Cherokee Nation Foundation.

3. "Documents" shall include, but is not limited to, any information whether it be written, recorded or graphic materials, however produced or reproduced, including, but not limited to, correspondence and other written communications, notes, memoranda and articles. This Request for Production includes all responsive documents available to or in the possession,

custody, or control of defendant, her attorney or agents.

4. As used in this request, a document and/or thing "evidencing," "concerning" or "relating to," or their derivatives, a given subject means any document and/or thing constituting or comprising that subject, and any document and/or thing identifying, referring to, dealing with, commenting upon, describing, summarizing, analyzing, explaining, detailing, outlining, defining, interpreting, or pertaining to that subject.

REQUEST FOR PRODUCTION

REQUEST NO. 1: Please provide copies of all formation documents related to Cherokee Media Limited a/k/a Cherokee Media Ltd., including, but not limited to, articles of organization, bylaws and/or any partnership or operating agreements as may be applicable.

REQUEST NO. 2: Please provide copies of all tax returns filed by Cherokee Media Limited a/k/a Cherokee Media Ltd. for tax years 2010 through 2014.

REQUEST NO. 3: Please provide copies of all personal tax returns filed by you for tax years 2010 through 2014.

REQUEST NO. 4: Please produce for inspection and testing any laptop computers, hard disk drives or other electronic storage media in your possession which were utilized by you at any time during your employment as Executive Director of the Foundation.

REQUEST NO. 5: Please provide copies of all your higher education diplomas together with transcripts.

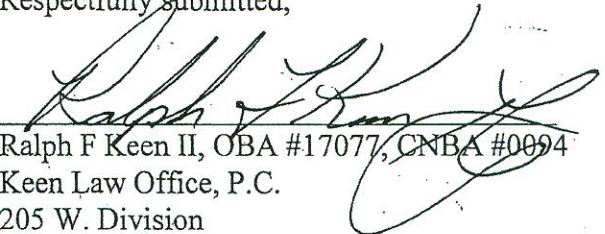
REQUEST NO. 6: Please provide any and all written contracts or agreements in your possession relating to your position as Executive Director of the Foundation including employment contracts and/or severance agreements.

REQUEST NO. 7: Please provide any and all written contracts or agreements in your

possession relating to any other employee of the Foundation during your tenure as Executive Director of the Foundation including employment contracts and/or severance agreements.

REQUEST NO. 8: Please provide any and all written contracts or agreements in your possession entered between Foundation and Cherokee Media Limited a/k/a Cherokee Media Ltd. during your tenure as Executive Director.

Respectfully submitted,



Ralph F Keen II, OBA #17077, CNBA #0094

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Attorney for Plaintiff