

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
OWENSBORO DIVISION

FORBA HOLDINGS, LLC,

PLAINTIFF

vs.

NO. 4:08-CV-137-M

DEBBIE HAGAN

DEFENDANT

BEFORE E. ROBERT GOEBEL
UNITED STATES MAGISTRATE JUDGE
OCTOBER 17, 2011
OWENSBORO, KENTUCKY

APPEARANCES:

For the Plaintiff: Thor Y. Urness
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For Defendant: Pro Se
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Proceedings reported by mechanical stenography,
transcript produced by computer.

1 THE COURT: Madam Clerk, please call the
2 next matter on the Court's docket.

3 THE CLERK: Civil Action
4 No. 4:08-CV-137, Forba Holdings, LLC, v. Debbie
5 Hagan.

6 THE COURT: Appearances, please, for
7 FORBA Holdings.

8 MR. URNESS: Yes, Your Honor. Thor
9 Urness on behalf of the plaintiff.

10 THE COURT: Ms. Hagan, correct?

11 MS. HAGAN: Yes.

12 THE COURT: All right. What the Court
13 has before it this morning is plaintiff's motion for
14 sanctions against the defendant in this case,
15 Ms. Debbie Hagan, to enforce a consent injunction to
16 show cause as to why the defendant should not be
17 held in contempt -- or to hold the defendant in
18 contempt and for an award of attorney's fees, the
19 imposition of fines and other relief.

20 Ms. Hagan has filed a document in this
21 case in response to the plaintiff's motion for
22 sanctions and has included in her response her own
23 motion to quash and a motion to dismiss the consent
24 injunction.

25 Are the parties ready to proceed?

1 Mr. Urness?

2 MR. URNESS: Yes, Your Honor.

3 THE COURT: Ms. Hagan?

4 MS. HAGAN: Yes, sir.

5 THE COURT: All right. If you will.

6 MR. URNESS: May it please the Court.

7 I'm Thor Urness and I represent the
8 plaintiff in this action. This is a motion for
9 sanctions. We are basically seeking three parts of
10 relief.

11 We are seeking sanctions for the
12 violations of the Court's order that have already
13 incurred. We are seeking a prospective sanction to
14 try to avoid having to come back on a serial basis,
15 and we are also seeking relief in the form of
16 essentially discovery. Answers to the discovery
17 were served previously in the case so that we could
18 learn the identities of any persons who are current
19 or former employees of our client who have been
20 providing information to Ms. Hagan for posting of
21 the blog in contravention of their agreements with
22 our client.

23 We have prepared a notebook of the blog
24 entries that are subject to the motion. If I could
25 pass that forward, Your Honor.

1 THE COURT: You may.

2 MR. URNESS: And Ms. Hagan already has a
3 copy.

4 May I approach?

5 THE COURT: Yes, you may.

6 Thank you.

7 MR. URNESS: These are simply the
8 printouts of the different some 20 blog entries that
9 were the subject of our briefing, and I won't go
10 into those in detail really, other than to point out
11 organizationally that the group A, those are the
12 blog entries that Ms. Hagan appears to have taken
13 down since we filed the motion, and then group B,
14 and these are numbered corresponding to the manner
15 in which we briefed them. Those are the blog
16 entries that appear to remain on her site as of the
17 27th of September.

18 This is something of a game, catch me if
19 you can, we've had to play ever since the consent
20 injunction was entered into. There is a program
21 that we subscribed to that tells us every time there
22 is a change made to her site, and we have to go look
23 at the site and see what sort of information has
24 been posted.

25 At some points in the past after the

1 injunction was entered, Ms. Hagan has agreed to take
2 down some information. But it's just continued to
3 be an issue for our client with confidential and
4 internal information, which she agreed and the Court
5 ordered that she not post to the blog, continuing to
6 appear in the blog. All we want is for this to
7 stop.

8 We think a sanction for the purposeful
9 and -- well, repeatedly purposeful violations of the
10 court order is in order, and we think a prospective
11 sanction is the only way that we are likely to see
12 any meaningful relief. And then, most importantly,
13 because she does appear to be getting information
14 from one or more persons at our company in violation
15 of confidentiality agreements, the policies of our
16 client with its employees and the internet posting
17 policies, we think it is appropriate that those
18 people be identified, so that we can put a stop to
19 whoever is providing information to her in
20 contravention of the obligations to our client.

21 We have cited the Immunomedics case as
22 the authority in that regard. There is simply no
23 protection for somebody who is violating their own
24 agreement with their employer and providing internal
25 confidential information to a third party that is

1 posted on the internet.

2 Now, I do want to be clear, and we've
3 been very clear with Ms. Hagan, we're not here to
4 interfere with her first amendment rights at all.
5 Her blog posting, if the Court has had a chance to
6 look at it, is voluminous. We are focused on
7 discreet parts of that blog that are violations of
8 an order that she agreed to and this Court has
9 ordered. So that's the relief we are seeking.

10 And, again, we think the most important
11 relief, perhaps, for our client is to determine what
12 the source is of this information that is being
13 provided to her. Because it's internal, it's not
14 supposed to be provided to her, and she is grossly
15 mischaracterizing any snippet of information she is
16 able to obtain improperly from the company.

17 She is entitled to make a fair comment
18 on her blog site. This is not about that. We have
19 made it very clear to her notwithstanding what she
20 said in portions of her response, we're not here to
21 abridge her first amendment rights. We just want
22 her to abide by the orders she agreed to in the
23 Court's order. So our position is that.

24 Thank you, Your Honor.

25 THE COURT: Thank you.

1 Ms. Hagan, do you wish to address the
2 Court at this time?

3 MS. HAGAN: Yes, please.

4 THE COURT: You may.

5 MS. HAGAN: Excuse me if I'm a little
6 nervous.

7 THE COURT: Before we go on, Mr. Urness,
8 I'm assuming that you intend to produce evidence,
9 sworn testimony at this hearing regarding these
10 matters; is that correct, sir?

11 MR. URNESS: Your Honor, we did not
12 understand this to be an evidentiary hearing. We
13 have an affidavit in the record, and we have the
14 blog entries that are referenced in the record.
15 They are on the internet. They are authenticated
16 essentially through the citations in the record,
17 and, again, we have them printed out. We did not
18 understand this to be --

19 THE COURT: The Court anticipated this
20 as an evidentiary hearing.

21 MR. URNESS: All right. Well, Your
22 Honor, we have --

23 THE COURT: I'm assuming what you would
24 do at that point in time is you would put the
25 gentleman on the witness stand who made this

1 d e c l a r a t i o n a n d s u b j e c t h i m t o c r o s s - e x a m i n a t i o n
2 b o t h b y M s . H a g a n a n d b y t h e C o u r t .

3 M R . U R N E S S : Y o u r H o n o r , I l o o k e d a t
4 y o u r o r d e r . I d i d n ' t u n d e r s t a n d t h a t t h i s w a s t o
5 b e --

6 T H E C O U R T : M a y b e w e w e r e n o t c l e a r
7 e n o u g h .

8 M R . U R N E S S : W e l l , I ' m n o t s a y i n g t h a t .

9 T H E C O U R T : W e l l , m a y b e w e w e r e n o t
10 c l e a r e n o u g h . I ' m s e r i o u s . M a y b e w e w e r e n o t c l e a r
11 e n o u g h i n i n d i c a t i n g t h a t t h i s w o u l d b e a n
12 e v i d e n t i a r y h e a r i n g . I d o n ' t r e a l l y s e e h o w y o u c a n
13 g o a b o u t p r o v i n g s h e h a s v i o l a t e d t h i s c o n s e n t
14 i n j u n c t i o n w i t h o u t s w o r n t e s t i m o n y i n t h i s c a s e .

15 N o w , y o u s a y y o u h a v e a n a f f i d a v i t , b u t
16 t h e C o u r t h a s i n m i n d t e s t i m o n y t h a t i s s u b j e c t t o
17 c r o s s - e x a m i n a t i o n . A n d I ' m p a r t i c u l a r l y c o n c e r n e d
18 i n t h i s s i t u a t i o n w i t h -- I ' m a s s u m m i n g y o u h a d n o
19 i n t e n t i o n o f m a k i n g t h i s p r e s e n t a t i o n t o t h e C o u r t .
20 T h e C o u r t t h i n k s i t ' s n e c e s s a r y f o r y o u i n a n
21 e v i d e n t i a r y h e a r i n g e s s e n t i a l l y t o p r o v e t h a t t h e
22 d o c u m e n t s M s . H a g a n i s p u r p o r t i n g t o q u o t e o r
23 p o s t i n g o n t h i s w e b s i t e , t h i s w e b b l o g a r e , i n f a c t ,
24 i n t e r n a l d o c u m e n t s , c o n f i d e n t i a l d o c u m e n t s , s u c h a s
25 t h a t a n d s u c h a s y o u h a v e a l l e g e d a n d M r . C r u s e h a s

1 alleged in his declaration, so that the Court can
2 compare the postings in this situation with the
3 actual documents themselves to prove that they are,
4 in fact internal, confidential-type documents, which
5 she is prohibited from posting in this case.

6 MR. URNESS: I understand, Your Honor.
7 And, in fact, the blog entries themselves include
8 those entries. And one thing I can do is I can
9 cross-examine Ms. Hagan, because I think she will
10 have to admit that she received this information
11 from the -- company.

12 THE COURT: Well, you can call Ms. Hagan
13 as if on cross in this situation, but I'm a little
14 bit disappointed that we don't have this
15 presentation ready to go. I don't really think you
16 can prove your case simply with an affidavit in the
17 record in this case. I think we need evidence,
18 sworn testimony in this case.

19 When we get through with this matter,
20 I'm under an obligation to -- I make no ruling in
21 this case. I merely make a report and
22 recommendation to Judge McKinley in this matter.
23 And then you folks, of course, then have an
24 opportunity to file objections to my report and to
25 my recommendations and my factual findings and my

1 legal conclusions.

2 And Judge McKinley has to have a record
3 before him in which I think is complete. And
4 without sworn testimony subject to
5 cross-examination, I don't think this record can in
6 any way, shape or form be complete. Now, I'm
7 prepared at this time to continue this hearing to
8 another day and to bring the parties back here, both
9 parties as it were prepared to make any presentation
10 of sworn testimony that you wish.

11 But, again, I apologize that the Court
12 was not clear as to what the Court expected at this
13 hearing.

14 MR. URNESS: Well, no apology is
15 necessary. I have looked back over it, and
16 certainly we would have had Mr. Cruse if we had
17 understood --

18 THE COURT: I think it's necessary.
19 Ms. Hagan ought to have the opportunity to
20 cross-examine the declarant in this situation should
21 she wish to do so. You obviously have the
22 opportunity and right to call her as if on cross,
23 but I think just to call her as if on cross in this
24 situation would be somewhat incomplete. She has no
25 ability in this situation, I don't think, to

1 characterize your documents as internal,
2 confidential or whatever.

3 I mean, there are documents and then
4 there is documents. There is some that would be
5 confidential, some that would be internal things
6 that would be the subject of this consent
7 injunction, but at the same time, it's incomplete
8 without sworn testimony in this case as to what
9 documents are or are not.

10 I'm expecting in this situation for each
11 entry, each declaration made, a posting on the blog,
12 and then a corresponding document, internal document
13 or copyrighted document or confidential document,
14 marketing strategies, whatever it is that you're
15 claiming these things are, so that the Court can
16 actually look at your internal document and the
17 posting blog and make a determination that a
18 violation has occurred.

19 MR. URNESS: Fair enough. We can do
20 that, Your Honor.

21 Now, some of these -- there are
22 references to information, and those will have to be
23 addressed somewhat differently. Therefore, there is
24 a particular document that is posted, for example,
25 the first blog entry as part of a fable, and some of

1 them make references to I heard such and such about
2 the company, and those are pieces of information
3 that are explained in the affidavit, and Mr. Cruse
4 can testify more completely as to whether they would
5 only be available to someone who has had access to
6 internal information.

7 For example, the fact that the general
8 counsel had been hired. Nobody knew that until it
9 was publicly announced, and it showed up on the
10 blog.

11 THE COURT: I understand.

12 MR. URNESS: But we can do that, Your
13 Honor. And I apologize again for any inconvenience
14 we have caused the Court or Ms. Hagan for not having
15 Mr. Cruse here.

16 MS. HAGAN: Your Honor, may I something,
17 please?

18 THE COURT: Just one minute, if you
19 will.

20 MR. URNESS: One other point that really
21 relates to the third point that I missed, which is
22 the identity of the people posting this information,
23 that's not privileged at all. That's information
24 that we requested in discovery and wasn't provided.

25 THE COURT: Well, first of all,

1 regarding it being requested in discovery and not
2 provided, if I'm not mistaken, and you can correct
3 me if I'm wrong, but your civil action against
4 Ms. Hagan has been dismissed.

5 MR. URNESS: That's right.

6 THE COURT: The only thing that we have
7 in this case is a direct order from Judge McKinley
8 in this case that this consent injunction itself
9 remains in full force and effect. And you tell me
10 how we take formal discovery in a case that has been
11 dismissed?

12 MR. URNESS: Well, I was going to ask
13 for direction from the Court on that. I think one
14 way to do it would be to file a motion for us to
15 reopen the case, and that this discovery would be an
16 aid at execution in terms of enforcing an injunction
17 to which the parties have agreed. So it would be no
18 different than if to say that if we had an agreed
19 judgment for \$10,000, and it wasn't paid, we would
20 have the right post judgment to engage in discovery
21 as to assets of the defendant.

22 THE COURT: I would be inclined to allow
23 you to do just that, to reopen discovery here in
24 this situation and to obtain from Ms. Hagan the
25 information that you would be able to acquire

1 during the process of discovery. You did an
2 admirable job of pointing out to the Court the law
3 which you believe applies to injunctions, violations
4 of injunctions, the penalties associated with the
5 violations of injunctions.

6 But when you came to the task of saying
7 to the Court that you believe as a part of your
8 remedy for violation of the injunction that you're
9 entitled to seek direct identity from her of certain
10 named individuals within your client's company, I
11 notice no law in that situation. You recited to me
12 no law. I certainly think as a part and parcel of
13 discovery in this situation that you would be
14 entitled to do that.

15 MR. URNESS: Fair enough. We will file
16 a motion to reopen the case for purposes of
17 discovery. It was not in the motion as you pointed
18 out. It is in the reply. There is a footnote that
19 notes the Immunomedics case in terms of that
20 information. You're right, we did not brief it in
21 the context of we're entitled to it, but we can do
22 that.

23 THE COURT: Ms. Hagan, I will hear from
24 you at this time.

25 MS. HAGAN: Okay. Thank you, Your

1 Honor.

2 On September the 23rd, I sent
3 Mr. Urness a letter asking for him to bring
4 witnesses, like, for instance, Todd Cruse.

5 THE COURT: We are going to be doing
6 that.

7 MS. HAGAN: Okay. And he never
8 responded. Last week I sent him a reminder e-mail.
9 And last night at 6:14, I get a letter saying the
10 hearing is not an evidentiary hearing, and we will
11 not be bringing any witnesses. So it was up until
12 then, I prepared for evidence, because I thought I
13 should be able to, you know, like I said --

14 THE COURT: Sure.

15 MS. HAGAN: As far as revealing the
16 identities, there is case law for that, Management
17 Information Technologies v. Alyeska Pipeline
18 Services, where the judge felt that it would be
19 nothing but for retaliation against the employees.
20 And I do have a copy of that.

21 His client is under a federal corporate
22 integrity agreement for medicaid fraud, abusing
23 children --

24 THE COURT: What does that have to do
25 with what we're doing here today?

1 MS. HAGAN: Well, their corporate
2 integrity agreement lines out they are not to
3 retaliate against any of their employees. It lines
4 it out in at least six sections about
5 non-retaliation, non-retribution of employees that
6 want to come forward and tell what's going on to
7 keep them honest.

8 Also under the corporate integrity
9 agreement, they are supposed to make anything
10 available to their lawyer, because the Office of the
11 Inspector General has them monitored, and everything
12 is supposed to be pretty much open so that the
13 monitor can check. So by limiting me to be able to
14 speak, then that limits also the monitor to be able
15 to speak with me. So I would just like to point
16 that out.

17 THE COURT: Anything further, Ms. Hagan?

18 MS. HAGAN: I think that's it for right
19 now. But would you like this case?

20 THE COURT: Okay. We will go ahead and
21 mark that in this case. The Court will go ahead and
22 hang onto this notebook of blog entries, and we will
23 identify it as -- actually, I guess it's now known
24 as Church Street Health Management. You folks did
25 indicate that there has been a change of name

1 effective December 31 of 2010. So we will note for
2 the record that effective name change.

3 And I believe you acknowledged that in
4 your response, did you not, Ms. Hagan, that they had
5 changed their name?

6 MS. HAGAN: Yes. Yes, as of January of
7 this year.

8 THE COURT: We will note that. We will
9 keep this as Church Street's Health Management
10 Exhibit 1 in this case. You may go ahead and tender
11 to the Court Defense Exhibit No. 1, that case, and
12 you may file that with the Clerk here in this case.

13 Now, what to do next. The Court is
14 going to suggest that within 14 days from the day
15 that you file your motion to reopen this case --
16 Ms. Hagan, you need to pick up a copy of the local
17 rules, okay, because these local rules essentially,
18 I believe, gives some 21 days to file a response,
19 and then there is some 14 days in which they have a
20 right to file a reply.

21 Let me ask you this, Ms. Hagan. At this
22 point in time, do you object on any grounds
23 whatsoever known to you, do you object to the
24 reopening of this case for the purposes of taking
25 discovery in this matter?

1 MS. HAGAN: Yes, I do object to that.

2 THE COURT: All right. We will give you
3 an opportunity then to file your written objection
4 to it. Okay.

5 MS. HAGAN: Okay. After he files -- I
6 have two weeks --

7 THE COURT: You essentially have 21 days
8 to file your response, and then they have 14 days
9 after that to file a reply. And what we will do is,
10 I would suggest that in your motion to reopen, you
11 go ahead and include their, perhaps, interrogatories
12 and requests for production of documents that you
13 would intend to file by way of formal discovery.

14 And you may also wish, of course, to
15 take Ms. Hagan's deposition in this matter.
16 Certainly I would expect that in the process of
17 discovery that you would ask to do that.

18 I don't think it's worth our while at
19 this point in time to reset the hearing since we
20 have these motions to reopen. I would suggest that
21 the Court rule on that, and in the process of
22 reopening sets it for a hearing somewhere in the
23 future.

24 Now, the hearing that I'm going to set
25 next time, so that there is no mistake about it,

1 will be an evidentiary hearing where the Court will
2 receive and accept proof in this case. I suspect --
3 well, I'm not going to indicate what I would expect,
4 but certainly I've indicated the nature of the proof
5 I expect -- how you intend to put it on and to what
6 manner, I leave to you.

7 Ms. Hagan, you also are entitled to put
8 on proof of your own. One of the things that you're
9 going to have to understand, Ms. Hagan, is in this
10 situation that you've got to understand what is the
11 issue before this Court, and it's a lot narrower
12 than I think you believe it to be in this situation.
13 My concerns are, did you, in fact, violate this
14 consent injunction, did you violate it, and if so,
15 what are we going to do about it.

16 On your motion to dismiss, frankly, you
17 offered the Court no law whatsoever in this case on
18 your motion to dismiss. And you better be prepared
19 to argue the law on your motion to dismiss this
20 consent, one that you've already signed, one which
21 Judge McKinley has already put in the record as
22 saying it's in full force and effect as against you.
23 So you better be putting some law, some authority,
24 some legal authority for this position of dismissing
25 or quashing this consent injunction, you better be

1 putting some law in the record on that.

2 MS. HAGAN: Okay.

3 THE COURT: All right. Anything further
4 at this time? I suspect what we will be doing is
5 probably getting to an evidentiary hearing in this
6 case in February or somewhere in that neighborhood.
7 I would suspect that if the Court does allow
8 discovery in this case, that you get to it pretty
9 quick so that we can go forward with the hearing in
10 this matter.

11 The suspected discovery you want is some
12 answering of interrogatories and whatnot, maybe
13 production of documents, but certainly take the
14 deposition of this person should the Court reopen
15 it.

16 MS. HAGAN: Will I have the opportunity
17 to take depositions?

18 THE COURT: Do you know how to take a
19 deposition? Do you know what's involved? Do you
20 know the expense involved in doing that?

21 MS. HAGAN: So you're saying --

22 THE COURT: Oh, you're entitled. I
23 certainly am not going to limit discovery in this
24 case to one side. You may take discovery in this
25 case as well.

1 I'm assuming what the -- Mr. Urness,
2 could you pronounce your last name for me?

3 MR. URNESS: I answer to just about
4 anything. Urness.

5 THE COURT: Okay. I just wanted to make
6 sure that we were addressing you properly here in
7 this situation.

8 MR. URNESS: It rhymes with furnace.

9 THE COURT: Is it your intention to --
10 what is it your intention to reopen, just the issue
11 related to consent injunction, because you had a
12 Count 3 of your original complaint that dealt with
13 defamation?

14 MR. URNESS: No.

15 THE COURT: You're leaving defamation
16 alone?

17 MR. URNESS: We're happy just to have an
18 injunction in place that's abided by, so we would
19 want discovery for the purposes to determine -- now
20 I understand that there will be a full evidentiary
21 hearing. I think we are going to want to take
22 Ms. Hagan's deposition before that hearing to obtain
23 very limited answers to interrogatories and
24 documents and communications she's had with third
25 parties that are the basis of our motion, because I

1 think we can prove through that testimony, as well
2 as Mr. Cruse's testimony that -- violations. So we
3 would want that to happen.

4 THE COURT: Okay. And, Ms. Hagan, you
5 need to do two things. Get a copy of the local
6 rules. Ask our Clerk out here how to do that.

7 I believe these rules are available on a
8 website, are they not?

9 LAW CLERK: Yes, they are.

10 THE COURT: Apparently, you know how to
11 work your way around on the internet, so these are
12 available. The Federal Rules of Civil Procedure,
13 you need to get a copy of those. Specifically, you
14 need to familiarize yourself with Civil Rules 26
15 through 37. These are the rules that basically
16 pertain to discovery in a civil action. Okay. Get
17 yourself familiar with those.

18 MS. HAGAN: Is it my understanding that
19 the main thing they want is who talks to me or where
20 I get my information? Is that the main objective?

21 THE COURT: One of the things they will
22 be asking for in this situation is for you to
23 identify the sources of information, your sources of
24 information whereby you acquired information to post
25 on the web, who are you talking to or who is talking

1 to you. In this discovery, they are going to want
2 that.

3 Now, if you intend to resist that, you
4 better be able to explain legally why you are
5 entitled to resist it.

6 MS. HAGAN: Okay. And I should do that
7 in my objection, right?

8 THE COURT: I also advise you if you can
9 to have an attorney represent you in these matters.
10 Obviously, you're entitled to represent yourself
11 should you wish to do so, but you're hamstrung in
12 this situation by not having a legal education, and
13 you're hamstrung by not knowing how the rules of
14 court operate.

15 Your motion to dismiss, frankly, is
16 going to be difficult for you to sustain in this
17 case because of these -- because of some of the
18 problems you have with respect to lacking necessary
19 training and education to deal with it. So I'm just
20 going to suggest that you do that if you can.

21 We'll try to get this matter back to a
22 hearing as quickly as possible in this case. All
23 right.

24 MR. URNESS: Your Honor, I think
25 actually she may have an attorney. I spoke with

1 Mr. Flaherty. I don't know the nature of their
2 relationship is other than he has called me and
3 talked to me about it.

4 THE COURT: I'm just suggesting that he
5 helps her in going -- from this point forward to
6 have an attorney to help represent you in this
7 matter. Again, it's not required by law, but the
8 problem is you're required -- whether you have an
9 attorney or not, you're required essentially to know
10 and understand and be able to apply the rules of
11 law, cases and things.

12 MR. URNESS: One other thing.

13 THE COURT: Yes.

14 MR. URNESS: I did get this letter that
15 Ms. Hagan referred to with nine people listed and
16 she said have these people at the hearing. We will
17 have Mr. Cruse here, and I don't anticipate having
18 anyone else. Obviously, if she wants to subpoena
19 people --

20 THE COURT: If you want to have the
21 people here at the hearing in this case, ma'am, you
22 are required to subpoena them.

23 MS. HAGAN: Okay.

24 THE COURT: And anyone that you want at
25 the hearing must be subpoenaed. Be sure that --

1 you've got to be sure in this situation that you
2 don't get too far afield with your factual inquiries
3 of people.

4 MS. HAGAN: Yes, sir.

5 THE COURT: Again, I want to emphasize
6 this hearing will be fairly limited in scope.

7 MR. URNESS: In that regard, Your Honor,
8 on this issue of retaliation, she is right, there is
9 a corporate agreement in place with the government
10 in which the company is following strictly. There
11 is no intent to retaliate at all.

12 There is simply an intent to understand
13 who is abiding by a company's policies and who is
14 not, so that we don't have problems that are created
15 by the company unwittingly and that doesn't have
16 anything to do with the corporate integrity.
17 Integrity has everything to do with the reasons as
18 to why we filed this lawsuit several years ago.

19 That's all we have, Your Honor.

20 THE COURT: Ms. Hagan, do you have any
21 other questions before we adjourn this?

22 MS. HAGAN: I don't think so.

23 THE COURT: All right. Once again --
24 and you may fire this gun as quickly as you wish.
25 You don't have to wait your 14 days, but once it's

1 filed, then you've got 21 days to respond.

2 MR. URNESS: I forgot. The blog
3 entries, we would like to have those sealed just
4 because we don't -- we have complained about them
5 being on the internet. She has taken down 12 of
6 them.

7 THE COURT: That's a good point. I am
8 going to order that the notebook of blog entries,
9 Plaintiff's Exhibit No. 1, be placed in the record
10 under seal.

11 MR. URNESS: Thank you, Your Honor.

12 THE COURT: And the reason that is being
13 done, Ms. Hagan, placing it under seal, it keeps it
14 unavailable to public eyes in this case.

15 MS. HAGAN: That means I should take it
16 down from the internet since it is being sealed; is
17 that correct?

18 THE COURT: Ms. Hagan, if you have got
19 any of this material on the internet, and it's in
20 violation of the consent injunction, I suggest you
21 take it down. I will leave it to you at this point
22 in time. But if it's in violation of the consent
23 injunction in this case -- going over that
24 injunction, mainly looking --

25 MS. HAGAN: Maybe that's what my

1 confusion is is what is --

2 THE COURT: Well, I would suggest that
3 you look at the consent injunction that was entered
4 in this case, and I know you've looked at it, and
5 you've probably gone over it many times trying to
6 understand it. You seem to be a person who is very
7 fluent with the English language. You write well
8 and you apparently understand documents very well.
9 You have a lot of information that is contained on
10 your blog. I have looked at it.

11 Get your consent injunction in front of
12 you there. Do you have it there?

13 MS. HAGAN: Got it.

14 THE COURT: Now, this consent injunction
15 does not pertain to things you've necessarily done
16 in the past, it also prohibits you from doing
17 certain things in the future. The paragraph marked
18 capital A, 1, you are basically restrained and
19 enjoined from publishing or posting at your internet
20 websites or at any other location or in any other
21 manner or making available for access to any other
22 persons, a, any internal and/or copyrighted
23 documents or other information of FORBA obtained
24 directly or indirectly through access through the
25 FORBA website.

1 Now, that pertains probably to what they
2 claim in their initial complaint, that you had
3 posted from your website or you posted on your
4 website as taken from their website.

5 Subpart B goes on to say and, and/or
6 any, any other internal and/or confidential FORBA
7 documents or information. And you can read FORBA at
8 this point in time to read Church Street Management
9 since it has changed its name.

10 And for using or disclosing any
11 documents or information constituting trade secrets
12 of FORBA, including FORBA's marketing materials,
13 marketing strategy information, budgeting materials,
14 recruitment strategy information, spread sheets and
15 facility information lists. That's a pretty
16 all-inclusive list of things that you need to be
17 careful about posting.

18 MS. HAGAN: I'm not supposed to even
19 speak about it, right?

20 THE COURT: You may not -- it says using
21 or disclosing any documents or information which
22 constitutes trade secrets, including their marketing
23 materials. Just read it at face value in this
24 situation. You know, at this point in time, I have
25 to leave it to you to decide if you have any

1 information or not at this point in time that
2 violates this. Okay.

3 MS. HAGAN: I will read it and reread
4 it.

5 THE COURT: All right. Like I said,
6 once I reset this matter for a hearing, I certainly
7 am going to set it as an evidentiary hearing. And I
8 will be really plain about it next time. It will
9 essentially be a show cause hearing where the
10 plaintiff has to put on evidence. You are allowed
11 to put on evidence, not compelled, but allowed.

12 The plaintiff expects me to sustain
13 imposition, they're going to have to put on
14 evidence. But you are entitled, it's a situation
15 where you are not obligated to put on any evidence
16 in this case, but you are certainly entitled to if
17 you wish.

18 All right. Anything else occur to
19 either party in this case to ask the Court about?

20 MR. URNESS: No. Thank you, Your Honor.

21 MS. HAGAN: I don't think so.

22 THE COURT: All right. Then this matter
23 is adjourned.

24 (End of proceedings.)

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C E R T I F I C A T E

I CERTIFY THAT THE FOREGOING IS A CORRECT
TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE
ABOVE-ENTITLED MATTER.

s/Michelle E. Kerr, RPR

October 24, 2011

Michelle E. Kerr, RPR
Court Reporter

DATE