

QUAN-EN YANG, *et al.*
On their own Behalf and on Behalf
of All Others Similarly Situated,

Plaintiffs,

vs.

G & C GULF, INC. d/b/a
G&G TOWING, *et al.*

and

BRUCE PATNER t/a
PATNER PROPERTIES,
On His Own Behalf and on Behalf
of All Others Similarly Situated,

Defendants.

* * * * *

* IN THE
* CIRCUIT COURT
* FOR
* MONTGOMERY COUNTY, MD.
* Case No. 403885V

* TRACK VI
* Hon. Ronald B. Rubin,
* Specially Assigned

RECEIVED
JAN 18 2018
Clerk of the Circuit Court
Montgomery County, Md.

**RESPONSE TO MOTION TO VACATE STIPULATED ORDER
REGARDING ELECTRONICALLY STORED INFORMATION**

Plaintiffs, by and through their undersigned counsel, hereby responds to the Motion to Vacate Stipulated Order Regarding Electronically Stored Information (“Motion to Vacate”) filed by the Assignee of the assets of G&C Gulf, Inc. f/t/a G&G Towing (“G&G Towing”). Although Plaintiffs understand the Assignee’s desire to complete the transfer of G&G Towing’s assets, the fact remains that the Stipulated Order Regarding Electronically Stored Information (Dkt. No. 55)(“ESI Order”) remains relevant in this litigation unless and until Plaintiffs receive adequate assurances from G&G Towing that all ESI in this case has been produced consistent with the discovery requests previously propounded.

The ESI Order in this case requires G&G Towing to maintain: (1) its electronic data (which Plaintiffs understand is stored on G&G Towing computers and accessed through a computer program named *In Tow Management*); (2) the personal computer and E-Mail of Bryan

Sherman, G&G Towing's former General Manager;¹ and (3) video that is maintained on hard drives owned by G&G Towing. *See* Dkt. No. 55. The Motion to Vacate does not assert that G&G Towing, or the proposed transferees of its assets will incur any additional expense by continued compliance with the ESI Order; nor are Plaintiffs aware that there is any additional cost to anyone at this point in continued preservation of the ESI.

Rather, the Motion to Vacate complains that “the buyer is now disenchanted with the sale due to the refusal of the class plaintiffs” to release the ESI Order. Motion to Vacate at ¶6. *But see* Footnote 1 (noting that Mr. Sherman – who has specific obligations under the ESI Order – is likely the unidentified “buyer”). Class Plaintiffs assure the Court that our reluctance to simply release the ESI Order is neither punitive nor inflexible. Rather, Plaintiffs have not yet agreed to vacate the ESI Order because, on numerous occasions, Plaintiffs have requested that Mr. Sherman represent in writing or during a deposition that all of the information requested by Plaintiffs in discovery and preserved by the ESI Order has already been produced through the course of this litigation. To date, however, no representation has been forthcoming.

As noted above, Plaintiffs are not unsympathetic to the request set forth in the Motion to Vacate. Nonetheless, in order to protect the interests of the Plaintiff Class in this case, Plaintiffs require Mr. Sherman's representation regarding the ESI in this case before consenting to vacate the ESI Order. Absent such a representation, the question of whether to vacate the ESI Order must be left in the hands of the Court.

Respectfully submitted,

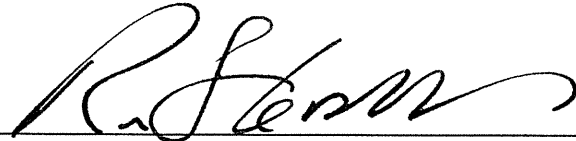
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¹ It is Plaintiffs' understanding that Mr. Sherman and his wife are the prospective buyers of G&G Towing's personal property, referenced in Paragraph 6 of the Motion to Vacate. This is purely anecdotal, however, because Plaintiffs have not been provided with a copy of, nor reviewed, the purported agreement of sale.

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By:



Richard S. Gordon

CERTIFICATE OF SERVICE

I hereby certify, this 17th day of January, 2018, that I served a copy of the foregoing Response to the Motion to Vacate Stipulated Order Regarding Electronically Stored Information, by electronic mail and first-class mail, postage pre-paid on:

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