

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PHILADELPHIA CERVICAL COLLAR : CIVIL ACTION
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JEROME MEDICAL : NO. 00-2515

MEMORANDUM AND ORDER

HUTTON, J.

April 17, 2001

Presently before this Court are Motion of Defendant Jerome Group, Inc. for Reconsideration of the Court's March 12, 2001 Order Denying Jerome's Motion to Compel (Docket No. 32) and Plaintiff's Response (Docket No. 34). For the reasons stated below, the Motion is **GRANTED in part and DENIED in part.**

I. BACKGROUND

In the instant motion to reconsider, Defendant asks the to compel further responses to interrogatories 1-3, 5 7-9, 11-12, 21 and 27. Defendant filed a motion to compel discovery responses on December 4, 2000 in which it sought to compel further responses to interrogatories 1-3, 5, 7-9, 11-12, 21 and 27. This motion was denied on January 16, 2001 because of Defendant's failure to comply with Local Rule of Civil Procedure 26.1(f). On December 11, 2000, Defendant again sought this Court's assistance obtaining the discovery at issue in the instant Motion. The Court denied the second motion of Defendant on March 12, 2001. Defendant now asks this Court to reconsider the Court's March 12, 2001 Order.

II. STANDARD OF REVIEW

Federal Rule of Civil Procedure 59(e) provides in relevant part that "[a]ny motion to alter or amend a judgment shall be filed no later than 10 days after entry of the judgment." Fed. R. Civ. P. 59(e). Generally, a motion for reconsideration will only be granted if: (1) there has been an intervening change in controlling law; (2) new evidence, which was not previously available, has become available; or (3) it is necessary to correct a clear error of law or to prevent manifest injustice. See *Wiggins v. Boston Scientific Corp.*, No. CIV. A. 97-7543, 1999 WL 200672, *2 (E.D.Pa. April 8, 1999).

III. ANALYSIS

In interrogatories 1-3, Defendant requests evidence supporting Plaintiff's allegations that it lost customers or suffered decreased sales as a result of a medical study. Defendant seeks identification of any customers lost as a result of the study, identification of any customers that have reduced their purchase orders because of the study and identification of any potential customers that may have been lost because of the study. In response to Defendant's discovery request, Plaintiff has produced written declarations from Cervical Collar customers that stated that the article distributed by Defendant to distributors and customers in the industry "caused customers to cease or diminish purchases of the Philadelphia Cervical Collar." The individual

affiants, however, do not attest to this claim. Additionally, Plaintiff indicates that Plaintiff has identified numerous witnesses in this case and that the Defendant has made no effort to depose them.

Plaintiff lists a series of individuals who it claims have knowledge about the information sought in Defendant's interrogatories and that Defendant could depose these individuals. Plaintiff, however, fails to cite any authority for its apparent position that the identification of individuals with knowledge of information satisfies its discovery obligations. Here, Defendant made specific requests of Plaintiff and Plaintiff cannot avoid its obligation under the Federal Rules of Civil Procedure to produce discoverable information by identifying non-parties to the lawsuit who have the information sought. Accordingly, the Court grants Defendant's motion to compel these particular discovery requests.

In interrogatories 5, 7-9, and 12 Defendant seeks identification of customers who purchased Plaintiff's product after the study was published, identification of the total sales of the product of each year after the study was published, identification of damages sustained and identification of how Plaintiff calculated damages. The motion with regards to these interrogatories is denied with leave to renew because the deadline for disclosing expert testimony has been extended. See Court's Order, April 17, 2001 (extending deadline for disclosure of all expert testimony).

For interrogatories 11 and 27, Defendant has not put forth any argument stating why this Court should reconsider its prior Order denying Plaintiff's motion to compel interrogatories 11 and 27. As a result, the motion to reconsider the Court's Order concerning these discovery requests is denied.

An appropriate Order follows.

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O R D E R

AND NOW, this 17th day of April, 2001, upon consideration of Defendant Jerome Group, Inc.'s Motion for Reconsideration of the Court's March 12, 2001 Order Denying Jerome's Motion to Compel (Docket No. 32) and Plaintiff's Response (Docket No. 34), IT IS HEREBY ORDERED that said Motion is **GRANTED in part and DENIED in part.**

IT IS FURTHER ORDERED that Plaintiff shall provide responses to interrogatories 1-3 within ten (10) days of the date of this ORDER.

IT IS FURTHER ORDERED that Defendant's Motion to Reconsider this Court's Order denying the motion to compel responses to interrogatories 5, 7-9, and 12 is **DENIED with leave to renew.**

IT IS FURTHER ORDERED that Defendant's Motion to Reconsider this Court's Order denying the motion to compel responses to interrogatories 11 and 27 is **DENIED.**

BY THE COURT:

HERBERT J. HUTTON, J.