

During discovery, Defendants requested “Documents sufficient to show the person or persons who, or entity or entities that, are funding Plaintiffs’ prosecution of this action, including but not limited to the person or persons who, or entity or entities that, are paying Mr. Biss’s and/or Mr. Feller’s legal fees.” (Inter. No. 92).

Plaintiffs responded on November 9, 2020 with “Objection – relevance” and provided no further response.

This lack of discovery became the subject of prior communications with the Court and a topic at one or more case management conferences. *See, e.g.*, ECF No. 72. The Court invited this motion if the issues remained unresolved.

Defendants deferred filing this motion until now with the hope that Plaintiffs would provide litigation funding details in their depositions and Congressman Devin Nunes would answer unresolved questions regarding whether Plaintiffs were motivated to file and pursue this lawsuit directly or indirectly by others who would pay for it in exchange for, by way of example, furtherance of a common purpose or participation in the sharing of a potential recovery. As such, Defendants agreed to “table the issue . . . in the hopes that the subpoenas [would] yield comparable information.” ECF No. 74.

None of those alternatives worked, making this motion to compel necessary for Defendants to obtain discovery relevant to their defenses and necessary to present a full record on material issues that could prove dispositive on summary judgment or appeal.

As discussed in greater detail in their contemporaneously-filed Brief in Support of Defendants’ Resisted Motion to Compel Responses to Third-Party Litigation Funding Discovery Requests, mandated disclosure of third-party litigation funding information occurs by rule in many federal courts and by order pursuant to Fed. R. Civ. P. 26(b)(1).

Here, this Court should find that the litigation funding information sought is relevant and discoverable because of the context of this litigation and the constitutional ramifications of a libel case against media defendants.

In addition to discussing this matter with the Court, the issue of third-party litigation funding discovery was the subject of several meet and confer sessions among counsel for the parties. Those exchanges included conferring orally with counsel for Plaintiffs pursuant to Local Rule 7(k), wherein which Plaintiffs' lead attorney indicated his clients would resist this motion. *See* Declaration of Nathaniel S. Boyer as attached and filed in conformity with L.R. 37. Defendants incorporate that declaration and its exhibits, some of which are submitted under seal pursuant to the protective order applicable to this case, here by this reference.

Considering the importance and complexity of the issues raised by this motion and Defendants' need for the relevant evidence it seeks, good cause exists for oral argument. Accordingly, Defendants request that the Court grant them oral argument on this motion.

WHEREFORE, for these reasons and those stated in their accompanying brief (which also is filed under seal pursuant to the protective order and incorporated here by this reference), Defendants respectfully request that the Court require Plaintiffs to provide all third-party litigation funding information and documents responsive or relating to document production request No. 92 directly to Defendants, or in the alternative, to the Magistrate Judge for his *in camera* review if the Court deems that initial step necessary.

Ultimately, this Court should compel Plaintiffs to produce complete responses to Defendants' discovery requests, including its deposition questions and requests for production that sought information and documents regarding the source of funding for this litigation that, without limitation, discloses:

- (a) If Plaintiffs or their attorneys are receiving third-party litigation funding, including specifically non-party advancement or payment of legal fees and costs,
- (b) If so, from whom and in what amounts, and
- (c) Whether and to what extent the third-party funder(s) has (have) provided support or financing for other libel lawsuits by Devin Nunes against media defendants.

Dated: August 23, 2021.

**Ryan Lizza and Hearst Magazine Media, Inc.,
Defendants**

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Certificate of Service

The undersigned certifies that a true copy of **Defendants' Resisted Motion to Compel Responses to Third-Party Litigation Funding Discovery Requests (Oral Argument Requested)** was served upon the following parties through the court's CM/ECF electronic filing system on August 23, 2021.

/s/ Katie Miller

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