

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

RUTHELLE FRANK, et al.,

Plaintiffs,

v.

Case No. 11-CV-1128

GOVERNOR SCOTT WALKER, et al.,

Defendants.

FIFTH DECLARATION OF CLAYTON P. KAWSKI

I, Clayton P. Kowski, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am one of Defendants' attorneys in the above-captioned matter. I make this Fifth Declaration based on my own personal knowledge and based upon the sources described.

2. I make this Fifth Declaration in support of Defendants' Civil L.R. 7(h) Expedited Non-Dispositive Motion to Compel the Production of Complete and Un-Redacted Survey Data.

3. Attached hereto as Exhibit A is a true and correct copy of an e-mail exchange that occurred between me and Plaintiffs' counsel on April 26 and 27, 2012. When Plaintiffs made Federal Rule of Civil Procedure 26(a)(2) expert witness disclosures on April 24, 2012, they did not timely produce to Defendants' counsel the data relied upon by their expert.

4. Attached hereto as Exhibit B is a true and correct copy of a CD containing the file "Survey Research - Final Data Export.csv," which was produced to me by Plaintiffs' counsel via e-mail on April 26, 2012. (The e-mail from Plaintiffs' counsel Jon Sherman to me is found in attached Exhibit A.) The file can be opened using Microsoft Excel.

5. The database file in Exhibit B contains a redacted version of the survey data compiled by Professor Matt Barreto, which is the subject of Defendants' instant motion. In particular, the columns for fields "v1" and "v2" have been redacted, among other fields that may have been redacted. Fields "v1" and "v2" correspond to the questions found at page 50 of Professor Barreto's expert report regarding the respondents' zip codes and names. (Dkt. #62-10 at 50.)

6. Attached hereto as Exhibit C is a true and correct copy of an e-mail exchange that occurred between me and Plaintiffs' counsel on September 4, 5, 10, and 11, 2013. The parties met and conferred regarding Defendants' request for Plaintiffs to produce the complete and un-redacted survey data and have reached an impasse.

7. On September 16, 2013, I raised this issue with the Court during an in-person status conference and was instructed to file a motion.

8. On September 18, 2013, I spoke on the telephone with Kelly Barton from the Clerk of Court's office at the United States District Court for the Eastern District of Wisconsin. Ms. Barton told me that the best way to file the database file that I burned to the CD found in Exhibit B is to file a hard copy of the CD with the Clerk's office and to then serve a copy of the CD on opposing counsel.

I declare under penalty of perjury that the foregoing is true and correct.

Dated this 18th day of September, 2013.

s/Clayton P. Kawski
CLAYTON P. KAWSKI