

IN THE CIRCUIT COURT FOR THE STATE OF TENNESSEE
THIRTIETH JUDICIAL DISTRICT AT MEMPHIS

PAMELA MOSES,)
)
 Plaintiff,) Case No. CT-1579-19
) Division I
 v.)
) Judge Felicia Corbin-Johnson
 MARK GOINS, TRE HARGETT, and) Judge Suzanne Cook
 JONATHAN SKRMETTI, in their official) Judge Barry Tidwell
 capacities,)
)
 Defendants.)

**PLAINTIFF'S REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF
HER MOTION TO COMPEL DEFENDANT SKRMETTI
TO PRODUCE DOCUMENTS AND ANSWER INTERROGATORIES**

Defendant Skrmetti advances several extraordinary theories of non-participation in discovery that, if accepted by the Panel, would fundamentally alter the ordinary course of litigation in Tennessee and severely curtail “[t]he essential aim of [the] legal system” of “seek[ing] truth in the pursuit of justice.” *Harris v. Bd. of Pro. Resp. of Supreme Ct. of Tennessee*, 645 S.W.3d 125, 139 (Tenn. 2022) (internal citation omitted).

- Defendant Skrmetti believes he can refuse to search for responsive documents on the basis that he submitted verified interrogatory responses denying a specific allegation in the complaint.¹
- Defendant Skrmetti believes he can make broad assertions of privilege without producing a privilege log, notwithstanding the Tennessee Rules of Procedure’s express requirement that he do so. *See* Tenn. R. Civ. P. 26.02(5).

¹ Defendant Skrmetti does not deny that he declined to search for responsive documents.

- Defendant Skrmetti believes he can represent to Tennessee’s courts that immediate relief is warranted to prevent the disclosure of a “mound” of documents in discovery and then not produce a single document after his request is denied.²
- Defendant Skrmetti believes he can assert an affirmative defense but deny plaintiff any document discovery related to the affirmative defense, even when Plaintiff explicitly requested documents related to all defenses.

These positions, however, are meritless and inconsistent with the legal system’s “predominant principle of utilizing all rational means of ascertaining the truth.” *Borngne ex rel. Hyter v. Chattanooga-Hamilton Cnty. Hosp. Auth.*, 671 S.W.3d 476, 501 (Tenn. 2023) (Holly Kirby, J., concurring) (quoting *Lee Med., Inc. v. Beecher*, 312 S.W.3d 515, 525 (Tenn. 2010)).

This Panel should not permit Defendant Skrmetti to completely deny Plaintiff document discovery on the basis of his interrogatory responses. Document discovery serves a critical and complementary role to sworn statements. This is because individuals sometimes forget information, are mistaken, misunderstand the intended meaning or scope of a question, or simply decline to answer fully and truthfully. Indeed, the concept of impeachment through documentary evidence exists for this very reason.

² Defendant Skrmetti attempts to justify his prior representations about the “mound of documents” to this Panel and the Court of Appeals by claiming that he “argued that [Plaintiff’s discovery] requests *may* lead to the disclosure of ‘mounds of documents.’” [Opp. at 8 (emphasis added)]. But Defendant Skrmetti did more than represent that “mounds of documents” *may* be produced. He represented to this Panel and the Court of Appeals that a “mound of documents . . . will have already been produced.” [App. for Extraordinary Appeal (Aug. 30, 2024), at 14 (emphasis added) (Ex. A); Def.’s Mot. for Stay (Aug. 30, 2024), at 4 (emphasis added) (Ex. B)]. These representations are wholly inconsistent with Defendant Skrmetti’s actual discovery response (zero documents produced), and Defendant Skrmetti’s attempt to explain around them is unavailing.

Moreover, Defendant Skrmetti's decision to repeatedly swear that he had "no information responsive" to Plaintiff's discovery requests without first undertaking reasonable searches for responsive information improperly puts the cart before the horse. "Lawyers have a duty to do more than simply refrain from committing perjury. A lawyer's general duty of candor to the courts includes not only the duty to refrain from knowing misrepresentations but also a **positive duty to disclose to the court all material facts.**" *Harris*, 645 S.W.3d at 139 (internal citations omitted). Defendant Skrmetti has "no less obligation to meet these standards in litigation where [he is] personally involved." *Id.* This is because, "[i]n all circumstances, a lawyer's conduct 'must further the public's understanding of and confidence in the rule of law and the justice system.'" *Id.* (quoting Tenn. Sup. Ct. R. 8, pmlb., cmt. [7]).

In addition, Defendant Skrmetti is largely playing word games when he relies on his own statement that he has no responsive documents. In addition to the fact that he failed to conduct a search, his statement about having no responsive documents appears to be based on his unilateral decision to limit his response to requests relating to his denial of being involved in the denial of Plaintiff's voting registration. He has not denied that he has documents responsive to Plaintiff's actual requests, which are far broader; he just refuses to respond to those requests and pretends they do not exist.

Contrary to Defendant Skrmetti's assertion otherwise, Plaintiff has done more than set forth "speculation of wrongdoing." [Opp. at 8]. She has demonstrated that Defendant Skrmetti's discovery responses are deficient. As detailed in her motion, Plaintiff has identified that:

- Defendant Skrmetti failed to conduct any searches for responsive information.
- Defendant Skrmetti failed to produce responsive information known to Plaintiff.

- Defendant Skrmetti failed to produce a privilege log despite lodging privilege objections.
- Defendant Skrmetti limited all his discovery responses based upon an erroneous premise that Plaintiff was only entitled to seek information related to a single allegation in the complaint (as opposed to any information pertaining her surviving claims against Defendant Skrmetti *and* his two codefendants).

Enough is enough. Even the Attorney General must comply with the Tennessee Rules of Procedure and this Panel's prior orders. Defendant Skrmetti can disagree with this Panel's ruling on his Motion for Judgment on the Pleadings, but he cannot continue to disregard his discovery obligations based upon his personal view that he is an improper defendant in this case.

CONCLUSION

For the reasons described in Plaintiff's Motion and memorandum in support filed therewith, the Panel Should GRANT Plaintiff's Motion to Compel and also order Defendant Skrmetti to pay reasonable attorneys' fees and costs in connection with his longstanding refusal to participate in discovery.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document has been served via email and the Court's electronic filing system on December 12, 2024, as follows:

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