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VIA ELECTRONIC CASE FILING

October 17, 2008

Julie Straus  
Trial Attorney  
Civil Division  
U.S. Department of Justice  
P.O. Box 833  
Washington, D.C. 20044

RE: CHLQ v. Mukasey

Dear Julie:

Late yesterday, October 16, 2008, we received a Rule 30 (b)(6) Notice stating:

“In accord with Rule 30(b)(6) of the Federal Rules of Civil Procedure, please be advised that CHLQ has a duty to designate one or more of its officers, directors or agents to testify. See Fed. R. Civ. Pro. 30(b)(6).

The deposition will be stenographically recorded. You are invited to attend and cross-examine.

The Subject Matter of Examination

1. The development of the Confidential Medical Record forms that CHLQ uses to screen people prior to permitting any participation in Church services.
2. The review of the Confidential Medical Record forms used “to screen carefully for a variety of medical and psychiatric conditions.”
3. The criteria used to assess the “risks to physical and mental health” posed by participation in CHLQ services.
4. All decisions made regarding the eligibility of participation in CHLQ services by each individual who submitted a Confidential Medical Record form. “

We wrote you back today pointing out:

“Julie:

We have your 30(b)(6) Notice, but we believe that there is no justification for responding by making any new witnesses available. You have been given access to 4 named plaintiffs, including the Church's leader in Ashland and Portland and its only paid staff member. Each of these plaintiffs was examined about medical screening practices at the Churches.

You have had the Applications and Medical Forms to use in your cross examination including a variety of forms with minor differences. You have learned a significant amount about the process from two of the Church leaders, the one paid employee and from one of the members who is a medical doctor and familiar with the process. There are a multitude of cites in these depositions to medical screening questions and answers.

You have had more than ample opportunity to discover any facts that could lead to admissible evidence in this case. You have not provided good cause to take a second deposition. For the reasons stated, we will not be producing any witnesses on Monday.”

You wrote back the following:

“The deposition has been properly noticed and we will be there at the noted time and place. If the deponent fails to appear, we will move for sanctions in accordance with Federal Rule of Civil Procedure 37.”

First, you did not follow Local Rule 30.2 which states:

Except for good cause, counsel will not serve a notice of deposition until they have made a good faith effort to confer with all counsel regarding mutually convenient date, time, and place for the deposition.

This was not done and thus the Notice is defective. Second, you presumed that in one working day, we could produce a witness or witnesses for you to depose (assuming there were any who met your demand) Of greater moment, however, is the Rule 37 sanction threat. This is not how we do business out here. Local Rule 7.1 requires that the parties “through personal or telephone conferences,” try to resolve the dispute. You have made no attempt to do so.

Rather than fly to Oregon and waste all of that time and money, you should follow Judge Panner's instructions to the parties and seek a ruling from the Court. We have no people other than the plaintiffs you deposed who would be able to supply any more information as noted above. Assuming however, you were successful in that regard, we would then confer with you about a time and place.

Neither Mr. Marmaduke nor I are available for the remainder to today. You might call Judge Panner’s clerk to see about arranging a conference with the Judge either tomorrow or Monday morning. If tomorrow, Mr. Marmaduke will be at, 503 887 9655, or 503 738 9077 and I will be at 541 913 6397.

Thank you.

Best regards,

/s/ Roy S. Haber

Roy S. Haber  
Don H. Marmaduke

CC: Judge Panner