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Healthcare Advocates, Inc.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

HEALTHCARE ADVOCATES, INC.,

Plaintiff,

v.

HARDING, EARLEY, FOLLMER &
FRAILEY; JOHN F.A. EARLEY, III,
CHARLES L. RIDDLE, FRANK J. BONINI,
JR., KIMBERLY TITUS, and JOHN DOES
1-5,

Defendants.

Civil Action No. 05-3524

Hon. Robert F. Kelly

DECLARATION OF SCOTT S. CHRISTIE

I, Scott S. Christie, declare pursuant to 28 U.S.C. §1746 and under the penalty of perjury of the laws of the United States of America that the following is true and correct to the best of my knowledge:

1. I am a Member of the firm of McCarter & English, LLP, counsel for defendant Healthcare Advocates, Inc. (“Healthcare Advocates”), the plaintiff in this case. I make this Declaration in support of Healthcare Advocates, Inc.’s Opposition to Defendant Harding, Earley, Follmer & Frailey’s Motion for Summary Judgment.

2. In 2005, prior to filing this lawsuit, Healthcare Advocates retained consulting computer forensic expert Warren Kruse and incurred \$5,000 in expenses having him analyze and

interpret just the Healthcare Advocates web logs related to Defendants' conduct. Without the corresponding web logs from Internet Archive, his analysis and conclusions were limited.

3. Beginning at least as early as May 2005, Healthcare Advocates approached representatives of Internet Archive in an effort to obtain the Internet Archive web logs related to Defendants' conduct and related assistance from Internet Archive personnel. Representatives of Internet Archive advised at that time that the relevant web logs no longer existed and, furthermore, declined to provide any other assistance to Healthcare Advocates related to clarifying the nature, extent and significance of Defendants' conduct. Because such information and assistance was critical to Healthcare Advocates' ability to conduct a meaningful damage assessment, Healthcare Advocates believed that it had no other meaningful alternative other than to name Internet Archive as a defendant in this case.

4. In the original complaint in this case filed July 8, 2005, Healthcare Advocates sued not only Defendants, but also Internet Archive for failing to adequately secure the historical web pages of the Healthcare Advocates Website in its digital collection. On two separate occasions, Internet Archive unsuccessfully moved to dismiss the complaint. It was only after the Court denied the second motion to dismiss, forcing Internet Archive to respond to Healthcare Advocates' interrogatories and document production requests, that Healthcare Advocates learned for the first time that the Internet Archive web logs related to Defendants' conduct did, in fact, continue to exist. Healthcare Advocates did not receive all of these web logs from Internet Archive until after the parties had reached terms of settlement at the end of August 2006, and did not have an opportunity to depose Internet Archive personnel until the end of September 2006.

5. Once the Internet Archive web logs related to Defendants' conduct was in hand, testifying computer forensic expert Gideon Lenkey finally was able to analyze and interpret both the Healthcare Advocates web logs side by side with the relevant Internet Archive web logs.

6. Attached as Exhibit A are true and correct copies of excerpts from the transcript of the deposition of Gordon Mohr, taken on September 14, 2006.

7. Attached as Exhibit B are true and correct copies of excerpts from the transcript of the deposition of Kevin Flynn, taken on September 28, 2006.

8. Attached as Exhibit C are true and correct copies of excerpts from the transcript of the deposition of the deposition of Edward Felten, taken on February 2, 2007.

9. Attached as Exhibit D is a true and correct copy of the expert report of plaintiff's expert Gideon J. Lenkey.

Executed this 18th day of April, 2007, at Newark, New Jersey.

s/Scott S Christie
SCOTT S. CHRISTIE