



R E V I S I O N / L E G A L

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February 9, 2018

VIA ECF ONLY

United States Magistrate Judge Pitman
Daniel Patrick Moynihan
United States Courthouse
500 Pearl Street
New York, New York 10007-1312

RE: Defendants' Failure to Produce Documents

Dear Magistrate Judge Pitman:

In accordance with Local Rule 37.2 and your individual rules, Plaintiff respectfully requests an informal conference with the Court to discuss Defendants' failure to produce any documents in response to Plaintiff's First Sets of Requests for the Production of Documents and Things, which were served on Defendants' counsel on November 6, 2017.

Defendants provided responses to Plaintiff's discovery requests on December 6, 2017. On or about December 8, 2017, counsel for both parties discussed any potential issues arising out of the form of Defendants' production. Defendants' counsel represented on that phone call that he had received responsive documents already and was in the process of reviewing them for production.

After hearing nothing from Defendants' counsel for more than one month, I correspondence via email on January 15, 2018 asking "[w]hen can we expect your client's document production." I have not received a single communication from Defendants' original counsel since.

Two days later, on January 17, 2018, Defendants' prior counsel first attempted to withdraw and Defendants' current counsel attempted to appear. Immediately after this ECF filing landed in my inbox, I wrote to Defendants' current counsel asking when we could expect production of the documents prior counsel told me were in hand on or about December 8, 2017. Defendants' counsel responded in a series of emails on January 17, 2018 that "this is the first I have heard of this," but that he would "look into the matter." He further stated that "[i]t will take a little time."



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After not hearing from Defendants' counsel, I again emailed on January 22, 2018 asking "[h]ave you had a chance to look into this matter?" Defendants' counsel responded that same day confirming that "there are documents." He wrote that he had "not yet had the chance to review them, or the requests" but said that once he had done so he would provide the documents to us. He wrote "I can give you a time frame once I see the scope of the production."

On February 1, 2018, having not heard from Defendants' counsel concerning discovery, I again wrote an email asking "[w]hen can we expect your client to produce documents?" Rather than answer my email directly, Defendants' counsel filed a motion to stay the proceedings roughly two and one-half hours after my inquiry. Twenty-four hours after moving to stay these proceedings, Defendants' counsel responded to my inquiry stating "[p]robably a couple of weeks."

In light of Defendants' motion to stay the proceedings and the lack of urgency with which they have approached their discovery obligations, I wrote to Defendants' counsel on February 2, 2018 stating that, absent a realistic chance of settlement, Plaintiff would move to compel discovery if documents were not produced on or before Friday, February 9, 2018.

On Thursday, February 8, 2018, Defendants filed a letter addressed to the Honorable Ronnie Abrams that demonstrates Defendants' continued willingness to complicate this litigation with specious assertions. (ECF No. 92.) After reviewing this letter, I emailed Defendants' counsel asking for confirmation that documents would be produced by close of business on Friday, February 9, 2018. Defendants' counsel responded soon thereafter writing "I said it would take a couple of weeks last week. You will not receive them this week, next week, most likely."

Defendants received Plaintiff's discovery requests more than three months ago. Defendants' prior counsel had documents in-hand two months ago. Defendants' current counsel first attempted to file an appearance twenty-three days ago. Defendants' should not get to skirt their discovery obligations by swapping attorneys.

Pursuant to your September 21, 2017 scheduling order, fact discovery in this matter shall be completed no later than March 30, 2018. As described above, Plaintiff has diligently pursued discovery and has been met with silence or a lack of urgency that is prejudicial to Plaintiff. In view of the March 30, 2018 deadline and Plaintiff's constant attempts to obtain Defendants' production, Defendants'



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representation that documents would be produced “next week, most likely” is unacceptable.

Plaintiff wants nothing more than to move this case forward as quickly as possible. As stated above, Plaintiff respectfully requests an informal conference with the Court by this letter-motion for a pre-motion discovery conference.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Anderson J. Duff', with a horizontal line drawn through it.

Anderson J. Duff

AJD/rr

cc: Saul Roffe (By ECF)