

FILED

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

CLERK, U.S. DISTRICT COURT,
WESTERN DISTRICT OF TEXAS
BY _____
DEPUTY CLERK

JARROD STRINGER, et. al.)	
)	
)	
v.)	CIVIL NO. SA-16-CA-257-OG
)	
ROLANDO PABLOS, in his official)	
capacity as Texas Secretary of State)	
and STEVEN C. McCRAW, in his official)	
capacity as Director of the Texas Department)	
of Public Safety)	

ORDER

Pending before the Court is Plaintiffs' motion for sanctions for violating the order mandating production of documents. Docket no. 44. Defendants filed a response (docket no. 45) and Plaintiffs filed a reply (docket no. 46). After reviewing the record, the parties' arguments, and the applicable law, the Court finds that the motion for sanctions should be GRANTED.

Plaintiffs served their first requests for production on August 24, 2016. Responses to the requests were due September 24, 2016. Fed.R.Civ.P. 34(b)(2)(A). On October 28, 2016, Plaintiffs filed a motion to compel. Docket no. 30. As of December 1, 2016, Defendants had not produced a single document. On December 13, 2016, the Court granted Plaintiffs' motion to compel and ordered that the documents be produced by January 13, 2017. Docket no. 37. Defendants apparently waited until receiving a court order to start gathering and reviewing the documents even though production should have been complete back in September. They advised Plaintiffs on January 13th that they would not be able to produce all the documents, and Plaintiffs agreed to give them an additional four days, until January 17th. Defendants then said they

needed an extension through February 8th, more than four months after the documents should have been produced under the rules and three weeks after the court-ordered deadline.

Plaintiffs noticed 30(b)(6) depositions as early as September 2016. The documents should have been produced prior to the depositions to enable counsel to question the witnesses on the contents thereof. The depositions were postponed at least twice, but could not be postponed any longer. At least one of the 30(b)(6) depositions has already been taken, and production of documents is still incomplete.¹ Plaintiffs filed their motion for sanctions on January 23, 2017. Plaintiffs seek monetary sanctions for Defendants' failure to comply with the Court's December 13th order. Specifically, they seek recovery of fees and costs associated with re-deposing witnesses, if necessary, and attorneys' fees and costs associated with bringing the motion.

Defendants claim that Plaintiffs have not complied with the rules by "attempting to resolve discovery disputes without court intervention." Docket no. 45, p. 1. The record reflects otherwise. Defendants should have produced the documents by September 24, 2016. On October 4, 2016, Plaintiffs' counsel wrote a lengthy letter to defense counsel to confer before seeking court intervention. Docket no. 30-3. When communications failed to resolve the dispute, Plaintiffs filed their motion to compel. Once the Court intervened and ordered the production of documents, Defendants should have complied. When Defendants did not meet the court-ordered deadline, Plaintiffs conferred again with a series of email communications. Docket no. 44. And again, Defendants failed to produce all of the requested documents. Plaintiffs did more than required under the rules.

¹As of the filing of Plaintiffs' reply on February 3, 2017, production was still incomplete. Docket no. 46.

Defendants also claim that they are “already producing (and will continue to produce) documents on a rolling basis, and production is nearing completion as of this filing.” Docket no. 45, p. 2. The court-ordered deadline was clear, and it did not include a rolling schedule for production. Defendants unilaterally decided to “roll out” documents on an arbitrary schedule without seeking permission from the Court. If Defendants had started gathering and reviewing the documents when served with the requests, production would not be continuing six months later.

Defendants seem to believe that late production does not hinder discovery or prejudice the other side “given that discovery extends through May 15, 2017.” Docket no. 45, pp. 2, 3, 7. But a discovery deadline does not mean that the parties can wait until the end of the discovery period to respond to written discovery requests. There is a reason why counsel requested the documents prior to taking depositions. Defense counsel knows, or should know, that the documents are needed before depositions so that Plaintiffs’ counsel can ask meaningful questions of the witnesses. Depositions were postponed for months – to Plaintiffs’ detriment. They have now been forced to begin depositions without the benefit of receiving and reviewing all of the documents beforehand.²

In this case, virtually all of the discoverable material is in Defendants’ possession or control. Defendants’ months long delay has been disruptive, time consuming, cost consuming, and prejudicial to the extent that Plaintiffs have been deprived of the discovery material they need to move forward. Defendants claim that the Secretary of State was busy with the 2016

²Plaintiffs had “absolutely no chance to load, review, or use the complete production in advance of the January 31 deposition of Sheri Gipson” Docket no. 46, p. 2. Almost 4,000 were produced the day after Gipson’s deposition. Docket no. 46, p. 4. Plaintiffs’ counsel may have faced the same impediment with the deposition of John Crawford, which was scheduled for February 6th.

election, but they never requested an extension from the Court on that basis and the election ended three months ago. Defendants also claim that they had only one attorney assigned to the matter and their office lacked sufficient manpower to review and respond to the discovery requests. Docket no. 44, p. 3, Exh. C. This argument is common and understandable with solo practitioners, but not with the Office of the Attorney General for the State of Texas. More than one name has appeared on the papers filed by defense counsel in this case and it is Defendants' responsibility to allocate the resources necessary to respond to discovery in a timely manner.³ The Court finds that Defendants have willfully disregarded the deadlines for responding to discovery as set forth in the rules. They have also disregarded the court-ordered deadline. After the Court ordered Defendants to produce the documents, they asked for partial reconsideration on other grounds but never advised the Court that they would have difficulty meeting the Court's deadline. Defendants failed to justify the months long delay in producing the documents and they have not sufficiently explained their failure to comply with the Court's order. Plaintiffs have been harmed by Defendants' noncompliance and monetary sanctions will not impose an undue burden on the State of Texas.

It is therefore ORDERED that Plaintiffs' motion for rule 37 sanctions (docket no. 44) is hereby GRANTED. Defendants must pay Plaintiffs' reasonable expenses incurred in bringing their motion to compel (docket no. 30) and motion for sanctions (docket no. 44). Plaintiffs will have the option to reopen any depositions that were taken before production was complete.⁴ If

³See Docket no. 44, Exh. E (email regarding updated production log, indicating that attorneys Natalie Marion and Matthew Deal and legal assistant Tamera Martinez have also been working on the matter).

⁴This includes individual depositions if Plaintiffs receive documents they would have used in questioning those individuals.

any depositions are reopened, they will take place within 45 days after production of documents is complete. Defendants shall pay all reasonable expenses incurred as the result of those depositions that need to be reopened, including court reporter fees, travel expenses, and attorney's fees.

It is so ORDERED this 16 day of February, 2017.



ORLANDO L. GARCIA
CHIEF U.S. DISTRICT JUDGE