



STATE OF OKLAHOMA }
 CLEVELAND COUNTY } S.S.
 IN THE DISTRICT COURT OF CLEVELAND COUNTY
 STATE OF OKLAHOMA

FILED
 APR 04 2019

STATE OF OKLAHOMA, ex rel., §
 MIKE HUNTER, §
 ATTORNEY GENERAL OF OKLAHOMA, §
 §
 Plaintiff, §
 §
 vs. §
 §
 (1) PURDUE PHARMA L.P.; §
 (2) PURDUE PHARMA, INC.; §
 (3) THE PURDUE FREDERICK COMPANY; §
 (4) TEVA PHARMACEUTICALS USA, INC.; §
 (5) CEPHALON, INC.; §
 (6) JOHNSON & JOHNSON; §
 (7) JANSSEN PHARMACEUTICALS, INC.; §
 (8) ORTHO-McNEIL-JANSSEN §
 PHARMACEUTICALS, INC., n/k/a §
 JANSSEN PHARMACEUTICALS, INC.; §
 (9) JANSSEN PHARMACEUTICA, INC., §
 n/k/a JANSSEN PHARMACEUTICALS, INC.; §
 (10) ALLERGAN, PLC, f/k/a ACTAVIS PLC, §
 f/k/a ACTAVIS, INC., f/k/a WATSON §
 PHARMACEUTICALS, INC.; §
 (11) WATSON LABORATORIES, INC.; §
 (12) ACTAVIS LLC; and §
 (13) ACTAVIS PHARMA, INC., §
 f/k/a WATSON PHARMA, INC., §
 §
 Defendants. §

In the office of the
 Court Clerk MARILYN WILLIAMS

Case No. CJ-2017-816
 The Honorable Thad Balkman

Discovery Motion Submitted to:
 Special Discovery Master
 William C. Hetherington

RESPONSE TO DEFENDANTS' EMERGENCY "MOTION" TO COMPEL

The Teva and Johnson & Johnson Defendants have filed something they call an "Emergency Motion to Compel." It is neither a motion nor a matter of emergency. It is one sentence "adopt[ing] and reassert[ing]" an extinct Purdue motion the Court struck last week. And, the Purdue motion it references is one that neither Teva nor Johnson & Johnson thought emergent enough to join when Purdue filed it the first time. Teva and Johnson & Johnson had the same information as Purdue when Purdue filed its motion. They had the same information as Purdue

when Purdue argued its motion. And they had the same information as Purdue on March 15 when fact discovery closed. But they made the strategic decision to sit on their hands and rely on the work Purdue did. Despite joining in numerous motions with Purdue, Teva and Johnson & Johnson decided to sit this one out—until it was too late. The Purdue motion is now void. There is nothing left to join or “adopt.”

Further, Purdue’s motion is void as a result of the settlement negotiations under the supervision of Settlement Judge Layn Phillips. As the Court is aware, the State and the Purdue Defendants engaged in serious negotiations over the past months that resulted in the Consent Judgment entered on March 26, 2019. Teva and Johnson & Johnson chose not to settle. Purdue and the State negotiated for certain discovery requests to be stayed and ultimately stricken pursuant to the Settlement. Without waiving any confidentiality under Rule 408, it is clear that all of Purdue’s motions—just like the Sackler depositions—were part of those negotiations. And the moment the Consent Judgment was executed, these motions *all* became null and void. Void. This was part of the bargain that both sides negotiated.

It is the remaining Defendants’ fault that they did not timely file their own motions. And it is their fault that they did not join Purdue’s motion while it was still alive. Purdue’s motion has been briefed, argued, and dismissed. It’s dead. And Teva and Johnson & Johnson never joined it. Never. They cannot now, after a \$270 million settlement, a Judgment, and an Order striking Purdue’s motion—and well after the close of fact discovery—start this process again.

The “Motion” fails to comply with Oklahoma Rules generally, and it disregards this Court’s rules specifically—namely, the Scheduling Order that ruled fact discovery closed on March 15. Therefore—whatever this filing is—it should be denied.

ARGUMENT AND AUTHORITIES

I. Defendants' Motion is Improper and Invalid.

This "Motion" is improper and invalid because it was filed outside of the fact-discovery cutoff and fails to comply with the Rules for District Courts of Oklahoma.

The Court has the discretion to deny Defendants' "Motion" on the grounds that Defendants waited until after the discovery cutoff to file it. *E.g., Nortel Networks Ltd. v. (1) SMC Elecs.*, 2007 WL 1959281, at *1 (W.D. Okla. June 29, 2007) ("Failure to pursue a discovery remedy in timely fashion may constitute a waiver of discovery violations. It is especially important that a party file its motion before discovery cutoff." (quoting *Cont'l Indus., Inc. v. Integrated Logistics Sols., LLC.*, 211 F.R.D. 442, 444 (N.D. Okla. 2002)). In *Nortel Networks Limited v. SMC Electric*, the court denied the defendants' similarly deficient motion to compel because the defendants filed it ten days after the discovery deadline cutoff, and only two months before the trial began. 2007 WL 1959281, at *1. There, just like here, "Defendants do not specify in their motion which requests and responses it finds insufficient or incomplete. Apparently, they instead wish the Court to glean this information from the prior correspondence between the parties." *Id.* at *2, n.2. There, just like here, "Defendants fail to present any justification regarding their failure to request specific, complete relief until after the discovery deadline had passed." *Id.* at *3. And there, just like here, "the insufficiency of Defendants' motion need not be addressed further on account of the motion's fatal untimeliness." *Id.* at *2, n.2.

Defendants here could have joined Purdue's motion (or filed their own) prior to the discovery cutoff on March 15. But, instead, Teva and Johnson & Johnson waited until after the discovery cutoff, after the Parties argued Purdue's motion to Judge Hetherington on March 13, and after the Court had already stricken Purdue's motion. That untimeliness, as in *Nortel*, should

be fatal. Defendants have waived their rights to file discovery motions and, worse still, are simply trying to re-hash issues this Court has already had before it. The “Motion” is untimely, improper, and should be denied.

Defendants’ “Motion” also is improper because it does not comply with Oklahoma District Court Rule 4. Rule 4 requires that “[i]n a motion a party must specifically state the grounds therefore and the relief or order sought even where the party relies on defects or deficiencies apparent on the face of the pleading, motion or other instrument.” Okla. Dist. Ct. R. 4(b). Defendants’ “Motion,” on the other hand, is one sentence. It does not state the grounds for relief, nor does it specify the relief it seeks. This is not a motion under Rule 4. Defendants’ “Motion” is invalid and should be denied.

II. Even if the “Motion” is Valid, it Should be Summarily Denied.

Since Purdue’s Motion was filed and argued, the discovery period has ended. And the State has produced documents for approximately 200 current and former State employees.

Further, the State produced the following, among other items, that were raised in Purdue’s motion: (1) audio recordings of DUR Board meetings; (2) documents from the Oklahoma Bureau of Narcotics and for multiple custodians therein; (3) what Purdue referred to as “summaries” from the Chief Medical Examiner; (4) Burl Beasley’s responsive documents; (5) contracts between Oklahoma Health Care Authority (“OHCA”) and Pharmacy Management Consultants (“PMC”); (6) documents and databases related to PMC’s processing of prior authorization requests; (7) meeting materials and presentations from State groups and commissions related to opioids; and (8) documents and communications from the Board of Dentistry. In addition, several of the documents requested by Purdue in its Motion were irrelevant to this case, or any tiny amount of relevance is outweighed by the burden to gather and produce them.

Moreover, the very nature of Defendants' requests (to the extent they can be divined from Purdue's motion) is inconsistent and out of touch with how discovery works. In response to Defendants' requests for production, the State identified, searched for, and produced responsive documents from hundreds of custodians at over a dozen State agencies. And, Defendants have not timely served a specific request for production of custodial files for the custodians Purdue identified in its now defunct motion. Absent such a specific and timely request for production, Defendants are not—and have never been—entitled to cherry pick custodians they think are relevant or (what is really happening here) identify custodians they think are missing, and send the State back to repeat the whole process again. If that were the case, Defendants with dilatory aims like those seen here will always be able to point to another custodian, or another source of documents they think they do not have, in order to turn discovery into an interminable loop reminiscent of what happens *If You Give a Mouse a Cookie*. That is not, and should not be, how discovery works.

Finally, Judge Balkman has already stated that the parties have “substantially complied with discovery.” Ex. 1, March 8 Hearing Transcript, 72:13-14. And that was before discovery was closed. The State was diligent in complying with its discovery obligations, and Defendants continue to use discovery ploys and motion practice to try to delay this trial. This time, Defendants' ploy is late, baseless, and improper.

Enough is enough.

CONCLUSION

For the foregoing reasons, the State respectfully requests this Court deny Defendants' “Emergency Motion to Compel.”

Respectfully submitted,



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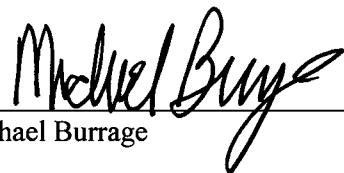
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EXHIBIT

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IN THE DISTRICT COURT OF CLEVELAND COUNTY

STATE OF OKLAHOMA

STATE OF OKLAHOMA, ex rel.,)
MIKE HUNTER)
ATTORNEY GENERAL OF OKLAHOMA,)

Plaintiff,)

vs.)

Case No. CJ-2017-816

- (1) PURDUE PHARMA L.P.;)
- (2) PURDUE PHARMA, INC.;)
- (3) THE PURDUE FREDERICK)
COMPANY;)
- (4) TEVA PHARMACEUTICALS)
USA, INC;)
- (5) CEPHALON, INC.;)
- (6) JOHNSON & JOHNSON;)
- (7) JANSSEN PHARMACEUTICALS,)
INC.;)
- (8) ORTHO-McNEIL-JANSSEN)
PHARMACEUTICALS, INC.,)
- n/k/a JANSSEN PHARMACEUTICALS;)
- (9) JANSSEN PHARMACEUTICA, INC.)
- n/k/a JANSSEN PHARMACEUTICALS,)
INC.;)
- (10) ALLERGAN, PLC, f/k/a)
ACTAVIS PLC, f/k/a ACTAVIS,)
- INC., f/k/a WATSON)
PHARMACEUTICALS, INC.;)
- (11) WATSON LABORATORIES, INC.;)
- (12) ACTAVIS LLC; AND)
- (13) ACTAVIS PHARMA, INC.,)
f/k/a WATSON PHARMA, INC.,)

Defendants.)

**PORTIONS OF TRANSCRIPT MAY BE COVERED UNDER PROTECTIVE ORDER
TRANSCRIPT OF PROCEEDINGS
HAD ON MARCH 8, 2019
AT THE CLEVELAND COUNTY COURTHOUSE
BEFORE THE HONORABLE THAD BALKMAN
DISTRICT JUDGE**

REPORTED BY: ANGELA THAGARD, CSR, RPR

1 and production on or before February 5th. It's the next
2 paragraph.

3 THE COURT: Thank you. Thank you.

4 MR. DUCK: It will all make sense to you when you
5 read it. Thank you, Judge.

6 THE COURT: All right.

7 We're going to take a ten-minute break, and then
8 afterwards, I'll tell you what I feel -- or how I feel about
9 it. Okay?

10 (A recess was taken, after which the following
11 transpired in open court, all parties present:)

12 THE COURT: Thank you. You can have a seat.

13 **Both the State and the defendants have substantially**
14 **complied with discovery, and although both parties admit fault**
15 **over the course of this litigation of failing to timely**
16 **disclose some documents, the defendant argues that it's the**
17 **State's failure to produce timely discovery that should cause**
18 **the jury trial date to be continued for 100 days. Well, all**
19 **other deadlines as well.**

20 Reviewing the arguments of the counsel, the previous
21 rulings by the discovery master, the written briefs and the
22 exhibits that were submitted by the parties, I find that there
23 has been no discovery deficiencies or other actions by the
24 State to support the defendants' motion to continue deadlines
25 for 100 days.

EXHIBIT

2

2007 WL 1959281

Only the Westlaw citation is currently available.
United States District Court,
W.D. Oklahoma.

NORTEL NETWORKS LIMITED, Plaintiff,
v.
(1) SMC ELECTRONICS, LLC; (2) Mehran
"David" Koranki; and (3) Allied Solution
Technical Center LLC, Defendants.

No. CIV-06-787-C.

|
June 29, 2007.

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MEMORANDUM OPINION AND ORDER

ROBIN J. CAUTHRON, United States District Judge.

*1 Before the Court is Defendants' motion to compel (Defs.' Mot., Dkt. No. 84). Plaintiff has filed a response (Pl.'s Resp., Dkt. No. 89). Accordingly, this matter is now at issue.

The scheduling order entered in this case established a discovery cutoff date of June 1, 2007, in anticipation of trial being conducted on the August 2007 docket. (See Scheduling Order, Dkt. No. 52.) Defendants' motion to compel was not filed until June 11, 2007, well past the discovery deadline. Defendants' motion alleges three separate failures by Plaintiff:¹ (1) Plaintiff's insufficient and incomplete responses to written discovery; (2) Plaintiff's failure to produce certain exhibits; and (3) Plaintiff's refusal to produce requested witnesses for deposition.

I. Written Discovery

It is not disputed that Defendants propounded their first set of written discovery—a total of ninety-one separate requests—on January 24, 2007, and Plaintiff provided responses on February 26, 2007. (Defs.' Mot. at 3; Pl.'s Resp. at 6-7.) According to Defendants, these responses were inadequate, and on March 7, 2007, Defendants began requesting that Plaintiff supplement these responses. (See Defs.' Mot. Ex. 1.) Correspondence between the parties ensued. (See Defs.' Mot. Exs. 2-6.)

While the parties dispute the content of their exchanges,² it is clear from the Defendants' own motion and the parties' correspondence that whatever the nature of Defendants' complaints, the last time they requested any supplementation to the original discovery responses was during a contentious telephone call on April 19, 2007. (See Defs.' Mot. at 4; Pl.'s Resp. at 2 & Ex. 1 ¶ 10.)³ Defendants failed to raise any further concerns with the original discovery responses after April 19, 2007, until they filed their motion to compel on June 11, 2007.

In addition to failing to clearly explain their dissatisfaction with the responses to the Court, Defendants fail to present any justification regarding their failure to request specific, complete relief until after the discovery deadline had passed—more than six weeks after Defendants claim they last talked to Plaintiff about the issue.

Although Fed.R.Civ.P. 37 does not specify any time limit within which a Motion to Compel must be brought, courts have made it clear that a party seeking to compel discovery must do so in timely fashion. ¶¶ *Buttler v. Benson*, 193 F.R.D. 664, 666 (D.Colo.2000) (“A party cannot ignore available discovery remedies for months and then, on the eve of trial, move the court for an order compelling production.”)[.] Once, as here, a party registers a timely objection to requested production, the initiative rests with the party seeking production to move for an order compelling it. Failure to pursue a discovery remedy in timely fashion may constitute a waiver of discovery violations. It is especially important that a party file its motion before discovery cutoff. ¶¶ *American Motorists Insurance Co. v. General Host Corp.*, 162 F.R.D. 646, 647-48 (D.Kan.1995) (motion to compel denied where defendant made “absolutely no effort” to file motion

before discovery deadline). It is also critical that the movant not wait to file its motion until the eve of trial.

*2 *Cont'l Indus., Inc. v. Integrated Logistics Solutions, LLC*, 211 F.R.D. 442, 444 (N.D.Okla.2002) (citations omitted).

While a six-week delay may not seem extreme, Defendants have been warned by the Court of the inadvisability of attempting stall tactics. Defendants are well aware of the impending trial date of this case, and the Court consistently has denied their attempts to prolong discovery. (*See, e.g.*, Order Denying Mot. to Stay, Dkt. No. 59; Order, Dkt. No. 65 (granting Defendants a fifteen-day extension to designate an expert witness, rather than the requested thirty-day extension); Order Denying Defs.' Mot. for Continuance, Dkt. No. 79; Order Granting Pl.'s Mot. to Compel, Dkt. No. 88; Order Granting Pl.'s Mot. to Compel, Dkt. No. 91.) Thus, whether Defendants' dissatisfaction arose with their March 7, 2007, letter or after the communications of April 19, 2007, they failed to take any remedial action while the discovery period was ongoing. Their delay is unexplained, and their motion as concerns the original discovery responses is untimely. *Cf.* *Norton v. City of Marietta, Okla.*, 432 F.3d 1145, 1156-1157 (10th Cir.2005) (finding no abuse of discretion where a district court denied a motion to compel filed after the close of discovery and two days before the pre-trial conference).

II. Request for Exhibits

Defendants' motion to compel also requests that Plaintiff produce "various exhibits" or make them available at one location in Richardson, Texas. (Defs.' Mot. at 5.) On January 10, 2007, Plaintiff contacted Defendants about two exhibits that it planned to use at trial. (Defs.' Mot. Ex. 7.) Exhibits # 2 and # 3 in Plaintiff's disclosures were summary reports of documents that Plaintiff claimed were otherwise admissible but too voluminous to be conveniently examined in court. (*Id.*) Plaintiff's Exhibits # 2 and # 3 rely on Fed.R.Evid. 1006 for their admissibility. This rule states:

The contents of voluminous writings ... which cannot conveniently be examined in court may be presented in the form of

a chart, summary, or calculation. The originals, or duplicates, shall be made available for examination or copying, or both, by other parties at reasonable time and place. The court may order that they be produced in court.

In compliance with Rule 1006, Plaintiff's notification advised Defendants that the underlying materials would be available for review and inspection at offices in both Texas and Massachusetts during normal business hours. (Defs.' Mot. Ex. 7.)

On January 27, 2007, Defendants replied to this notification by requesting that Plaintiff "forward" and "produce" copies of all of the documents to their office, either in paper form, on CDs, or via e-mail. (Defs.' Mot. Ex. 8.) Although Defendants refer to the requested items as "several exhibits [Plaintiff intends] to utilize at trial" (Defs.' Mot. at 5), Plaintiff points out that the requested items are not actually trial exhibits. Rather, the requested items are the voluminous writings which Plaintiff plans to summarize in its trial Exhibits # 2 and # 3 pursuant to Fed.R.Evid. 1006. (*See* Pl.'s Resp. at 2-3.)

*3 Although Defendants failed to amend their motion to reflect what has transpired since January, in its response Plaintiff submits a sworn affidavit by Plaintiff's counsel stating that Plaintiff did indeed "produce" both the trial exhibits and all supporting documents by May 1, 2007. (Pl.'s Resp. at 15 & Ex. 1 ¶ 15.) Plaintiff further provided the Court with Bates identification numbers for these items. (*Id.* Ex. 1 ¶ 15.) Defendants have not disputed Plaintiff's assertion, nor that Plaintiff went well beyond the procedure required by Rule 1006 in providing these documents. Further, Defendants have not identified for the Court any specific documents that have not been produced. Defendants' request is therefore moot, inappropriate, and a waste of the Court's time, as Defendants were in receipt of all the requested items for over five weeks before they filed their motion to compel. Moreover, because Defendants failed to seek remedial relief since its communication with Plaintiff of January 24, 2007, their request is untimely under the same rationale outlined above regarding the written discovery request.

III. Failure to Produce Witnesses

Finally, Defendants claim that Plaintiff has refused to produce certain witnesses for deposition. Their request appears to pertain to two different sets of witnesses: first, a group of witnesses identified in a letter; and second, a witness designated by Plaintiff as its expert.

As far as the first claim, on May 7, 2007, Defendants sent a letter to Plaintiff which read in part:

A preliminary list of others we want to depose is as follows: Tracy Kinney; Petra Laws; Jim Morse, Global Services,⁴ Jeffrey Kerr; Monica Grant; Curtis Butler[;] and Mary Butler. Please advise if these persons still work for Nortel. If not, will you still produce them or provide the latest information you have concerning their location.

(Defs.' Mot. Ex. 9.)

It is troubling that Defendants claim in their motion that "Plaintiff never responded" to this letter. (Defs.' Mot. at 5.) This is false. Plaintiff clearly did respond, in a letter dated May 10, 2007, which begins, "I am writing in response to your letter dated May 7th." (See Pl.'s Resp. Ex. 1-Q.) In its May 10 letter, Plaintiff noted that it was willing to make Jim Morse (who was identified in initial disclosures) available, but it asked Defendants to identify the need for the other witnesses as they "were not identified in ... initial disclosures and/or no longer work for Nortel." (Pl.'s Resp. Ex. 1-Q.) Correspondence continued regarding these witnesses, with Plaintiff again requesting an explanation of the need to depose them, and Defendants generally asserting these witnesses had significant contact with Defendants' client. (See Pl.'s Resp. Exs. 1-R to 1-T.)

The Court already has fully considered and rejected Defendants' argument regarding the need to extend discovery for these depositions in light of Plaintiff's willingness to allow limited out-of-time discovery. (See Order, Dkt. No. 79.) Defendants still have not demonstrated a need for these depositions, and their

duplicative motion is a thinly disguised successive attempt to prolong the discovery in this case. To reiterate, "nothing asserted by Defendants demonstrates sufficient cause to disturb the deadlines entered in this case." (*Id.*)

*4 Defendants' second claim regards their wish to depose Plaintiff's designated expert witness. Plaintiff served its expert disclosure on April 2, 2007. (Pl.'s Resp. at 4 & Ex. 1-X.) The parties dispute Defendants' actions in seeking to depose Plaintiff's expert. Defendants claim that on April 26, 2007, they discussed with Plaintiff their desire to conduct several more depositions, including that of Plaintiff's expert. (See Defs.' Mot. at 6.) According to Defendants, Plaintiff's counsel agreed to speak to his client regarding a possible continuance of discovery or trial deadlines. (See *id.* & Ex. 10.) On May 1, 2007, Plaintiff then advised Defendants that it would not agree to a continuance. (See Defs.' Mot. at 6; Pl.'s Resp. Exs. 1 ¶ 21 & 1-V.) On May 30, 2007, Defendants sent a request to Plaintiff for agreeable dates to depose Plaintiff's expert. (See Defs.' Mot. Ex. 11.) Plaintiff answered in the negative on June 1, 2007, sensibly noting that a request for deposition two days before the June 1 discovery cutoff did not afford Plaintiff or its expert time to comply. (See Defs.' Mot. Ex. 12.)

Defendants have submitted no evidence, beyond the assertion in their motion, that they requested on April 26 to depose Plaintiff's expert. Plaintiff's counsel has no recollection of this request. According to Plaintiff, Defendants received Plaintiff's expert disclosure on April 2 but did not make any request to depose the expert until May 30, 2007. (Pl.'s Resp. Exs. 1 ¶ 20 & 1-U.)

It seems very unlikely that Defendants did indicate this request on April 26, 2007, given that nowhere in their letter dated April 26, 2007, their letter dated May 7, 2007, or their motion to continue filed May 30, 2007, did they make any mention of the deposition of Plaintiff's expert. (See Defs.' Mot. Exs. 9 & 10; Defs.' Mot., Dkt. No. 73.) However, even assuming the request was made orally on April 26 the delay in again mentioning it to Plaintiff was unjustified. Defendants do not dispute that they were first given Plaintiff's expert disclosure on April 2, but they intimate that they did not request to depose the expert until either April 26 (Defendants' version) or May 30 (Plaintiff's version) because they were waiting to hear whether Plaintiff would agree to a continuance. (Defs.' Mot. at 6.) This argument is both weak and implausible.

First, Defendants could hardly realistically expect that Plaintiff would agree to a continuance, given Plaintiff's repeated attempts to expedite matters in this case ever since it was filed. (*See, e.g.*, Pl.'s Mot. to Expedite Trial, Dkt. No. 19; Pl.'s Mem. in Opp'n to Defs.' Mot. to Stay, Dkt. No. 55; Pl.'s Qualified Opp'n to Defs.' Mot. for Extension of Time, Dkt. No. 64; Pl.'s Mem. in Opp'n to Defs.' Mot. for Continuance, Dkt. No. 74.) Second, even if a continuance was being contemplated, such a possibility would not have hampered or precluded an attempt by Defendants to depose Plaintiff's expert. There is no reason that discussions of a possible continuance should prevent Plaintiff from making such a request on April 2 or soon thereafter. In addition, Defendants were aware by *May 1* that Plaintiff would not agree to continue discovery, and still they did not send a written request to Plaintiff until May 30. (*See* Pl.'s Resp. Ex. 1-V at 2; Defs.' Mot. at 6.) Defendants' delay thus made it impossible for Plaintiff to accommodate their request, and Plaintiff's objection to producing its expert is well taken.

IV. Attorney's Fees

*5 Plaintiff has requested the costs and fees incurred in opposing Defendants' motion. (Pl.'s Resp. at 20.) The

parties' correspondence clearly shows that Plaintiff made a good faith attempt to resolve this dispute without the Court's interference. The Court finds that Defendants were not substantially justified in making this motion. Pursuant to its Fed.R.Civ.P. 37(a)(4)(B), the Court shall award Plaintiff its reasonable expenses, including attorney's fees, incurred in opposing the present motion. The parties are directed to confer on reasonable costs and fees, and if no agreement is possible, Plaintiff shall file an application for costs and fees, properly supported, following the ultimate disposition of this case at trial.

V. Conclusion

Accordingly, Defendants' motion to compel (Dkt. No. 84) is DENIED. For the final time, the Court directs the parties to proceed according to the Court's scheduling order without further delay.

IT IS SO ORDERED

All Citations

Not Reported in F.Supp.2d, 2007 WL 1959281

Footnotes

- 1 For purposes of addressing this discovery dispute, references herein made to "Defendants" and "Plaintiff" generally refer to counsel representing each party unless otherwise clear from the context.
- 2 Defendants do not specify in their motion which requests and responses it finds insufficient or incomplete. Apparently, they instead wish the Court to glean this information from the prior correspondence between the parties. Because Defendants also failed to provide the Court with a copy of the discovery requests or Plaintiff's responses, Plaintiff has filed a copy for the Court's reference. (*See* Pl.'s Resp. Exs. 1-A to 1-F.) Ultimately, the insufficiency of Defendants' motion need not be addressed further on account of the motion's fatal untimeliness.
- 3 Plaintiff argues that Defendants' contention that the last communication regarding written discovery was on April 19, 2007, is false. (Pl.'s Resp. at 12.) Although Defendants misleadingly omitted any reference to this exchange, Plaintiff provides supporting documentation showing that on April 25, 2007, Defendants requested a substantial amount of additional information from Plaintiff. Plaintiff voluntarily supplied this information to Defendants on May 1, 2007. (*See* Pl.'s Resp. Ex. 1-N.) Plaintiff's disclosure of this additional exchange ultimately does not assist Defendants' cause, however, because the evidence of this second interaction indicates that: (1) Plaintiff has willingly assisted Defendants with their discovery requests; and (2) Defendants failed to mention any outstanding requests regarding the first set of discovery responses when lodging their second request. (*Id.*)
- 4 It is unclear whether "Global Services" is a separate entity.