

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

_____)	
MARKEISHA HEMSLEY)	
)	
Plaintiff,)	
)	
v.)	2021 CA 003339 M
)	Judge Robert R. Rigsby
KHALILAH Q. JEFFERSON, et al.)	Next Event: Exchange of Fact Witnesses
)	May 31, 2022
Defendants.)	
_____)	

PLAINTIFF’S REPLY TO DEFENDANT MOORE OBGYN, LLC’S OPPOSITION TO PLAINTIFF’S MOTION FOR LEAVE TO FILE PLAINTIFF’S SECOND MOTION TO COMPEL AND REQUEST FOR SANCTIONS, AND PLAINTIFF’S SECOND MOTION TO COMPEL DISCOVERY FROM DEFENDANT MOORE OBGYN, LLC, FOR SANCTIONS, AND REQUEST FOR EXPEDITED RULING

Plaintiff Markeisha Hemsley, by and through undersigned counsel, hereby replies to Defendant Moore OBGYN, LLC’s (“Moore” or “Defendant Moore”) Opposition to Plaintiff’s Motion for Leave to File Plaintiff’s Second Motion to Compel and Request for Sanctions, and Plaintiff’s Second Motion to Compel Discovery from Defendant Moore OBGYN, LLC, for Sanctions, and for Expedited Ruling (“Defendant’s Opposition”) as follows:

1. Defendant Moore’s Opposition contains no authority for why it should not be held to the Super. Ct. Civ. R. 33 and 34 **mandated** 30-day deadline for discovery responses. As Defendant Moore notes, its discovery responses (albeit woefully deficient) were produced mere hours before the deadline for responding to Plaintiff’s Motion to Compel, and nearly two months after they were due under the Rules. Clearly, the only thing that could get Defendant Moore to participate in discovery **at all** was a Motion to Compel. And now Moore wants to erase history and act as if Plaintiff expended no effort to obtain delinquent discovery.

2. Moreover, the responses that Defendant Moore has now produced are grossly

deficient. For example, the following is its non-response to Plaintiff's perfectly reasonable Interrogatory No. 6:

INTERROGATORY NO. 6: Please identify each instance in which you have ever been sued or placed on notice of a claim of liability since 2012, furnishing the name of each such plaintiff; the name of the attorney representing the plaintiff and defendant physicians, hospital, practice groups, and/or medical providers; the nature of the alleged claim or suit; and the date, style, jurisdiction, and disposition of each claim or suit.

ANSWER: This Defendant objects to Interrogatory No. 6 on the basis that it is overbroad, unduly burdensome, and seeks information that is not relevant to the instant action or reasonably calculated to lead to the discovery of admissible evidence.

Form objections with no response at all to a perfectly reasonable Interrogatory **do not constitute a good faith attempt to engage in discovery.** Rather, Defendant Moore's discovery responses show that it intended they be nothing more than an attempt to get something to Plaintiff in advance of its opposition so it could claim the issue was moot. The actual effect, given the quality of these responses, is that Plaintiff will have to re-engage in the Super. Ct. Civ. R. 37 process from the beginning to confront Moore about its deficient discovery.

3. Moore then absurdly asserts that Plaintiff is the one not acting in good faith by referring to Plaintiff's generously offered deadline of May 2, 2022, as an extension for Defendant Moore to respond to discovery after the Court's denial of Moore's Motion to Dismiss. Defendant Moore could not have been more unequivocal in its rejection of that offer, boasting "I await your motion to compel." That Moore now seeks to use that deadline as evidence that Plaintiff is not acting in good faith is truly comical.

4. Moore attempts to obfuscate its conduct by pointing to the discovery failures of the other Defendants in this matter and accusing Plaintiff of being "contentious." If Defendant

refers to the dictionary definition of “contentious” by Meriam-Webster as “likely to cause disagreement or argument,” then Plaintiff pleads GUILTY. Certainly, Plaintiff’s attempts to enforce the Court’s rules has caused disagreement and argument. Regardless, Plaintiff’s discovery conversations with the other Defendants are entirely irrelevant here. What the other Defendants have or have not produced has no bearing on Defendant Moore’s own obligations under the Rules.

5. Moore’s Opposition to Plaintiff’s request that its objections be waived as untimely relies heavily on cases citing the Federal Rules of Civil Procedure rather than the applicable District of Columbia Superior Court Rules. As such, surely Defendant Moore knows that, in Federal Practice, the failure to object within the time fixed generally constitutes a waiver of any objection. *See Chubb Integrated Sys. V. Nat’l Bank of Wash.*, 103 F.R.D. 52, 62 (D. D.C. 1984); *see also Davis v. Fendler*, 650 F.2d 1154, 1160 (9th Cir. 1981); *Shenker v. Sportelli*, 83 F.R.D. 365, 367 (E.D.Pa.1979); 8 C. Wright & A. Miller, *Federal Practice and Procedure: Civil* § 2173 at 544 (1970). Furthermore, Super. Ct. Civ. R. 33(b)(4) states **clearly and absolutely** that grounds for objection not made in a timely manner are waived. There is no case law on the matter, likely because no one has challenged Rule 33(b)(4)’s clarity. Defendant’s argument that it had “good cause” to not respond to Plaintiff’s discovery is nothing more than a self-serving justification of its own misplaced confidence that it would succeed on the Motion to Dismiss. The objections that Defendant Moore now asserts, in addition to being free of substance, are untimely by nearly two months, without good cause, and should be waived under Super. Ct. Civ. R. 33(b)(4).

6. Finally, Moore’s claim that it has consistently indicated an intention to cooperate with discovery is belied by its own actions. When first contacted by Plaintiff regarding a lack of

response by the rules-mandated deadline, Defendant Moore indicated, without any legal basis, that it **would not be responding at all** until the Motion to Dismiss was ruled upon. Then, when that Motion was denied approximately one month after Defendant Moore's responses were due, instead of indicating that the responses would be forthcoming shortly, Defendant Moore brazenly stated that it would produce discovery responses on its own time; when offered an actual extension by Plaintiff, Moore responded with "I await your motion to compel." Defendant's Opposition does not discuss why, if its position was that it did not need to comply with discovery until the Motion to Dismiss was ruled upon, it did not have the discovery ready as soon as the Motion was denied. Clearly, Defendant Moore does not want to admit that it arrogantly believed it would win the Motion to Dismiss and never had any intention of complying with discovery in good faith. As noted above, the only thing that has made Defendant Moore produce discovery thus far in this case is the underlying Motion to Compel, and said discovery is hardly more than a placeholder. For obstructing discovery and forcing Plaintiff to resort to a Motion to Compel just to get it to follow the rules, Defendant Moore should be sanctioned appropriately, as requested in Plaintiff's Motion.

Respectfully submitted,

By: /s/ Peter C. Grenier /s/
Peter C. Grenier, #418570
David W. Blum, #1029697
Grenier Law Group PLLC
1920 L Street, N.W., Suite 750
Washington, D.C. 20036
Phone: 202-768-9600
Fax: 202-768-9604
Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on May 12, 2022, a copy of this Reply was filed and served via

CaseFile Xpress upon:

Khalilah Q. Jefferson
13103 Saint James Sanctuary Drive
Bowie, Maryland 20720-6370
Defendant

Andrew E. Vernick
Christopher J. Greaney
Vernick and Associates, LLC
111 Annapolis Street
Annapolis, Maryland 21401
Counsel for Defendant United Health Group, LLC, d/b/a Capital Women's Services

Thomas V. Monahan, Jr.
Jhanelle Graham Caldwell
Goodell, DeVries, Leech & Dann, LLP
One South Street, 20th Street
Baltimore, Maryland 21202
Counsel for Defendant Moore OBGYN, LLC

/s/ David W. Blum /s/