

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION

EARATON ADAMS, et al., )  
individually and on behalf of the )  
class they seek to represent, )  
Plaintiffs, )  
v. ) CIVIL ACTION NO. 08-0155-KD-N  
AUSTAL, U.S.A., L.L.C., )  
Defendant. )

ORDER

Defendant Austal, U.S.A., L.L.C. (“Austal”) has filed a Motion (doc. 106) requesting that the court stay consideration of its previously-filed Motion to Compel (doc. 101) responses to two subpoenas served on third-party Bender Shipbuilding & Repair Co., Inc. (“Bender”). The Motion to Compel complained that Bender had made objections to the subpoenas but had produced no documents in response.

In support of the instant motion, Austal asserts that Bender has provided documents it claims are responsive to the subpoenas, but requests that the court keep the original Motion to Compel pending until Bender has reviewed the documents, so that Bender may be made to respond in the event that the production is found to be inadequate. The original motion, however, is not drafted to address deficient production but the complete lack of response; a new motion will be required to challenge any inadequacy in the production made. Nor could the court cogently require Bender to respond to the original motion, following partial production of documents. Further, the Motion to Compel recites efforts Austal made to confer with Bender to

obtain compliance and thus avoid the need for court involvement, as is required prior to filing a Motion to Compel; additional conferencing efforts would be necessary to correct allegedly inadequate responses before the court would consider a renewed motion to compel further responses.

It thus appears that a stay of the motion to compel currently pending before the court is not a reasonable remedy. Accordingly, it is hereby ORDERED that defendant Austal's Motion to Stay is DENIED, and that the Motion to Compel is DENIED as Moot. Denial of the Motion to Compel is made without prejudice to defendant's right to bring a new motion seeking to compel more complete responses, should such relief prove necessary.

DONE and ORDERED this the 24<sup>th</sup> day of November, 2009.

/s/ Katherine P. Nelson  
**KATHERINE P. NELSON**  
**UNITED STATES MAGISTRATE JUDGE**