

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

ETHEL L. ABRAHAMS, et al.,
Plaintiffs,
v.
PHIL-CON SERVICES, LLC,
Defendant.
CIVIL ACTION 10-0326-WS-N

ETHEL L. ABRAHAMS, et al.,
Plaintiffs,
v.
PHIL-CON SERVICES, LLC, and
PHILLIPS & JORDAN, INC.,
Defendants.
Adv. Proc. No. 10-00075-MAM

ORDER

The defendants have filed a motion to dismiss the claims of several plaintiffs ("the 41(b) plaintiffs") with prejudice under Rule 41(b). (Doc. 36).<sup>1</sup> The 41(b) plaintiffs declined the opportunity to respond. (Doc. 38). Indeed, their attorney has represented that he is unable to oppose the motion. (Doc. 36 at 3).

"The legal standard to be applied under Rule 41(b) is whether there is a clear record of delay or willful contempt and a finding that lesser sanctions would not suffice." Goforth v. Owens, 766 F.2d 1533, 1535 (11th Cir. 1985) (internal quotes omitted); accord Gratton v. Great American Communications, 178 F.3d 1373, 1374 (11th Cir. 1999). "The severe sanction of dismissal with prejudice ...

<sup>1</sup> The plaintiffs as to whom dismissal is sought are: Ozell Benjamin; Maurice Johnson; Richard Johnson; Jerry Moore; Nehemiah Powell; Queen Robinson; Robert Shephard; Samuel Thomas; and Patrick Gary.

can be imposed only in the face of a clear record of delay or contumacious conduct by the plaintiff.” *Morewitz v. West of England Ship Owners Mutual Protection and Indemnity Association*, 62 F.3d 1356, 1366 (11<sup>th</sup> Cir. 1995) (internal quotes omitted).

The Court finds that this standard is met here. The 41(b) plaintiffs have repeatedly refused to respond to written discovery, have repeatedly refused to appear for deposition, and have disobeyed without excuse the Magistrate Judge’s order to appear in court for mediation. Whether or not they have lost interest in the litigation, the 41(b) plaintiffs’ longstanding pattern of conduct establishes a clear record of delay or willful contempt. The Court expressly finds that no sanction short of dismissal with prejudice will suffice.

Accordingly, the plaintiffs’ motion to dismiss is **granted**. The claims of the 41(b) plaintiffs are **dismissed with prejudice**.

DONE and ORDERED this 20<sup>th</sup> day of March, 2013.

s/ WILLIAM H. STEELE  
CHIEF UNITED STATES DISTRICT JUDGE