

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

DOMINICK MAIDA, ET AL.

PLAINTIFFS

vs.

NO. 4:07CV001151 BSM

SAMANTHA SHERMAN, ET AL.

DEFENDANTS

ORDER

Pending before the Court are plaintiffs' third motion to compel and for discovery sanctions and motion to take the deposition of Joe Vincent, II.

Plaintiffs' Third Motion to Compel and for Discovery Sanctions: (Doc. No. 41)

Plaintiffs propounded discovery requests on separate defendant Jerry Johnson on June 6, 2008. Johnson did not respond and on August 22, 2008, the court ordered him to respond to the discovery requests within twenty days. On September 12, 2008, Johnson sent responses to the discovery requests. Plaintiffs claimed these were insufficient and on September 23, 2008, plaintiffs' counsel wrote to Johnson's counsel seeking full responses to the discovery requests. Johnson provided amended responses to the interrogatories on October 29, 2008, which plaintiffs contend are not substantively different than his earlier responses.

In their third motion to compel, plaintiffs assert that Johnson's answers to the discovery requests are evasive or nonresponsive and that he has raised untimely and non-meritorious objections to the discovery requests. In particular, plaintiffs argue that Johnson has waived any objections by failing to assert them within thirty days of service of the

discovery requests. Johnson has not responded to the motion to compel.

The court has reviewed Johnson's responses to the interrogatories; in most of which, Johnson claims that he either does not have or does not know the information requested. While plaintiffs may disagree with the responses and question Johnson's veracity, the court cannot compel Johnson to provide information that he claims he does not have. For this reason, the court finds that Johnson has fully responded to the discovery requests. These are issues that defense counsel make take up when Johnson is cross-examined, both during his deposition and trial.

Accordingly, plaintiffs' third motion to compel discovery responses and for sanctions (Doc. No. 41) is denied.

Plaintiffs' Motion to Take the Deposition of Joe Vincent, II (Doc. No. 43):

Plaintiffs seek to depose defendant Joe Vincent, II, who is currently incarcerated at the Grimes Unit of the Arkansas Department of Correction. Plaintiffs wish to take a videotaped deposition of Vincent, both for discovery and evidentiary purposes. Leave of court is required to depose a person confined in prison. Fed. R. Civ. P. 30(a)(2)(B). Defendant Johnson agrees to the motion; none of the other defendants have responded.

The motion is granted. Plaintiffs are granted leave to depose Vincent at a time and on such terms as are convenient to the Grimes Unit.

IT IS SO ORDERED this 25th day of November, 2008.

Brian S. Miller

UNITED STATES DISTRICT JUDGE