

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

MARQCHELLO JORDAN

PLAINTIFF

v.

Civil No. 4:17-cv-04011

CENTRAL TRANSPORT, LLC *et al.*

DEFENDANTS

ORDER

Pending now before the Court is Plaintiff's Motion for Sanctions against separate Defendant, Elmer Enrique Ventura ("Ventura"). ECF No. 53. Defendants have responded to this Motion. ECF No. 56, 57. Pursuant to the provisions of 28 U.S.C. § 636(b)(1) and (3) (2009), the Honorable Susan O. Hickey referred this Motion to this Court. After considering this Motion and arguments of counsel, the Court finds as follow:

I. Background:

This lawsuit arises from an accident involving three tractor-trailers which occurred on May 6, 2015. ECF No. 23. Plaintiff alleges Defendants were negligent in causing this accident. *Id.* It has also been alleged by Plaintiff that Defendant Ventura was at the time of the accident an agent or employee of Defendant Central Transport, LLC ("Central") and was acting within the scope of his agency or employment at this time. *Id.*

According to Plaintiff, since October 30, 2017, he has been attempting to schedule the deposition of Ventura. ECF No. 54. After being unable to schedule this deposition, Plaintiff noticed Ventura's deposition for April 16, 2018. *Id.* However, Ventura failed to appear. *Id.* Plaintiff also alleges Ventura has failed to properly respond to written discovery. *Id.*¹

¹Plaintiff counsel states these issues appear to be ones of Ventura's own making and not the fault of his counsel. ECF No. 54, Pg. 5.

Because of Ventura's conduct, Plaintiff seeks to have the Court strike Ventura's entire Answer as an appropriate sanction. ECF No. 54. In the alternative, Plaintiff requests the Court strike those portions of Ventura's Answer concerning proper service of the Complaint, manner in which the accident happened, and agency with Central. *Id.*

Defendant Central responded and requests Plaintiff's Motion be denied and to the extent any sanctions are awarded, that they be crafted to ensure Central is shielded from any prejudice associated with those sanctions. ECF No. 56.

Ventura responded to this Motion. ECF No. 57. Counsel for Ventura stated they have continued to attempt to contact Ventura to arrange dates for his deposition. *Id.* However, according to counsel, Ventura is an over-the-road truck driver who now works with a company other than Central and counsel has had considerable difficulty in reaching and communicating with Ventura. ECF No. 58. Ventura requests the Court allow counsel additional time to obtain available dates from Ventura to provide him for a deposition. *Id.* In support, Ventura states there is sufficient time for his deposition given that the discovery deadline is November 20, 2018 and the trial date is March 18, 2019. *Id.*

II. Discussion:

Given the circumstances of this matter and the fact that the discovery deadline is still over five months away, the Court is not inclined to issue sanctions at this time. However, Plaintiff, through no fault of his own, has been unable to obtain proper discovery from Ventura. Therefore, Ventura will have until July 31, 2018 in which to appear for his deposition. Should Ventura fail to appear for a deposition by this date, the Court would entertain a future Motion for Sanctions.

III. Conclusion:

Based on the foregoing, the Plaintiff's Motion for Sanctions (ECF No. 53) is **DENIED** as premature, however, Defendant Ventura **SHALL** appear for deposition no later than July 31, 2018. Further, Ventura **SHALL** provide responses to any written discovery requests which remain outstanding no later than July 15, 2018. Continued failure of Ventura to comply with his discovery obligations may result in sanctions, including but not limited to the striking of his Answer.

ENTERED this 13th day of July 2018.

/s/ Barry A. Bryant
HON. BARRY A. BRYANT
U.S. MAGISTRATE JUDGE