

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 14-CV-61577-BLOOM/VALLE

CLEANIEL EDWARDS, as personal
representative of the estate of
Raleigh Priester, *et al.*,

Plaintiffs,

v.

ARMOR CORRECTIONAL HEALTH
SERVICES, INC., *et al.*,

Defendants.

**ORDER DENYING DEFENDANTS' MOTION TO COMPEL
NON-PARTY WITNESS APPEARANCE AT DEPOSITION**

THIS MATTER is before the Court on Defendants' Motion to Compel Non-Party Witness Appearance at Deposition. (ECF No. 91). The Court has reviewed the Motion, the applicable law, and is otherwise duly advised in the premises. For the reasons set forth below, Defendants' Motion is **DENIED**.

On July 21, 2015, Defendants served two subpoenas duces tecum for deposition on two non-parties, Mr. Allan Clark and Mrs. Claudette Clark (the "Clarks"). The subpoenas commanded the Clarks to appear for deposition on July 24, 2015—only three days later. The subpoenas further commanded the Clarks to compile and produce documents responsive to the subpoenas within the same three-day window. When the Clarks failed to appear for the depositions, Defendants filed the instant Motion to compel their depositions and to recover Defendants' fees and costs associated with the motion and the missed depositions.

Under Federal Rule of Civil Procedure 45(d)(1), a litigant serving a subpoena "must take

reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena.” The Court, in turn, “must enforce this duty[.]” Fed. R. Civ. P. 45(d)(1). A party does not fulfill this duty, however, when it serves a subpoena that commands a non-party to appear for a deposition, to produce documents, and to prepare a privilege log, as necessary—all within three days of service of the subpoena. *Cf. Subair Sys., LLC v. Precisionaire Sys., Inc.*, No. 08–60570–CIV, 2008 WL 1914876, at *2 n.4 (S.D. Fla. Apr.26, 2008) (finding that 10 days’ notice of a deposition “could be deemed ‘reasonable’” under Rule 45).

Accordingly, it is hereby **ORDERED AND ADJUDGED** that Defendants’ Motion is **DENIED**. Defendants may re-serve subpoenas on the Clarks with sufficient notice to permit the depositions to occur on or before the discovery deadline of August 15, 2015.

DONE AND ORDERED in Chambers in Fort Lauderdale, Florida, on August 4, 2015.



ALICIA O. VALLE
UNITED STATES MAGISTRATE JUDGE

Copies furnished to:
United States District Judge Beth Bloom
All Counsel of Record