

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

DON LIPPERT, <i>et al.</i> ,)	
)	
Plaintiffs,)	Case No. 10 C 4603
)	
v.)	
)	Judge Jorge L. Alonso
JOHN BALDWIN, <i>et al.</i> ,)	
)	
Defendants.)	

ORDER

For the reasons set forth below, the Court hereby approves and adopts the Report and Recommendation [652] issued by Magistrate Judge Martin. Defendants will be required to pay the attorneys' fees that plaintiffs incurred in making their response [626] to defendants' position statement. Pursuant to the Magistrate Judge's Recommendation, the parties should attempt to agree to the amount before asking the Magistrate Judge to set the amount.

STATEMENT

Magistrate Judge Martin entered a Report and Recommendation in which he recommends an award of attorneys' fees to plaintiffs and against defendants. The Court reviews *de novo* a Magistrate's Report and Recommendation awarding sanctions, because an award of sanctions is considered dispositive. *Retired Chi. Police Ass'n v. City of Chi.*, 76 F.3d 856, 869 (7th Cir. 1996); Fed.R.Civ.P. 72(b)(3). Defendants timely filed an objection (after receiving an extension of time from this Court) to Magistrate Judge Martin's order.

This case is nearly eight years old. As far back as October 10, 2017, Magistrate Judge Martin noted in his order that the parties had agreed that defendants would update their hard document production with respect to "eight prisons." By November 21, 2017, Magistrate Judge Martin ordered defendants to produce certain hard copies of documents related to "eight prisons." Magistrate Judge Martin entered similar orders on December 12, 2017 and January 18, 2018. By mid-February 2018, however, defendants were questioning whether they should be producing documents with respect to two of the eight prisons. Magistrate Judge Martin gave defendants an opportunity to file a position statement outlining their objection and gave plaintiffs an opportunity to respond. In their position statement, defendants argued that plaintiffs had never issued a clear discovery request for documents related to two of the eight prisons. Plaintiffs filed a response [626].

Magistrate Judge Martin was not impressed by defendants' argument. Magistrate Judge Martin ruled that the time to have objected to producing documents related to the two prisons

had been back in September 2017, before defendants agreed in October 2017 to produce the documents. This Court agrees.

In addition, Magistrate Judge Martin gave defendants until March 6, 2018 to file a brief explaining why they should not be sanctioned. Defendants did not bother to file the brief. Accordingly, Magistrate Judge Martin issued a Report and Recommendation in which he recommended that defendants pay plaintiffs their “reasonable attorneys’ fees incurred in filing their Response to Defendants’ Position Paper” [626]. He also suggested the parties work out the amount themselves.

In objecting to the award of fees, defendants do not challenge the merits of Magistrate Judge Martin’s recommendation. They do not argue that the Magistrate Judge lacked the authority to award fees. (Rule 37(b)(2)(C) allows the court to award reasonable attorneys’ fees when a party fails to comply with a discovery order.) Nor do defendants argue that their position was justified or that it was reasonable for plaintiffs to have had to respond to their position statement. Instead, defendants argue that they have a new lead attorney, who is cooperating with plaintiffs to supply the missing discovery. The Court is pleased to hear that, but that does not excuse their prior behavior.

Because the Court agrees with Magistrate Judge Martin that defendants’ objection to producing documents with respect to two of the eight prisons was too late and because defendants have pointed out no error in the Magistrate’s Report and Recommendation, the Court hereby adopts it.

SO ORDERED.

ENTERED: June 26, 2018



JORGE L. ALONSO
United States District Judge