

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

CHRISTIAN LANG, et al

CIVIL ACTION

VERSUS

NO: 10-1085-SSV-SS

DIRECTV, INC., et al

ORDER

DEFENDANTS' MOTION FOR SANCTIONS (Rec. doc. 144)

DENIED WITHOUT PREJUDICE

The defendants, DirecTV, Inc. and JP&D Digital Satellite Systems, Inc., seek an order dismissing the claims of one of the plaintiffs, Gary Smith ("Smith"), for failure to comply with the District Judge's order to appear for his deposition.

On April 9, 2010, the plaintiffs' petition was removed to federal court. The trial was set for March 21, 2011. Rec. doc. 26. On January 17, 2011, the plaintiffs, including Smith, requested a continuance of the trial. Rec. doc. 58. The trial was reset for September 26, 2011. The discovery deadline is August 16, 2011. Rec. doc. 103.

On February 1, 2011, the defendants filed a motion to compel Smith and another plaintiff, Dwayne Humphreys, to appear for depositions. Rec. doc. 78. The motion became moot, when the parties moved for a joint discovery order. Rec. doc. 90. The order was signed by the District Judge. It provided that Smith was appear for his deposition on February 18, 2011. Rec. doc. 92. He did not appear for his deposition. His counsel states:

Plaintiff Smith did not respond to telephone calls prior to the deposition and Plaintiff's counsel had to cancel the deposition when it became apparent that he could not confirm Mr. Smith's appearance. Smith made contact in late February and

expressed his regret for failing to communicate. He has cooperated with his counsel ever since and responded to several phone calls and requests for information.

Rec. doc. 145 at 2. On June 8 or nearly four months after the Court-ordered deposition date, the defendants filed their motion for sanctions. They report that Smith has not produced any documents in response to discovery requests. They contend that his deposition is a necessity in any circumstance but particularly where he is a representative plaintiff and the plaintiffs seek conditional certification of a collective action.

IT IS ORDERED that the defendants' motion for sanctions (Rec. doc. 144) is DENIED WITHOUT PREJUDICE.

IT IS FURTHER ORDERED that the parties shall proceed as follows:

1. **Within three (3) working days of the entry of this order**, counsel for plaintiffs shall transmit a copy of this order to Smith.
2. **Within five (5) working days of the entry of this order**, counsel for Smith shall confer with Smith and obtain dates for a deposition at the office of counsel for defendants during the weeks of August 1 and 8, 2011.
3. **Within six (6) working days of the entry of this order**, counsel for Smith and defendants shall confer by telephone and select a date for Smith's deposition during the weeks of August 1 and 8, 2011. Counsel for Smith shall initiate the call.
4. Immediately after counsel have agreed to a date for the deposition of Smith during the weeks of August 1 and 8, 2011, counsel for Smith shall confirm the date in writing to Smith.
5. **Within ten (10) working days of the entry of this order**, Smith's lawyer shall file a declaration in the record stating that in compliance with this order: (a) he transmitted a copy of the order to Smith; and (b) he confirmed the date, time and place of the deposition in

writing to Smith. Copies of the letters transmitting this order and confirming the deposition shall be attached to the declaration.

5. **Before the close of business on Friday, July 22, 2011**, Smith shall: (a) produce all documents responsive to the defendants' discovery requests by delivering the documents to office of counsel for defendants; and (b) provide a declaration that after a diligent search there are no other documents in his possession, custody or control responsive to the requests.
6. **If Smith fails to comply with any part of this order, it will be recommended that his claims in this action be dismissed with prejudice.**
7. Any motion to dismiss for failure to comply with this order shall be filed within five (5) working days of the breach of the order and shall be accompanied by a motion for expedited hearing.

New Orleans, Louisiana, this 5 day of July, 2011.



SALLY SHUSHAN
United States Magistrate Judge