

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DAVID ISIAH HENRY and
HEATHER WILLIAMS,

Plaintiffs,

Case No. 17-cv-11061

v.

Paul D. Borman
United States District Judge

David R. Grand
United States Magistrate Judge

CITY OF FLINT, OFFICER
MICHAEL HENIGE, OFFICER
SEAN COE, and OFFICER NIKOLAS
WHITE,

Defendants.

_____ /

**OPINION AND ORDER: (1) ADOPTING MAGISTRATE JUDGE’S
REPORT AND RECOMMENDATION (ECF #86); AND (2) GRANTING IN
PART AND DENYING IN PART DEFENDANT’S MOTION TO DISMISS
(ECF #76)**

Now before the Court is the Report and Recommendation of Magistrate Judge David R. Grand recommending that the Court grant in part and deny in part Defendants’ Motion to Dismiss, based on Plaintiffs’ failure to cooperate in discovery and failure to comply with the Magistrate Judge’s April 4, 2018 Sanctions Order (ECF #52), specifically regarding video recordings of Plaintiffs’ interaction with

police. (ECF #86.) No objections were filed to the Report and Recommendation.

The Magistrate Judge found that while sanctions were appropriate, dismissal was not yet warranted. In the alternative to dismissal, Defendants requested an adverse inference instruction regarding the unproduced videos, which Plaintiffs claim they no longer possess. Accordingly, the Magistrate Judge recommended that the Court deny Defendants' request for dismissal, but:

[I]n the event of trial, the Court should provide the jury with an adverse inference instruction regarding any missing videos that Defendants requested. The Court should order Plaintiffs to forthwith produce any recordings of police interactions in their possession that they have not already produced. Finally, Plaintiffs should be instructed that any further violation of their discovery obligations or of a Court order will subject them to sanctions, up to and including dismissal of this action.

(Rep. & Rec., PgID 1488, ECF #86.)

Having reviewed the Report and Recommendation and there being no timely objections under 28 U.S.C. § 636(b)(1) and E.D. Mich L.R. 72.1(b), the Court **ADOPTS** the Magistrate Judge's Report and Recommendation (ECF #86), and **GRANTS IN PART** and **DENIES IN PART** Defendants' Motion to Dismiss (ECF #76).

FURTHER, this Court orders Plaintiff to forthwith produce any recordings of police interactions in their possession that they have not already produced. Any further violation of their discovery obligations or a Court order will subject them to

sanctions, up to and including dismissal of this action. If this case proceeds to trial, the Court will provide the jury with an adverse inference instruction regarding any missing videos that Defendants requested.

IT IS SO ORDERED.

Dated: February 4, 2019

s/Paul D. Borman
Paul D. Borman
United States District Judge