

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

|                         |   |                   |
|-------------------------|---|-------------------|
| ROBERT E. SANFORD,      | ) | 8:08CV261         |
|                         | ) |                   |
| Plaintiff,              | ) |                   |
|                         | ) |                   |
| v.                      | ) | <b>MEMORANDUM</b> |
|                         | ) | <b>AND ORDER</b>  |
| UNKNOWN NEWTON, et al., | ) |                   |
|                         | ) |                   |
| Defendants.             | ) |                   |

This matter is before the court on Defendants’ Motion for Enlargement of Time in which to submit their responses to Plaintiff’s Request for Production of Documents. (Filing No. [120](#).) For good cause shown, Defendants’ Motion will be granted and the Progression Order will be modified, as set forth below.

***I. BACKGROUND***

On November 30, 2009, the court issued an Order setting a schedule for the progression of this case. (Filing No. [66](#).) This Order required the parties to serve interrogatories and requests for admission by December 30, 2009. (*Id.* at CM/ECF p. 1.) The Order also required that the parties file all motions to compel by February 8, 2010. (*Id.* at CM/ECF p. 2.) On December 11, 2009, Plaintiff filed Requests for Production of Documents, Admissions, and Interrogatories with the court. (Filing Nos. [73](#), [74](#), and [75](#).) However, Plaintiff failed to serve these discovery requests on Defendants. Thus, on the court’s own Motion, Plaintiff was given until April 6, 2010, to serve discovery requests on Defendants, and Defendants were given until May 6, 2010, to respond to those requests. (Filing No. [86](#) at CM/ECF p. 2.) On May 6, 2010, counsel for Defendants, Pamela J. Dahlquist (“Dahlquist”), filed a Notice of Service of Discovery. (Filing No. [89](#).) Plaintiff subsequently filed a Motion to Compel Discovery (filing no. [97](#)), and a Motion for Sanctions for failure to comply with discovery (filing no. [114](#)). In Plaintiff’s Motion for Sanctions, Plaintiff states that “Defendants never responded to [his] discovery requests.” (*Id.* at CM/ECF p. 1.)

On September 14, 2010, Attorney Kristin M. Lynch (“Lynch”) entered her appearance as counsel for Defendants. (Filing No. [115](#).) On September 24, 2010, Lynch, on behalf of Defendants, filed a Reply to Plaintiff’s Motion for Sanctions in which she asked the court for an order reopening discovery because former counsel for Defendants, Dahlquist, “was recently separated from her employment with the Douglas County Attorney” and “[t]he Douglas County Attorney’s Office cannot locate former counsel Dahlquist’s files . . . and cannot produce copies of the discovery responses [Dahlquist] served upon Plaintiff on May 6, 2010.” (Filing No. [120](#) at CM/ECF p. 2.)

## *II. ANALYSIS*

Plaintiff alleges that Defendants never responded to his discovery requests. (Filing No. [114](#) at CM/ECF p. 1.) Defendants do not dispute that prior counsel may have failed to respond to Plaintiff’s discovery requests, inasmuch as they claim they cannot locate prior counsel’s files and cannot produce copies of the discovery responses served on Plaintiff. (See Filing No. [120](#) at CM/ECF p. 2.) In light of this, and because the court cannot determine from the record what, if any, discovery responses Defendants have served on Plaintiff, the parties’ pending Motions for Summary Judgment will be denied without prejudice to reassertion. Further, Defendants’ Motion for Enlargement of Time in which to submit their responses to Plaintiff’s Request for Production of Documents will be granted and the Progression Order will be modified, as set forth below.

IT IS THEREFORE ORDERED that:

1. Defendants’ Motion for Enlargement of Time in which to submit their responses to Plaintiff’s Request for Production of Documents (filing no. [120](#)) is granted, but only as provided herein. The Progression Order in this matter is modified as follows:

- A. The parties have until December 28, 2010, to complete joint discovery.
- B. All dispositive motions shall be filed on or before January 27, 2011.
- C. **No further extensions of time will be permitted.**

2. The Clerk of the court is directed to set a pro se case management deadline in this case using the following text: February 7, 2011: deadline for court to review status of this matter.

3. The Final Pretrial Conference scheduled in this case for October 28, 2010, is cancelled.

4. All pending motions are denied without prejudice to reassertion.

DATED this 30<sup>th</sup> day of September, 2010.

BY THE COURT:

s/ Joseph F. Bataillon  
Chief United States District Judge

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