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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

THOMAS JACKSON and CAROL JACKSON,)
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 Plaintiffs,)
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 vs.)
)
 UNITED ARTISTS THEATRE CIRCUIT, INC.,)
 d/b/a UA RAINBOW PROMENADE, *et al.*,)
)
 Defendants.)

Case No. 2:10-cv-00050-LDG-GWF
ORDER
Motion for Extension, Motion for
Sanctions and Motion to Compel
(#51)

This matter is before the Court on Plaintiffs’ Second Emergency Motion for Limited Extension of Time in Which to Subpoena Master Janitorial, Motion for Sanctions and Motion to Compel Attendance (#51), filed March 29, 2011, and Defendant United Artists Theatre Circuit, Inc.’s Opposition to Plaintiffs’ Second Emergency Motion for Limited Extension of Time in Which to Subpoena Master Janitorial, Motion for Sanctions and Motion to Compel Attendance (#53), filed March 31, 2011.

DISCUSSION

1. Background

On January 31, 2011, the Court extended the discovery deadline until March 14, 2011 so that Plaintiffs could depose the person most knowledgeable (“PMK”) of Master Janitorial. (#33). Plaintiffs filed an emergency motion to extend discovery on March 14, 2011 because they had not yet had an opportunity to depose Master Janitorial. (#48). The Court granted the emergency motion and further extended the discovery deadline to March 30, 2011 to allow Plaintiffs to depose Master Janitorial. (#50).

On March 25, 2011, Plaintiffs served the subpoenas on Master Janitorial, noticing the depositions of the PMK and the Custodian of Records (“COR”). (#51 at 2-3). The depositions

1 noticed depositions to take place three days later on March 28, 2011. (*Id.* at 2). On the day the
2 deposition was scheduled, a person identifying himself as the son of the PMK for Master Janitorial
3 telephoned Plaintiff's counsel and informed him that the PMK was out of town and would not
4 appear at the noticed depositions. (*Id.*) In addition, the caller indicated to Plaintiff's counsel that
5 the company would be consulting an attorney before any individuals from Master Janitorial agreed
6 to respond to the subpoena. (*Id.*)

7 **2. Motion for Extension of Time**

8 Based on the failure of the subpoenaed individuals from Master Janitorial to appear at the
9 scheduled depositions, Plaintiffs now request an additional extension of time in which to subpoena
10 and depose individuals at Master Janitorial. (#51). There is no explanation in the present motion,
11 however, why Plaintiffs need an extension to serve individuals at Master Janitorial with additional
12 subpoenas. Plaintiffs state that they have already served the subpoenas at issue on individuals at
13 Master Janitorial, including the COR and PMK. (*Id.* at 2-3). If these individuals were properly
14 served, there is no need for Plaintiffs to serve the subpoenas a second time. Under Fed.R.Civ.P. 45,
15 third parties are required to timely respond to properly served subpoenas. Where a third party
16 refuses to comply with a subpoena, the subpoenaing party may request that the Court compel the
17 third party to comply. If the Court grants the motion to compel, the subpoenaing party will
18 generally be allowed to depose the subpoenaed individual, even if the discovery deadline has run.
19 As a result, the Court will deny Plaintiff's request for an additional extension of time to subpoena
20 and depose individuals at Master Janitorial.

21 **3. Motion to Compel and Motion for Sanctions**


22 In the present motion, Plaintiffs also request that the Court compel the appearance of the
23 subpoenaed individuals from Master Janitorial at future scheduled depositions. None of the
24 subpoenaed representatives of Master Janitorial has filed a response to Plaintiffs' Motion to
25 Compel (#51). There is no indication in the present motion, however, that Plaintiffs served the
26 motion to compel or motion for sanctions upon the subpoenaed individuals. As these individuals
27 have not had notice of the motion or an opportunity to respond, the Court will delay ruling on
28 Plaintiffs' motion to compel and motion for sanctions until Plaintiffs file proof that the motions

1 have been served upon the subpoenaed individuals at issue. Accordingly,

2 **IT IS HEREBY ORDERED** that Plaintiffs' Second Emergency Motion for Limited
3 Extension of Time in Which to Subpoena Master Janitorial, Motion for Sanctions and Motion to
4 Compel Attendance (#51) is **granted in part** and **denied in part** as follows:

- 5 1. Plaintiffs' request for an extension of time to subpoena and depose individuals at
6 Master Janitorial is **denied**;
- 7 2. Plaintiffs shall serve a copy of the motion to compel, motion for sanctions and the
8 present order upon the subpoenaed parties at Master Janitorial and file a Certificate
9 of Service with the Court. The subpoenaed parties shall have fourteen (14) days
10 after the date of service to respond to the motion to compel and motion for
11 sanctions.

12 DATED this 5th day of April, 2011.

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15 GEORGE FOLEY, JR.
16 United States Magistrate Judge
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