

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

**TIERRA BLANCA RANCH HIGH COUNTRY
YOUTH PROGRAM, et al.,**

Plaintiffs,

v.

No. CIV-15-0850 MCA/LAM

FELIPE GONZALES,

Defendant.

**ORDER DENYING WITHOUT PREJUDICE
PLAINTIFFS' MOTION TO COMPEL [Doc. 47]**

THIS MATTER is before the Court on *Plaintiffs' Motion to Compel* (Doc. 47), filed on December 13, 2016. A response to the motion was due on December 30, 2016, but none has been filed. Having considered the motion, record of the case, and relevant law, the Court finds that the motion is not well-taken and should be **DENIED without prejudice**.

In the motion, Plaintiffs ask the Court to enter an order compelling nonparty New Mexico Children, Youth and Families Department ("NMCYFD") to produce documents pursuant to a subpoena. *See* [Doc. 47 at 1]. Plaintiffs state that they served a subpoena on NMCYFD on November 14, 2016, and that NMCYFD responded to Plaintiffs with objections to the subpoena on the grounds that the subpoena seeks confidential information. *Id.* at 1-2. Plaintiffs contend that the *Stipulated Confidentiality Order* (Doc. 43) entered in this case "ensures that the requested subpoena records will be used or disseminated only in the pending litigation and maintained in confidence." [Doc. 47 at 2].

Federal Rule of Civil Procedure 45 provides that, if objections are made to a subpoena, “on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.” Fed. R. Civ. P. 45(d)(2)(B)(i). It appears that Plaintiffs have failed to comply with this Rule because they have not given notice to NMCYFD of their motion so that NMCYFD can respond. Instead, Plaintiffs’ certificate of service states that a copy of Plaintiffs’ motion to compel “was sent to [] all counsel of record via the Court’s Electronic filing system,” but NMCYFD is not a party to the case so it did not receive a copy of the motion via the Court’s electronic filing system. *See [Doc. 47 at 2]*. Therefore, the Court will deny this motion without prejudice.

IT IS THEREFORE ORDERED that *Plaintiffs’ Motion to Compel (Doc. 47)* is **DENIED without prejudice** for failure to comply with Federal Rule of Civil Procedure 45.

IT IS SO ORDERED.


LOURDES A. MARTÍNEZ
UNITED STATES MAGISTRATE JUDGE