

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
CIVIL NO. 3:09CV224-RJC-DSC

CARL STURDIVANT,)
)
 Plaintiff,)
)
 vs.)
)
 _____)
 KONE INC.,)
)
 Defendant.)
)
 _____)

ORDER

THIS MATTER is before the Court on the pro se Plaintiff’s “Third Renewed Motion to Compel ...” (document #16) filed October 27, 2009; Defendant’s “Response ...” (document #19) filed November 13, 2009; and “Plaintiff’s Motion to Extend Time to Respond to Defendant’s First Set of Requests to Produce and First Set of Interrogatories” (document #20) filed November 18, 2009.

The Court has previously denied Plaintiff’s “Expedited Motion to Compel ...” (document # 12) and “Renewed Expedited Motion to Compel ...” (document #13). See “Text-Only Order” entered September 22, 2009 (Defendant’s response brief established that discovery responses had been served in a timely manner).

In his third discovery motion, Plaintiff seeks an Order compelling Defendant to serve complete responses to his Requests for Production of Documents. In its present Response, Defendant states that Plaintiff served 85 separate Requests for Production of Documents, and that it has produced more than 2,000 pages of information in response to 70 of those requests and is gathering additional documents in response to one additional request (Request for Production No. 15).

Defendant contends that the remaining Requests for Production (Nos. 20, 50-59, and 73-75) do not seek documents that are relevant and/or reasonably calculated to lead to the discovery of admissible evidence. Instead, these requests appear to impose an undue burden on Defendant, which has already incurred great expense to gather the documents that have been produced. For these reasons, as well as the other reasons set forth in Defendant's Response, Plaintiff's Motion to Compel is denied.

In his "Motion to Extend Time to Respond to Defendant's First Set of Requests to Produce and First Set of Interrogatories," Plaintiff seeks an extension to December 9, 2009 in which to respond to Defendant's written discovery requests. These request were served on September 23, 2009 and Plaintiff's responses are long overdue. Plaintiff contends that he is unable to make his responses until Defendant has first fully responded to his requests.

In light of his pro se status, the Court will grant the requested extension. The Court cautions Plaintiff, however, that he may not condition his discovery responses upon his satisfaction with Defendant's responses.

Furthermore, the Court specifically warns Plaintiff that any further failure to respond to Defendant's First Set of Requests to Produce and First Set of Interrogatories, or otherwise to respond to Defendant's reasonable discovery requests, or to comply with the Court's Orders, the Local Rules, or the Rules of Civil Procedure may result in the imposition of sanctions. **Sanctions can include Plaintiff being required to pay Defendant's costs, including reasonable attorney's fees, and may also include dismissal of this lawsuit with prejudice.**¹

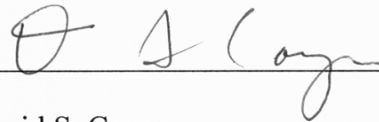
¹The Fourth Circuit has emphasized the significance of both establishing a history of dilatory action and warning to the offending party of what may follow prior to dismissing the action. See, e.g., Hathcock v. Navistar Int'l Transp. Corp., 55 F.3d 36, 40 (4th Cir. 1995); Choice Hotels Int'l v. Goodwin & Boone, 11 F.3d 469, 473 (4th Cir. 1993); and Lolatchy v. Arthur Murray, Inc., 816 F.2d 951, 953 (4th Cir. 1987).

NOW, THEREFORE, IT IS ORDERED:

1. Plaintiff's "Third Renewed Motion to Compel ..." (document #16) is **DENIED**.
2. Plaintiff's "Motion to Extend Time to Respond to Defendant's First Set of Requests to Produce and First Set of Interrogatories" (document #20) is **GRANTED** and Plaintiff shall respond to those discovery requests on or before December 9, 2009.
3. The Clerk is directed to send copies of this Order to the pro se Plaintiff; to counsel for Defendant; and to the Honorable Robert J. Conrad, Jr.

SO ORDERED.

Signed: November 18, 2009



David S. Cayer
United States Magistrate Judge

