

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ANDERSON DIVISION

Philip Morris, individually and on behalf)	C/A No. 8:16-cv-01440-DCC
of others similarly situated,)	
)	
Plaintiff,)	
)	
v.)	ORDER
)	
Southern Concrete and Construction, Inc.,)	
Kelly Boulware,)	
)	
Defendants.)	
_____)	

This matter is before the Court on Defendants’ Motion to Compel or, in the Alternative, to Dismiss. Defendants state that Plaintiff’s counsel has not consented to the motion; however, Plaintiff’s counsel does not oppose the motion.

Defendants move this Court to compel certain class members to provide depositions in this case. In the event that class members fail to provide depositions, Defendants ask that they be dismissed without prejudice pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. Defendants scheduled depositions for November 28, 29, and 30, 2017, and December 1, 2017; Defendants sent notice of the depositions and a letter explaining that they were required to attend to the class members by certified mail. Defendants contend that several of the class members have not returned calls regarding the scheduling of depositions.

Class members Jamie Golden, Frederickus Green, Rodney Isaac, Wayne Jones, George Mayes, Sylvester Ramsey, John Rowland, Gus Ray Smith, Ira Davis Thornton, David Lee Todd, Jason Walker, and Mark Wilson received the certified mail but failed to schedule their depositions. Class members Joshua Ransom, Kirk Ransom, and Steve Scott refused to accept or sign for the

certified mail. Class members Aaron Bruce Fisher, Robert Ligon, Tyrone Moore, Bobby Noble, Michael Strong, and Joel Watkins did not receive the certified mail because they were no longer at the address provided to Defendants and did not leave a forwarding address. Defendants note that they have incurred significant costs in sending the certified mail, paying for a court reporter for several days, and paying for defense counsel to appear for each noticed deposition.

Wherefore, based upon the foregoing, Defendants' motion to compel [51] is granted. The above listed class members are ordered to appear for a deposition in Anderson County within 45 days of the date of this Order. Any class member who fails to appear for a deposition or fails to show good cause for declining to appear for a deposition within that time will be dismissed pursuant to Rules 37(d) and 41(b) based upon the class members' failure to attend their own depositions and overall failure to prosecute this case. Defendants' and Plaintiff's counsel are directed to file a joint report regarding the status of the depositions within 52 days of the date of this Order.

IT IS SO ORDERED.

s/Donald C. Coggins, Jr.
United States District Judge

January 3, 2018
Spartanburg, South Carolina