

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

HELEN KINCHELOE, et al.

§

V.

§

CAUSE NO. A-09-CA-010 LY

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DAVID CAUDLE, et al.

§

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ORDER

Before the Court are: Plaintiffs' Opposed Motion to Compel (Clerk's Docket No. 86), Defendants' Response (Clerk's Docket No. 101), Plaintiffs' Reply to Defendants' Response (Clerk's Docket No. 104) and Defendants' Advisory to the Court (Clerk's Docket No. 105).

Plaintiffs' Motion to Compel

On February 11, 2010, the Court ordered Defendants to file a brief advisory with the Court indicating whether they intend to produce all disputed records at issue in the Motion to Compel or, if not, to state clearly what records they are withholding and the basis for doing so. *See* Clerk's Docket No. 103. In their Advisory to the Court, Defendants aver that they have produced all of the documents requested by the Plaintiffs with the exception of three documents identified in their privilege log. *See* Exhibit A to Advisory. Thus, Plaintiffs' Motion to Compel appears to be moot. Accordingly, the Court HEREBY DENIES Plaintiffs' Opposed Motion to Compel (Clerk's Docket No. 86) as MOOT. Plaintiffs may file another Motion to Compel if they still seek those documents identified in Defendants' privilege log.

Plaintiffs' Request for Sanctions

Although Plaintiffs' Motion to Compel appears to now be moot, the Court is extremely frustrated with defense counsel's handling of the discovery issues in this case. Defense counsel did not produce the requested documents for approximately five months and only begrudgingly did so

after Plaintiffs filed motions to compel and this Court ordered him to file an advisory explaining what had and had not been produced. Instead of responding to Plaintiffs' initial discovery requests in a timely manner, either by turning over the requested documents or by objecting to the requests by producing a privilege log, counsel stonewalled and came up with one excuse after another. Plaintiffs have been prejudiced by defense counsel's tactics in this case and have been forced to file a Motion to Compel as well as subsequent briefs related to the Motion. Because of defense counsel's actions, pursuant to FED. R. CIV. P. 37(a)(5), the Court HEREBY ORDERS defense counsel William W. Krueger, III and his law firm, McKamie Krueger, LLP, to pay to Plaintiffs **\$1,225.00** as reimbursement for their attorney's fees incurred in the preparation of the Motion to Compel and related briefs in this case.

SIGNED this 22nd day of March, 2010.



ANDREW W. AUSTIN
UNITED STATES MAGISTRATE JUDGE