

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

STEVEN B. AUBREY, et al.

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V.

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A-10-CV-076-SS

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PETER E. BARLIN, et al.,

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ORDER

Before the Court are the following motions and their associated responses, replies, and supplements:

- (1) Plaintiffs Steven B. Aubrey and Brian E. Vodicka's Opposed Motion to Compel Against First State Bank Central Texas (Dkt. No. 347); Defendant Vitaly Zaretsky's Response to Plaintiffs' Motion to Compel Against First State Bank Central Texas (Dkt. No. 349); Plaintiffs' Reply (Dkt. No. 352);
- (2) Movant First State Bank Central Texas' Motion for Award of Costs and Fees (Dkt. No. 353); Plaintiffs' Response to Non-Party First State Bank Central Texas' Motion for Award of Costs and Fees (Dkt. No. 372);
- (3) Plaintiffs' Motion for Substituted Service by Publication as to Defendant Gennady Borokhovich (Dkt. No. 373);
- (4) Movant REOC's Motion to Quash Subpoena or, Alternatively, to Extend Time to Serve Objections (Dkt. No. 379);
- (5) Defendant William Hemphill's Unopposed Motion to Establish/Extend the Deadline to Answer or Otherwise Respond to the First Consolidated Amended Complaint (Dkt. No. 384);
- (6) Motion to Withdraw Attorney Dillon R. Meek (Dkt. No. 396);
- (7) Defendant Peter Barlin's Motion to Quash Telephone Company Subpoenas (Dkt. No. 413); Plaintiffs' Response to Defendant Peter Barlin's Motion to Quash Telephone Company Subpoenas (Dkt. No. 427); Defendant Peter Barlin's Reply (Dkt. No. 440);
- (8) Plaintiffs' Motion to Compel Depositions (Dkt. No. 424); Plaintiffs' Motion for Leave to Conduct Additional Depositions (Dkt. No. 425); Count Three Defendants' Response to Plaintiffs' Motion to Compel and Motion for Leave to Conduct Additional Depositions (Dkt. No. 432); Defendant North American Title Company's

Combined Response to Plaintiffs' Motions to Compel Depositions and Leave to Conduct Additional Depositions (Dkt. No. 434); Defendant Vitaly Zaretsky's Response to Plaintiffs' Motion to Compel Depositions and Motion for Leave to Conduct Additional Depositions (Dkt. No. 435); Defendant Peter Barlin's Response to Plaintiffs' Motion to Compel Depositions (Dkt. No. 436); Defendants Gregory Lahr and Sandra Gunn's Response to Plaintiffs' Motions to Compel Depositions and Leave to Conduct Additional Depositions (Dkt. No. 437); Plaintiffs' Combined Reply to Defendants' Responses (Dkt. No. 445);

- (9) Count Three Defendants' Motion to Quash IBC Subpoena (Dkt. No. 428); Plaintiffs' Response to Count Three Defendants' Motion to Quash IBC Subpoena (Dkt. No. 439); Count Three Defendants' Reply in Support of Motion to Quash Subpoena (Dkt. No. 448);
- (10) Defendant William R. Hemphill, Jr.'s Motion to Quash Subpoena (Dkt. No. 430); Plaintiffs' Response to Defendant William R. Hemphill, Jr.'s Motion to Quash Subpoena (Dkt. No. 442); Defendant William R. Hemphill, Jr.'s Reply (Dkt. No. 451);
- (11) Defendants' Joint Motion for Protective Order (Dkt. No. 431); Plaintiffs' Response to Certain Defendants' Motion for Protective Order (Dkt. No. 444); and
- (12) Defendant William R. Hemphill, Jr.'s Motion to Join Defendants' Joint Motion for Protective Order and Response to Plaintiffs' Motions to Compel Depositions and Motion for Leave to Conduct Additional Depositions (Dkt. No. 438).

The District Court referred the above non-dispositive motions to the undersigned Magistrate Judge for resolution pursuant to 28 U.S.C. §636(b)(1)(A), FED. R. CIV. P. 72, and Rule 1(c) of Appendix C of the Local Rules of the United States District Court for the Western District of Texas, Local Rules for the Assignment of Duties to United States Magistrate Judges. Having considered the above-motions, their respective responses and replies, as well as the entire record in this case, the Court now issues the following orders.

The long history of this case was detailed in the undersigned's Report and Recommendation dated November 27, 2013. *See* Dkt. No. 463. As noted therein, the current case represents a consolidation of three separate but related cases. As noted in that R&R, and as stated during the

hearing on these motions, Judge Sparks held a status conference in these matters on November 16, 2012, and at that time counsel for the plaintiffs indicated that—at most—only minimal additional discovery (one deposition and four or five requests for production or inspection) would be needed to proceed to trial. Based on the First Amended Consolidated Complaint, Plaintiffs have sought substantial additional discovery, including loan files, phone records, bank records, and approximately fifteen additional depositions. This discovery is inconsistent with the representations made to the Court in November 2012, and Plaintiffs have made no attempt to seek leave to pursue the discovery, nor have they shown good cause for being permitted to conduct the discovery at this late date. Furthermore, the undersigned has recommended that Judge Sparks strike Plaintiffs' First Amended Consolidated Complaint and require Plaintiffs to submit a revised pleading limited to the parties and claims pending at the time of consolidation. *See* Dkt. No. 463. If adopted by Judge Sparks, this recommendation would effectively remove from the case all parties added as defendants in Plaintiffs' First Amended Consolidated Complaint. Consequently, discovery related to those parties would certainly not be pertinent to the remaining claims in this case.

Further, to the extent that any party believes additional discovery is necessary because they may not be able to make use of depositions taken or documents produced prior to consolidation, Judge Sparks addressed that issue at the November 2012 hearing, and indicated that he would permit discovery taken in one of the cases pre-consolidation to be used in the consolidated action.

ACCORDINGLY, it is **ORDERED** that Plaintiffs Steven B. Aubrey and Brian E. Vodicka's Opposed Motion to Compel Against First State Bank Central Texas (Dkt. No. 347) is **DENIED**.

It is **FURTHER ORDERED** that Movant First State Bank Central Texas' Motion for Award of Costs and Fees (Dkt. No. 353) is **GRANTED**. Plaintiff shall pay the amount of \$3,053.50 to First State Bank Central Texas, consisting of \$137.50 for research costs, \$284.00 for copy costs, and \$2,632.00 for attorneys' fees.

It is **FURTHER ORDERED** that Plaintiffs' Motion for Substituted Service by Publication as to Defendant Gennady Borokhovich (Dkt. No. 373) is **DENIED AS MOOT**.

It is **FURTHER ORDERED** that Movant REOC's Motion to Quash Subpoena or, Alternatively, to Extend Time to Serve Objections (Dkt. No. 379) is **GRANTED**.

It is **FURTHER ORDERED** that Defendant William Hemphill's Unopposed Motion to Establish/Extend the Deadline to Answer or Otherwise Respond to the First Consolidated Amended Complaint (Dkt. No. 384) is **DENIED AS MOOT**.

It is **FURTHER ORDERED** that the Motion to Withdraw Attorney Dillon R. Meek (Dkt. No. 396) is **GRANTED**.

It is **FURTHER ORDERED** that Defendant Peter Barlin's Motion to Quash Telephone Company Subpoenas (Dkt. No. 413) is **GRANTED**.

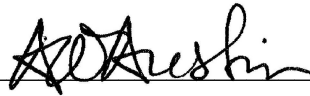
It is **FURTHER ORDERED** that Plaintiffs' Motion to Compel Depositions (Dkt. No. 424) and Plaintiffs' Motion for Leave to Conduct Additional Depositions (Dkt. No. 425) are **GRANTED IN PART AND DENIED IN PART**. Plaintiffs may proceed with the deposition of Vitaly Zaretsky without leave of Court. In all other respects, the motions are denied. If a party wishes to take any more depositions in this case, and is unable to come to an agreement with the deponent and parties involved, the requesting party shall file a motion with the Court.

It is **FURTHER ORDERED** that Count Three Defendants' Motion to Quash IBC Subpoena (Dkt. No. 428) is **GRANTED**.

It is **FURTHER ORDERED** that Defendant William R. Hemphill, Jr.'s Motion to Quash Subpoena (Dkt. No. 430) is **GRANTED** to the extent Plaintiffs seek additional discovery outside of the agreement between Hemphill and Plaintiffs regarding Hemphill's production of bank records.

Finally, it is **FURTHER ORDERED** that Defendants' Joint Motion for Protective Order (Dkt. No. 431) and Defendant William R. Hemphill, Jr.'s Motion to Join Defendants' Joint Motion for Protective Order (Dkt. No. 438) are **GRANTED**.

SIGNED this 6th day of December, 2013.

A handwritten signature in black ink, appearing to read "A. Austin", is written over a horizontal line.

ANDREW W. AUSTIN
UNITED STATES MAGISTRATE JUDGE