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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

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STANLEY L. WADE,

Plaintiff,

v.

RANDALL T. GAITHER,

Defendant.

**MEMORANDUM DECISION AND  
ORDER OVERRULING  
STANLEY L. WADE’S OBJECTION TO  
RANDALL GAITHER’S SUBPOENA TO  
D. KENDALL PERKINS**

Case No. 2:08-cv-641 WFD

District Judge William F. Downs  
Magistrate Judge David Nuffer

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Plaintiff Stanley L. Wade objects<sup>1</sup> to Defendant Randall T. Gaither’s June 2, 2010<sup>2</sup> subpoena to D. Kendall Perkins. Gaither’s subpoena was served two days past the court’s ordered deadline of May 31, 2010.<sup>3</sup> Wade argues that Gaither served the subpoena after the deadline in an effort to extend the deadline for a summary judgment motion.<sup>4</sup>

On February 20, 2010, the magistrate judge granted in part Gaither’s motion to compel and overruled Wade’s previous objections to the issuance of subpoenas to Perkins and Charles Muller.<sup>5</sup> Wade asserts that this order set the deadline to subpoena Perkins’s records for March 20, 2010.<sup>6</sup> However, the order does not impose such a deadline. The only deadline the order sets is March 22, 2010, for Wade “to respond to the interrogatories and request for production

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<sup>1</sup> Objections to Defendant’s Untimely Subpoena to D. Kendall Perkins (Objection), docket no. 128, file June 10, 2010.

<sup>2</sup> Defendant’s Response to Plaintiff’s Objection to Untimely Subpoena to D. Kendall Perkins (Response) at 4, docket no. 129, filed June 18, 2010.

<sup>3</sup> Order Granting in Part Motion to Compel (Order), docket no. 84, February 20, 2010

<sup>4</sup> Defendant’s Motion for Summary Judgment, docket no. 115, filed May 27, 2010.

<sup>5</sup> Order.

<sup>6</sup> Objection at 2.

regarding Muller.”<sup>7</sup> The order did not specify a deadline for the subpoenas. Wade is incorrect in his assumption that the order set a March 20, 2010 deadline for subpoenas.

Wade believes that Gaither waited until June 2, 2010 to subpoena Perkins in order to extend the deadline to file a motion for summary judgment pursuant to Fed. R. Civ. P. 56.<sup>8</sup> He states,

when Defendant decided to wake up and serve a Summary Judgment Motion on Plaintiff, he apparently discovered that such a Motion, pursuant to amended Rule 56(c), must be served within 30 days of the end of discovery. Hence, he decided to arbitrarily extend discovery to the present to meet the amended Rule's time requirement.<sup>9</sup>

This is not the case. Under the scheduling order governing this case, the deadline to file dispositive motions was not until June 30, 2010.<sup>10</sup> Gaither filed for summary judgment on May 27, 2010,<sup>11</sup> over a month prior to the June 30 deadline. Gaither timely filed for summary judgment and did not manipulate the deadlines as Wade alleges.<sup>12</sup>

Gaither correctly asserts that there is no basis for Wade's objection<sup>13</sup> to the Perkins subpoena as “[t]he documents requested are probative on material issues in this case.”<sup>14</sup> Furthermore, as Gaither point out, no prejudice will result to Perkins in responding to the subpoena as he was on the mailing certificate on February 20, 2010 when the Court issued its order concerning the motion to compel<sup>15</sup> and, as a result, has been on notice of the subpoena for

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<sup>7</sup> Order at 5.

<sup>8</sup> Objection at 1.

<sup>9</sup> Id. at 1-2.

<sup>10</sup> Scheduling Order at 2, docket no. 63, filed July 14, 2009.

<sup>11</sup> Defendant's Motion for Summary Judgment, docket no. 115, filed May 27, 2010.

<sup>12</sup> Objection at 1-2 (“[Gaither] decided to arbitrarily extend discovery to the present to meet the amended Rule's time requirement”).

<sup>13</sup> Response at 2.

<sup>14</sup> Order at 3.

<sup>15</sup> Response at 4; see also Notice of Electronic Filing for Order, docket no. 84, filed February 20, 2010.

several months and should be prepared to provide the information requested. Due to this and the fact that the subpoena was sent only two days past the May 31, 2010 deadline, it is timely.

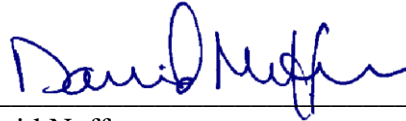
Gaither timely and properly served the subpoena to Perkins and Wade's objection to the subpoena is overruled.

**ORDER**

IT IS HEREBY ORDERED that Stanley L. Wade's objection<sup>16</sup> to Randall Gaither's subpoena to D. Kendall Perkins is OVERRULED.

Dated July 21, 2010.

BY THE COURT:

A handwritten signature in blue ink, appearing to read "David Nuffer", written over a horizontal line.

David Nuffer  
U.S. Magistrate Judge

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<sup>16</sup> Docket 128, filed June 10, 2010.