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UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ELLE NGUYEN, *et al.*,

Plaintiffs,

v.

MERCER ISLAND BOYS BASKETBALL  
BOOSTER CLUB, *et al.*,

Defendants.

CASE NO. 2:23-cv-00855-RSL

ORDER DENYING MOTION TO  
COMPEL AS MOOT, DENYING  
REQUEST FOR ATTORNEY'S  
FEES, AND DENYING MOTION TO  
STRIKE

This matter comes before the Court on Defendant Boys & Girls Club of King County and Marc Munson's "Motion to Compel Discovery Responses from Plaintiffs and for Attorneys [sic] Fees" (Dkt. # 73) and "Motion to Strike Plaintiffs' New Response on Defendants' Motion to Compel Discovery and Document Production" (Dkt. # 108).

Defendants served their first set of discovery requests on February 16, 2024. Plaintiffs obtained a 30-day extension of the time in which to respond, but did not serve their initial, incomplete responses until May 14, 2024. The responses were supplemented, as agreed by the parties, on May 24, 2024. Defendants identified various deficiencies in the production and wrote a letter, dated May 31, 2024, requesting further supplementation by June 14, 2024. Dkt. # 76-4. Although plaintiffs apparently agreed that some supplementation was necessary and said they would endeavor to do so by June 21, 2024, they did not supplement their responses until July 2, 2024, a day after this motion to

ORDER DENYING MOTION TO COMPEL AS MOOT,  
DENYING REQUEST FOR ATTORNEY'S FEES, AND  
DENYING MOTION TO STRIKE - 1

1 compel was filed. Defendants agree that plaintiffs have now satisfied their discovery  
2 obligations with respect to the first set of discovery requests, but nevertheless seek an  
3 award of fees and costs under Rule 37(b)(2).

4 Rule 37(b)(2) is clearly inapplicable: there was no “order to provide or permit  
5 discovery” with which plaintiffs failed to comply. In the absence of a prior court order,  
6 Rule 37(a)(5) governs a request for fees and costs. While an award may be appropriate  
7 under that subparagraph if the requested discovery is provided after a motion to compel is  
8 filed, fees and costs cannot be awarded if (i) the motion was filed without making a good  
9 faith attempt to obtain the disclosure without court involvement, (ii) the nondisclosure was  
10 substantially justified, and/or (iii) the circumstances make an award of expenses unjust.

11 The Court in no way condones delaying full and complete discovery responses for  
12 more than three and a half months past the due date, but notes that the parties agreed to  
13 certain extensions of time and were in discussions regarding the dates of production  
14 throughout that period. While defendants’ frustration with plaintiffs’ inability to follow  
15 through on any of their commitments is evident and understandable, this motion to compel  
16 was filed only two weeks after plaintiffs failed to meet a deadline for supplementation that  
17 defendants had unilaterally set. In addition, counsel’s response to the motion to compel  
18 reveals that the relationship between her and her clients was already fraying at the time,  
19 further complicating efforts to supplement in a timely manner. *See* Dkt. # 75 at 4.

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