

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION**

GENERAL CONFERENCE)	
CORPORATION OF SEVENTH-DAY)	
ADVENTISTS and GENERAL CONFERENCE)	
OF SEVENTH-DAY ADVENTISTS,)	
)	
Plaintiffs,)	
)	
v.)	Cast No.: 1:06-cv-01207-JDB
)	
WALTER MCGILL d/b/a CREATION)	
SEVENTH DAY ADVENTIST CHURCH)	
<i>et al.</i> ,)	
)	
Defendant.)	

**MOTION AND MEMORANDUM FOR SANCTIONS AND
ORDER SETTING SHOW CAUSE HEARING**

Plaintiffs, General Conference Corporation of Seventh-day Adventists and General Conference of Seventh-day Adventists (collectively the “Plaintiffs”), pursuant to Fed. R. Civ. P. 37, respectfully move this Court for Sanctions and an Order Setting a Show Cause Hearing against Defendant Walter McGill (the “Defendant”) for his failure to comply with this Court’s orders. Plaintiffs contemporaneously filed a Motion and Memorandum for Order Setting Evidentiary Show Cause Hearing against four other individuals, which deals with interrelated matters.

PROCEDURAL BACKGROUND

A. The Court’s Orders

On January 6, 2010, this Court entered an Order (D.E. No. 112) allowing the Plaintiffs to take discovery to aid in the enforcement of this Court’s May 28, 2009 Injunction Order (D.E. No.

98) entered against Defendant. Specifically, the Court ordered the Defendant to cooperate fully with Plaintiffs in limited discovery for the purpose of permitting Plaintiffs to ascertain the identities of those who may have acted in concert with Defendant. (D.E. 112).

B. Defendant's Refusal to Comply With Notice of Deposition

On January 22, 2010, Plaintiffs' counsel, Mr. Joel Galanter, served Defendant's counsel, Mr. Charles L. Holliday, with a Notice of Deposition for Walter McGill. (Exhibit 1, Notice of Deposition). Mr. McGill's deposition was scheduled for February 11, 2010. (*Id.*)

On February 11, 2010, Mr. Holliday sent Mr. Galanter an email, confirming that Mr. McGill would not attend his deposition. (Exhibit 2, 2/11/10 email from Holliday to Galanter). On February 11, 2010, Mr. Galanter responded to Mr. Holliday's email, attempting to reschedule Mr. McGill's deposition at another agreeable time. (*Id.*, 2/11/10 email from Galanter to Holliday). On March 24, 2010, Mr. Holliday responded to Mr. Galanter's email, stating that Mr. McGill would not agree to any date to conduct the deposition. (*Id.*, 3/24/10 email from Holliday to Galanter).

C. Defendant's Failure To Respond To Written Discovery Requests

On February 4, 2010, Plaintiffs narrowly drafted Discovery Requests to Defendant in Aid of Enforcement of Permanent Injunction (the "Discovery Requests") were served upon Defendant's counsel via first class mail, as well as by electronic mail. (Exhibit 3, Discovery Requests).

On March 9, 2010 responses to the Discovery Requests were due. On March 10, 2010, Mr. Galanter mailed Mr. Holliday a letter, noting that Defendant's responses to the Discovery Requests were overdue. (Exhibit 4, 3/10/10 letter from Galanter to Holliday). In this letter, Plaintiffs requested responses on or before March 17, 2010, noting that Plaintiffs would be

forced to file a motion if Defendant did not comply. Mr. Galanter and Mr. Holliday also discussed the late discovery responses on March 11, 2010 to no avail.

As of the date of the filing of this motion, Plaintiffs still have not received any responses to Plaintiffs' Discovery Requests to Defendant in Aid of Enforcement of Permanent Injunction.

LAW AND ARGUMENT

Under Fed. R. Civ. P. 37(b)(2), this Court may sanction a party and treat as contempt of court a party's failure to obey a court's discovery order. Specifically, Fed. R. Civ. P. 37(b) provides:

(b) Failure to Comply with a Court Order.

(1) Sanctions in the District Where the Deposition Is Taken.

If the court where the discovery is taken orders a deponent to be sworn or to answer a question and the deponent fails to obey, the failure may be treated as contempt of court.

(2) Sanctions in the District Where the Action Is Pending.

(A) For Not Obeying a Discovery Order. If a party . . . fails to obey an order to provide or permit discovery, including an order under Rule 26(f), 35, or 37(a), the court where the action is pending may issue further just orders. They may include the following: . . .

(vii) treating as contempt of court the failure to obey any order except an order to submit to a physical or mental examination.

Fed. R. Civ. P. 37(b) (emphasis added). Additionally, this court should sanction Defendant pursuant to Fed. R. Civ. P. 37(d) for his failure to attend his noticed deposition.

Defendant has failed to comply with this Court's orders by failing to submit himself to a deposition and by failing to respond to discovery requests. Defendant should therefore be sanctioned and ordered to appear before this court and show cause as to why he should not be found in contempt of court for his failure to comply with this Court's orders.

CONCLUSION

Accordingly, Plaintiffs respectfully request that the Court: (1) issue an order directing Defendant to appear at a hearing, contemporaneously scheduled with the interrelated hearing on Plaintiffs' Motion for Order Setting Evidentiary Show Cause Hearing, and show cause why Defendant should not again be held in contempt of court for violating the orders issued by this Court; (2) upon hearing to be held as soon as practicable, hold the Defendant in contempt of court for his failure to obey this Court's orders; and (3) award any and all sanctions and remedies that the Court deems proper to coerce compliance with the Court's orders and to compensate Plaintiffs for the losses sustained.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this the 24th day of March 2010, a copy of the foregoing document was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to Charles L. Holliday, 312 East Lafayette Street, P.O. Box 2004, Jackson, TN 38302. Parties may also access this filing through the Court's electronic filing system.

/s/ Joel T. Galanter