

STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT COURT

STATE OF NEW MEXICO, ex rel.,
MARCO WHITE, MARK MITCHELL,
and LESLIE LAKIND,

Plaintiffs,

vs.
COUY GRIFFIN,

Case No. D-101-CV-2022-00473

Defendant.

**PLAINTIFFS' MOTION FOR SANCTIONS DUE TO DEFENDANT'S FAILURE
TO MAKE DISCOVERY PURSUANT TO RULE 1-037 NMRA**

Plaintiffs respectfully move this Court for sanctions against Defendant Couy Griffin pursuant to Rule 1-037 NMRA for his failure to meaningfully participate in the discovery process in violation of the Court's June 14, 2022 Scheduling Order. Plaintiffs support for the instant motion is as follows:

1. On June 14, 2022, the Court endorsed Plaintiffs' proposed scheduling order governing pretrial deadlines. Pursuant to that Order, the parties were obligated – among other things – to “timely respond to written discovery requests within 20 calendar days of service.” *See* Scheduling Order ¶ 8. Further, the Order set the close of all discovery for no later than July 28, 2022. *Id.* at ¶ 9(e).
2. On June 15, 2022, Plaintiffs properly served their first set of written discovery requests pursuant to Rules 1-026, 1-033, 1-034, and 1-036 NMRA on Defendant via mail and 2-day Federal Express delivery. Plaintiff's first set of written discovery requests included interrogatories, requests for production, and requests for

admission. Defendant's responses thereto were due July 5, 2022. By email on July 5, 2022, Defendant requested an extension of time to respond to Plaintiffs' discovery requests. On July 6, 2022, Plaintiffs granted Defendant's request and extended the response deadline to July 11, 2022.

3. On July 7, 2022, Plaintiffs properly served their second set of written discovery requests pursuant to Rules 1-026, 1-033, 1-034, and 1-036 NMRA on Defendant via mail, email and 2-day Federal Express delivery. Plaintiff's second set of written discovery requests included additional interrogatories, requests for production, and requests for admission. Defendant's responses thereto were due July 27, 2022. By email on July 18, 2022, Defendant emailed Plaintiffs stating that he had not yet compiled responses to Plaintiffs' discovery requests. Defendant did not request additional time to provide responses.
4. To date, Defendant has not provided Plaintiffs with a single response to either their first or second set of written discovery requests. Moreover, Defendant has not set forth – nor can he – that his failure to respond to Plaintiffs' requests, thereby violating this Court's order, was justified or that the Court should view his failure to comply as anything other than willful. *See, e.g., United Nuclear Corp. v. General Atomic Co.*, 96 N.M. 155, 202 (1980) (finding that a “conscious or intentional failure to comply” suffices to find a party violated a rule willfully); *Thornfield v. First State Bank*, 103 N.M. 229, 231-32 (Ct. App. 1983) (finding willfulness on the part of plaintiff where plaintiff was aware of the request for productions and had not responded to it).

5. Defendant, therefore, is in violation of this Court’s order pursuant to Rule 1-037(B)(2) NMRA. Plaintiffs respectfully request that the Court order all the designated facts set forth in Plaintiffs’ first and second written discovery requests be deemed established consistent with the Court’s authority set forth in Rule 1-037(B)(2)(a).
6. In particular, Plaintiffs request that the Court order Request for Admission Nos. 9 - 64 of their first set of discovery requests and Request for Admission Nos. 117 – 119 of their second set of discovery requests – which consist of videos recorded by videographer Matthew Struck depicting Defendant and various events in the days before, on, and after January 6, 2021 (hereinafter “Struck videos”) – be deemed established and authenticated as true and accurate recordings of the activities documented therein.
7. Plaintiffs further request that consistent with the aforementioned provision, the Court order that Defendant may not object to the admission of the Struck videos Plaintiffs seek to introduce into evidence and use at trial.¹

Date: July 28, 2022

FREEDMAN BOYD HOLLANDER
& GOLDBERG, P.A.

/s/ Joseph Goldberg
Joseph Goldberg

¹ Though Plaintiffs believe they have established an independent foundation for the admission of the Struck videos through Struck’s July 27, 2022 deposition and are currently negotiating with Struck and his counsel to provide a declaration authenticating all videos recorded by Struck, Plaintiffs believe that Struck’s deposition testimony provided pertinent revelations. In addition to being a reluctant and, at times, hostile witness who evaded answering questions fully, Plaintiffs believe that Struck may have coordinated with the Defendant in an attempt to interfere in Plaintiffs’ ability to establish a foundation for the admission of the identified videos. Plaintiffs submit that this subversion is evidenced through the Defendant’s invocation of his Fifth Amendment right against self-incrimination when asked about his conversations with Struck concerning Plaintiffs’ discovery requests at his July 20, 2022 deposition or at a minimum, the invocation of the Fifth Amendment right interfered with Plaintiffs ability to establish that.

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Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on July 28, 2022, I filed the foregoing Plaintiffs' Motion for Sanctions due to Defendant's Failure to Make Discovery Pursuant to NMRA Rule 1-037 through the New Mexico Odyssey File & Serve system, which caused all counsel of record to be served by electronic means.

Defendant Griffin was served the foregoing via e-mail and 2 identical packages of the foregoing as indicated below:

1) by U.S. Postal First Class Mail and 2) by Federal Express, two-day delivery available to Tularosa, NM to the following address:

Couy Griffin



/s/ Joseph Goldberg
Joseph Goldberg