

EXHIBIT A

On May 14, 2013 and on May 17, 2013 (in violation of Local Rule 37(c)), Plaintiffs produced documents relating to their efforts to travel to this country for depositions and medical examinations. [REDACTED]

[REDACTED] Accordingly, dismissal of the Absentee Plaintiffs' claims for failure to appear for court-ordered depositions and medical examinations is an appropriate sanction pursuant to Federal Rule of Civil Procedure 37(b)(2)(A)(v).

II. BACKGROUND

A. Plaintiffs' Production of Travel-Related Documents

The Absentee Plaintiffs took the position that they could oppose CACI PT's sanctions motion by making selective disclosures to CACI PT and the Court concerning their efforts to travel to the United States for depositions and medical examination, while simultaneously refusing to produce the remainder of their travel-related documents to CACI PT on the grounds that they were irrelevant. As a result, CACI PT filed a motion to compel production of these documents on April 19, 2013. Dkt. #345. In that motion, CACI PT explained the relevance of the documents, and also explained that Plaintiffs' selective production resulted in a subject matter waiver for attorney-client communications and fact work product. The Court considered CACI PT's motion on the papers and granted the motion in its entirety on May 3, 2013. Dkt. #379. Because the hearing on CACI PT's sanctions was set for May 10, 2013, and CACI PT's sanctions reply was due on May 8, 2013, CACI PT requested that Plaintiffs produce the ordered documents by May 6, 2013.

Plaintiffs' counsel did not respond to this request, nor did they make any production of documents before the May 10, 2013 hearing. Instead, Plaintiffs advised the Court and CACI PT at the May 10 hearing that Local Rule 37(c) entitled Plaintiffs to eleven days to comply with the motion to compel order and that Plaintiffs, therefore, had no duty to make any disclosure prior to the May 10 hearing. The problem with that position, however, is that Plaintiffs did not even comply with Local Rule 37(c). On the eleventh day after the Court issued its motion to compel order (May 14, 2013), Plaintiffs sent a partial production of documents to CACI PT by Federal Express. Three days later, *after* the eleven-day-period of which Plaintiffs were so enamored, Plaintiffs made a second production of about 300 pages of documents. These documents are heavily redacted (redacting both names and substantive communications) and Plaintiffs did not provide a privilege log justifying any claimed right to redact.¹

[REDACTED]

[REDACTED]

[REDACTED] Plaintiffs' counsel represented on July 18, 2013 that the wheels were already turning to gain approval for the Absentee Plaintiffs' travel to the United States. This turned out to be untrue. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

¹ CACI PT has raised with Plaintiffs the propriety of their redaction of documents subject to the Court's order compelling production. The parties are continuing to meet and confer on this issue in order to determine whether motions practice will be required.

[REDACTED]

B. The Absentee Plaintiffs' Lack of Diligence as Revealed by Plaintiffs' Court-Ordered Production of Documents

The starting point for assessing the Absentee Plaintiffs' diligence in seeking approval for travel to the United States is the July 18, 2012 meeting between counsel for Plaintiffs and CACI PT. At that meeting, CACI PT's counsel raised the issue of Plaintiffs' depositions in this District and Plaintiffs' counsel responded that the process was well underway and that Plaintiffs would not have any difficulty traveling to the United States for depositions. O'Connor Decl. ¶ 2. That representation turned out to be untrue. [REDACTED]

[REDACTED]

² Azmy Decl. ¶ 8 (Feb. 13, 2012) (Dkt. #203).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Plaintiffs’ efforts, or lack thereof, are set

forth in the time line below, with relevant actions by CACI PT and the Court (that involved no

actions by Plaintiffs) denoted in italics:

July 18, 2013 Counsel for the parties meet and discuss Plaintiffs’ need to appear in this District for depositions. Plaintiffs’ counsel states that the process is well underway to secure Plaintiffs’ approval for travel. In actuality, however, there were no efforts underway. [REDACTED]

[REDACTED] O’Connor Decl. ¶ 2, Ex. 1.

July 18, 2013 to Oct. 11, 2013 [REDACTED]

Oct. 12, 2013 Court holds status conference in case. Plaintiffs proposed less than four months for discovery (with a discovery cutoff on February 5, 2013). Court ordered that 180 days would be allowed for discovery. Dkt. #149.

Oct. 12, 2013 Plaintiffs’ counsel sends email to Plaintiffs’ Iraqi coordinator. Email advises that this Court “moves very, very quickly” and that “the [visa] applications for each of the men should be completed and submitted to the embassy by October 22nd.” O’Connor Decl., Ex. 2.

Oct. 12, 2012 to Dec. 31, 2012 [REDACTED]

Oct. 14, 2012 [REDACTED]

[REDACTED]

O'Connor Decl., Ex. 3.

Oct. 24, 2012

[REDACTED]

O'Connor Decl., Ex. 4.

Dec. 6, 2012

[REDACTED]

Dec. 17, 2012

CACI PT's counsel sends an email to Plaintiffs' counsel requesting dates in January 2013 to take Plaintiffs' deposition in this District. This was five months after the parties' counsel met and CACI PT was assured that Plaintiffs were diligently pursuing authorization to enter the United States. In those five months, Plaintiffs had not actually done anything other than privately acknowledge that they need to start moving. O'Connor Decl., Ex. 6.

Dec. 18, 2012

[REDACTED]

O'Connor Decl., Ex. 7.

Dec. 19-20, 2012

[REDACTED]

⁴ [REDACTED]

[REDACTED]
[REDACTED] O'Connor Decl., Exs. 8, 9.

Dec. 26, 2012

[REDACTED]
[REDACTED] O'Connor Decl., Ex. 1. There are eight other emails in this document that appear to deal with Plaintiffs' travel efforts, but these have been inexplicably redacted in whole or in significant part. *Id.*

Dec. 27-30

[REDACTED]
[REDACTED] O'Connor Decl., Ex. 10. This email string is heavily redacted with no explanation or privilege log.

Dec. 31, 2012

The Absentee Plaintiffs apply for visas.

III. ANALYSIS

CACI PT can see why Plaintiffs decided to rest on Local Rule 37(c) to avoid producing their travel-related documents prior to the May 10, 2013 hearing on CACI PT's sanctions motion (and then did not even comply with Local Rule 37(c)). The production ordered by the Court does not tell a pretty story. Counsel for the parties met on July 18, 2012 and CACI PT's counsel specifically noted the need for Plaintiffs to obtain approval from the United States to enter this country for depositions. Plaintiffs' counsel represented that this process was well underway. In actuality, there was no process underway as of July 18, 2012, [REDACTED]

[REDACTED]

When a party fails to comply with a court order compelling discovery, dismissal is one of the available sanctions. Fed. R. Civ. P. 37(b)(2)(A)(v). A noncomplying party can avoid dismissal when compliance is impossible, but only if the noncomplying party can show that its inability to comply is not due to “willfulness, bad faith, or any fault of petitioner.” *Societe Internationale v. Rogers*, 357 U.S. 197, 212 (1958); *see also Suntrust Mortgage Inc. v. United Guaranty Residential Ins. Co.*, 2013 U.S. App. LEXIS 2349 (4th Cir. February 1, 2013), and *United States ex rel. Curnin v. Bald Head Island Ltd.*, 2010 U.S. App. LEXIS 11399 (4th Cir. June 4, 2010).

On this record, which CACI PT had to move to compel in order to develop, Plaintiffs cannot possibly meet their burden of showing a lack of fault on their part. While Plaintiffs continue to assert that they might be able to get approval to travel if they just have more time, [REDACTED]

[REDACTED]

O’Connor

Decl., Ex. 2, [REDACTED]

[REDACTED]

[REDACTED] Discovery has now closed. Plaintiffs did not comply with multiple orders to appear in this District for depositions, and Plaintiffs cannot meet their burden of proving that noncompliance with this Court's Orders is through no fault of their own. For these reasons, and as CACI PT explained in moving for sanctions, the Court should dismiss the Absentee Plaintiffs' claims for failure to appear for depositions.

Respectfully submitted,

/s/ J. William Koegel, Jr.

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