

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

DWAYNE FURLOW et al.,)	
)	
Plaintiffs,)	
)	
v.)	Case No.: 4:16-cv-00254-JAR
)	
JON BELMAR et al.,)	
)	
Defendants.)	
)	

**REPLY IN FURTHER SUPPORT OF PLAINTIFFS’ MOTION TO COMPEL
AND TO REOPEN DEPOSITION**

Plaintiffs respectfully submit this Reply Memorandum in further support of their (1) Motion to Compel third-party The Regional Justice Information Service Commission (“REJIS”) to produce certain documents, information, and data, and (2) Motion to Reopen Deposition. (ECF No. 56). As discussed in greater detail below, REJIS’s opposition fails to provide any basis for why these motions should not be granted.

I. Plaintiffs’ March 30 and April 2 Requests Are Within the Scope of the Initial Discovery Requests to REJIS.

REJIS’s opposition describes Plaintiffs’ March 30 and April 2 requests following Cindy Jennings’ deposition (the “follow-up requests”) as “beyond the scope of and more expansive than the initial subpoena.” Memo. of the Regional Justice Information Service Commission in Opp. to Pl.s’ Mot. to Compel (hereinafter “Opp.”) 6, ECF No. 64. Not only does this contradict statements made by REJIS through its counsel, but also, it is just not a true statement. While the follow-up requests are certainly more detailed and specific than the list of categories of documents in the initial

subpoena, they are not beyond the scope of those categories. Plaintiffs' initial subpoena for documents and deposition testimony focused on REJIS's involvement in the Wanted process and the systems REJIS uses to maintain and store information relating to Wanted issued by Defendants. *See* Plaintiffs' Motion to Compel (hereinafter "MTC") Ex. A, ECF No. 56-3. As Plaintiffs learned more about REJIS through documents produced by Defendants, as well as through the depositions of Mr. Meschke, various St. Louis County police officers, and Ms. Jennings, Plaintiffs were able to clarify their document requests and provide REJIS more detail and direction as to the scope of relevant materials Plaintiffs understood to be maintained by REJIS. Thus, the follow-up requests were encompassed by the categories of documents listed in the initial subpoena and the subpoenaed testimony of REJIS's two company witnesses; they were certainly not outside the scope.

For example, Plaintiffs' first follow-up request—which for months Plaintiffs have asked REJIS to prioritize—derives directly from the fourth category of documents requested in Plaintiffs' original subpoena to REJIS. *See* MTC ¶ 11. In response to that request for "an archival file containing any and all Stop Orders, Wanted, or 'wanted for questioning' that have been issued by St. Louis County in the last five (5) years from 2012-2016," REJIS produced a lengthy spreadsheet listing only the REJIS reference number, St. Louis County's identifying number, and the date of each Wanted entered into the REJIS database in the years 2012-2016. Follow-up request 1 simply seeks a more complete version of that chart, adding information about which Mr. Meschke and Ms. Jennings testified, and of which Plaintiffs learned in documents produced by Defendants. To the extent this information exists within REJIS's records, it

should be produced, as it is clearly within the scope of the subpoena, highly relevant to Plaintiffs' claims in this litigation and pursuit of establishing a class, and because REJIS has failed to demonstrate any burden that would outweigh the relevance of the information.

II. Plaintiffs Relied on Representations of Cooperation from REJIS.

REJIS devotes a substantial portion of its opposition to asserting that its failure to produce any documents over the course of four months is made reasonable by claiming that REJIS "never agreed to provide records in lieu of a subpoena." Opp. at 8. This assertion is neither compelling, nor true. At every turn, REJIS, through counsel (when he got around to communicating with Plaintiffs) expressed a willingness to cooperate and respond to the follow-up requests. For example, as noted in Plaintiffs' opening brief, REJIS and Plaintiffs engaged in a back-and-forth about prioritizing certain of the requests in anticipation of a May 13 deposition Plaintiffs were conducting. REJIS, through counsel, wrote to Plaintiffs' counsel:

I met with the General Manager. I had asked REJIS to assemble item nos. 7, 8, 11 (email search), 14, 15, 16 and 17 as soon as possible. Regarding no. 1, I had asked them to look into researching such information, provide an estimated time to complete such a request and cost estimate. I will follow up with them this morning.

MTC, Ex. S.

Furthermore, following REJIS's indication that it wanted Plaintiffs to send a new subpoena on May 18, less than two weeks later, REJIS notably dropped its request for a subpoena and expressed its willingness to cooperate. Specifically, REJIS's counsel wrote on May 31:

I have advised REJIS to provide St. Louis County any and all assistance with responding to *any discovery requests* in

Furlow et al. v. Belmar et al. We discussed REJIS [sic] request for a subpoena on the additional document requests sent via email following Marc Meschke's February 3, 2017 deposition in response to Plaintiffs' subpoena and also after Cindy Jennings' March 30, 2017, to which you responded that REJIS can avoid being joined in the lawsuit if it just responds to your additional requests.

MTC, Ex. Z (emphasis added).

As Plaintiffs chronicled in their opening brief, following this May 31 email, at no point in the numerous emails exchanged between Plaintiffs and REJIS did REJIS renew its request for a subpoena in order to comply with Plaintiffs' follow-up requests. To the contrary, Plaintiffs were able to open up a dialogue with both REJIS's counsel and Defendants' counsel in an effort to get them working cooperatively to respond to the requests, given their overlap, and due to the fact that REJIS stores and maintains data Plaintiffs initially requested from Defendants that remains outstanding. *See* MTC ¶¶ 24-30.

Furthermore, in its opposition, REJIS admits that, consistent with its express indications to Plaintiffs' counsel, it was taking steps to locate and produce data and documents despite the fact that Plaintiffs had not served a subpoena. *See, e.g.* Opp. at 6 (“[c]ounsel for REJIS attempted to facilitate email requests despite the lack of any follow up subpoena.”). For example, more than a month after the discussion regarding a subpoena, and more than three weeks after REJIS asserted a willingness to cooperate, Plaintiffs sent REJIS the Excel chart to which REJIS could add information responsive to follow-up request 1. *See* MTC, Ex. DD. REJIS counsel acknowledged receipt, and said he would get back to Plaintiffs the following week after checking with his client. *Id.*

There was no mention of the need for a subpoena, nor any indication that REJIS would not work to respond to this request.

On more than one occasion, REJIS counsel attributed the production delays in response to the follow-up requests to the departure of Mr. Meschke, not to the lack of a new subpoena. *See, e.g.*, MTC at 8 (“Mr. Flojo added during the call that the delay in responding to Plaintiffs’ discovery requests was due to not having Mr. Meschke or Ms. Jennings available”). Plaintiffs did not serve a second subpoena primarily because there was no need to, as the follow-up requests were within the scope of the initial subpoenas to REJIS and the testimony that flowed from those subpoenas. Additionally, Plaintiffs believed, reasonably, and based on statements by REJIS through its counsel, that REJIS was cooperating and would respond to the requests without the need for a subpoena.

III. Reopening of REJIS’s Deposition is Justified.

In its opposition, REJIS helpfully clarified that it has not dissolved, and “continues to be an existing and viable entity.” Opp. at 1. Troublingly, however, REJIS also now asserts, for the first time, that “[s]ome of the records or reports described by Mr. Meschke [during his sworn testimony on behalf of REJIS] are not possible to generate.” Opp. at 9. It has now been more than seven months since Mr. Meschke’s deposition, and Plaintiffs are learning, for the first time, that information provided by him cannot be relied upon. Whether REJIS is now, as a matter of convenience, disclaiming some of Mr. Meschke’s statements, or, alternatively, Mr. Meschke did indeed misrepresent the ability to obtain certain documents from REJIS, Plaintiffs have cause for concern. REJIS should be required to produce what it can generate in response to Plaintiffs’ requests, and, if that ultimately excludes categories of information

Mr. Meschke testified about being available, Plaintiffs should be allowed to reopen the deposition of REJIS to depose someone who is actually knowledgeable about what can and cannot be generated for production. REJIS identified Mr. Meschke as the person best situated to testify on behalf of REJIS on the topics listed in the December 30, 2016 subpoena. If REJIS now suggests that Mr. Meschke misstated information, Plaintiffs have a right for that information to be clarified through questions to another 30(b)(6) deponent.

IV. REJIS has Failed to Make the Necessary Showing that it Cannot Produce the Requested Documents and Information.

In addition to asserting that Mr. Meschke misrepresented REJIS's ability to produce certain documents, REJIS contends that the "records sought by Plaintiffs are neither REJIS records or [sic] records kept in the ordinary course of its business." Opp. at 11. This conclusory assertion fails to meet the burden required for REJIS to avoid producing the documents and information.

As already outlined in Plaintiffs' opening brief, "[a]fter the proponent of discovery makes a threshold showing of relevance, the party opposing a motion to compel has the burden of showing its objections are valid by providing *specific explanations or factual support as to how each discovery request is improper.*" MTC at ¶ 2 (emphasis added) (citing *Jo Ann Howard & Assoc. P.C. v. Cassity*, F.R.D. 539, 542 (E.D. Mo. 2014)). REJIS's protests in response to Plaintiffs' requests are comprised of assertions, without explanation, that "generating a record or report how [sic] the arrest may or may not related [sic] to the wanted entries is not possible" and that "the records sought by Plaintiffs are neither REJIS records nor records kept in its ordinary course of business." Opp. at 11.

In response to the first of these assertions, Plaintiffs do not expect to receive something that REJIS does not have or cannot produce. Rather, Plaintiffs only ask for REJIS to produce the information that can actually be obtained from its records. The second assertion—that the requested documents are not records kept in REJIS’s ordinary course of business—directly contradicts both publicly available information and deposition testimony that REJIS maintains an electronic system for storing and accessing information related to Wanted.

Finally, REJIS asks the court to require Plaintiffs to cover the costs associated with its response to the follow-up requests. As noted in Plaintiffs’ opening brief, Plaintiffs already offered to pay for the costs relating to the data report necessary to respond to Plaintiffs’ first follow-up request. MTC at ¶ 16. Furthermore, Plaintiffs have made numerous other attempts to ease any burden of collecting, creating and producing responsive documents. For example, Plaintiffs provided REJIS with an Excel template into which information responsive to the first follow-up request could be input. MTC at Ex. O. Plaintiffs also suggested prioritizing certain of their requests so that REJIS could most efficiently deploy its resources. *Id.* at Ex. R. Plaintiffs remain willing to assist REJIS in producing documents responsive to Plaintiffs’ requests, and, if helpful, Plaintiffs, through counsel, would be willing to search REJIS’s database and records themselves if granted access. At every turn, Plaintiffs have tried to work with REJIS and be of assistance. REJIS should not be permitted to continue to drag its feet in producing documents and information that are, by design, within its possession and control.

CONCLUSION

For the foregoing reasons, along with those set forth in Plaintiffs' opening brief, Plaintiffs respectfully request that the Court compel REJIS to complete its production of the documents, data and information responsive to Plaintiffs' 17 requests detailed in the emails sent to REJIS on March 30 and April 2, 2017, by a date certain. Additionally, Plaintiffs respectfully request that the Court leave open the possibility that Plaintiffs can reopen the deposition of REJIS if it becomes clear that Mr. Meschke and/or Ms. Jennings provided inaccurate testimony.

Dated: August 9, 2017

Respectfully submitted,

PAUL, WEISS, RIFKIND, WHARTON
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served upon all parties of record by this Court's PACER/ECF electronic notification system on this 9th day of August, 2017:

/s/Timothy J. Holland
Timothy J. Holland

CERTIFICATE OF SERVICE
ON NON-PARTY REJIS COMMISSION

The undersigned hereby certifies that a true and correct copy of the foregoing was served upon Raymond Flojo, counsel for non-party REJIS, by PACER/ECF electronic notification system and by email on this 9th day of August, 2017:

/s/Timothy J. Holland
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