IN THE UNITED STATES DISTRICT COURT
FOR EASTERN DISTRICT OF LOUISIANA
New Orleans Division

NATIONAL RIFLE ASSOCIATION OF AMERICA, INC., *et al.*,	)	
Plaintiffs	)	
v.	)	
C. RAY NAGIN, Mayor of New Orleans, and	)	**CIVIL ACTION NO. 05-4234**
WARREN RILEY, Superintendent of Police, New Orleans	)	**Hon. Carl J. Barbier**
Defendants	)	**Section "J"**
	)	**Magistrate 2**

MOTION TO HOLD DEFENDANTS C. RAY NAGIN AND WARREN RILEY IN CONTEMPT FOR FAILURE TO PROVIDE INITIAL DISCLOSURES AND TO COMPEL ANSWERS TO DISCOVERY

Plaintiffs, National Rifle Association of America, Inc., and Second Amendment Foundation, Inc., move the Court to hold defendants C. Ray Nagin and Warren Riley (hereinafter "Defendants") in contempt for failure to comply with the Scheduling Order issued on November 29, 2006, and to compel the Defendants to answer discovery propounded to them by movers and to set a hearing date for a trial on whether said Defendants should be held in contempt and should be compelled to answer discovery propounded to them by Plaintiffs, all as more fully stated below:

1.

On November 28, 2006 all counsel participated in a scheduling conference following which this court issued a scheduling order on November 29, 2006 (the "Scheduling Order"). The Scheduling Order required the parties to exchange initial disclosures on or before December 12, 2006.

2.

Undersigned counsel, on behalf of Plaintiffs, provided its initial disclosures to counsel for defendants on November 9, 2006, prior to the scheduling conference. Despite the clear language of the Scheduling Order, Defendants have, to date, failed or refused to provide counsel with their initial disclosures.

3.

On or around December 14, 2006 undersigned counsel left a voice message for counsel for the Defendants inquiring as to whether initial disclosures would be provided. Counsel for Defendants did not return or otherwise respond to the voice message.

4.

Therefore, on December 19, 2006 undersigned counsel sent counsel for Defendants a letter inquiring as to whether counsel for Defendants would be providing undersigned counsel with Initial Disclosures. In the letter, undersigned counsel requested a short telephone conference the next day at 3:00 p.m. to discuss the initial disclosures. The letter specifically noted that counsel should call

or have someone call to reschedule if he was unavailable at that time. A copy of the letter is attached hereto as Exhibit "A". As indicated on the letter, it was transmitted via facsimile, electronic mail and by regular mail.

5.

When undersigned counsel telephoned the office of counsel for Defendants at the time called for in the aforementioned letter, counsel for Defendants was unavailable. Counsel for Defendants has not responded by telephone, written correspondence, electronic mail or otherwise and we are now almost one month past the date that the initial disclosures were due.

6.

Additionally, on December 19, 2006 undersigned counsel submitted Interrogatories and Requests for Production of Documents (the "Discovery") to Defendants. A copy of the discovery is attached, *in globo*, as Exhibit "B". The discovery was submitted via facsimile, electronic mail and by regular mail (see Exhibit "A"). This discovery is nearly identical to draft interrogatories and requests for production that were provided to counsel for Defendants on August 29, 2006.

7.

On January 8, 2007 undersigned counsel sent counsel for Defendants correspondence inquiring about Defendants' answers to the Discovery and initial disclosures. In the January 8, 2007 letter, undersigned counsel requested a telephone conference with counsel for Defendants on January 9, 2006 at 3 p.m. to discuss the initial disclosures and the answers to the Discovery. Again,

undersigned counsel requested counsel for Defendants to call to reschedule if the date and time for the telephone conference was not appropriate. Counsel for Defendants was unavailable at the requested time and did not contact undersigned counsel to reschedule.

8.

Upon agreement of counsel, this court set an accelerated schedule for pretrial activities, including discovery. Preliminary witness/exhibit lists are due at the end of April, final witness/exhibit lists are due at the end of May, discovery cut off is on June 30 and the trial is set for June 25.

9.

Undersigned counsel is cognizant of the busy schedules of the attorneys involved in this matter. However, it is going to be impossible to complete the necessary work to be prepared for trial unless all counsel strictly comply with the deadlines set forth in the scheduling order and in the local/federal rules.

10.

Federal Rule 37(a)(2)(A) provides that if a party fails to make a disclosure required by Rule 26(a), any other party may move to compel disclosure and for appropriate sanctions. Rule 37 also provides that the motion must include a certification that the movant has in good faith conferred or attempted to confer with the party not making the disclosure in an effort to secure the disclosure without court action.

11.

Local Rule 37.1 provides as follows:

> "No motion relative to discovery shall be accepted for filing unless accompanied by a certificate of counsel for the moving party stating that counsel have conferred in person or by telephone for purposes of amicably resolving the issues and stating why they are unable to agree or stating that opposing counsel has refused to so confer after reasonable notice. Counsel for the moving party shall arrange the conference. Any motion filed under this paragraph shall be noticed for hearing. If the court finds that opposing counsel has willfully refused to meet and confer, or, having met, willfully refused or failed to confer in good faith, the court may impose such sanctions as it deems proper."

12.

The scheduling order issued by the court in this matter requires the parties to exchange initial disclosures on or before December 12, 2006. Undersigned counsel submitted the initial disclosures on behalf of the Plaintiffs prior to the scheduling conference. Defendants have yet to submit their initial disclosures.

13.

Undersigned counsel for plaintiffs attempted to confer with counsel for defendants to discuss the initial disclosures on two separate occasions but counsel for defendants failed to respond. Therefore, pursuant to Fed.R.C.P. 37, sanctions are appropriate and defendants should be compelled to provide the initial disclosures and held in contempt of court for failure to provide the disclosures as required in the court's scheduling order.

14.

Additionally, discovery was propounded to Defendants on December 19, 2006. More than 15 days have elapsed and no answer has been filed. Undersigned counsel made a good faith effort to confer with counsel for defendants but, again, counsel for defendants has been unavailable and has not responded to requests for a conference.

15.

Therefore, pursuant to Local Rule 37.1, defendants should be compelled to answer the discovery propounded in this matter.

16.

Fed.R.C.P. 37(a)(4)(A) provides that if a motion compelling a party to answer discovery is granted,

> "the court ***shall***, after affording an opportunity to be heard, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in making the motion, including attorney's fees, unless the court finds that the motion was filed without the movant's first making a good faith effort to obtain the disclosure or discovery without court action, or that the opposing party's nondisclosure, response, or objection was substantially justified, or that other circumstances make an award of expenses unjust." (Emphasis added).

17.

In this motion, plaintiffs are requesting the court to compel the Defendants to provide its initial disclosures and to answer discovery. Defendants' failure to both provide its initial disclosures and to answer discovery indicates contempt for this legal proceeding. Under these circumstances,

it is entirely appropriate for the court to award movers an amount sufficient to reimburse them for the costs associated with filing this motion and to order such other relief as the court deems appropriate under the circumstances.

18.

As stated in the attached affidavit (Exhibit "D"), undersigned counsel has spent 15.6 hours in researching the issues involved and preparing the documents to be filed regarding this motion to compel and for contempt. Additionally, counsel estimates that 6 hours will be expended in preparing for the hearing in this matter and traveling to New Orleans to argue the motion before the court. Undersigned counsel charges a fee of $175 per hour for his work in this matter. This is a reasonable rate in light of counsel's experience and the issues involved. Therefore, the amount of $3,780 would be an appropriate amount for a sanction against Defendants. If the court requires additional evidence in order to impose a sanction against defendants, counsel requests that the court set an evidentiary hearing for that purpose.

WHEREFORE, plaintiffs, National Rifle Association of America, Inc., and Second Amendment Foundation, Inc. move the court as follows:

I. To hold the defendants, C. Ray Nagin and Warren Riley, in contempt of court due to their failure to comply with the scheduling order;

II. To compel the Defendants to provide the Plaintiffs with the Initial Disclosures required by Fed.R.C.P. 26;

III. To compel the Defendants to respond to the interrogatories and requests for production of documents submitted by the plaintiffs;

IV. For an award of the costs associated with filing this motion, including reasonable attorney's fees; and,

V. For all other just and equitable relief.

Respectfully submitted,

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Second Amendment Foundation, Inc.

CERTIFICATES:

OF SERVICE:

I hereby certify that a copy of the Motion to Hold Defendants C. Ray Nagin and Warren Riley in Contempt for Violation of the Consent Order has been forwarded via facsimile, e-mail and U.S. Mail, first class, postage prepaid, this 11th day of January, 2007, to all counsel of record as follows:

Joseph V. Dirosa, Jr.
1300 Perdido Street, Room 5E03
New Orleans, LA 70112
Facsimile: (504) 658-9868
E-Mail: jvdirosa@cityofno.com

LOCAL RULE 37.1/FEDERAL RULE 37:

I hereby certify that I attempted to contact counsel of record for Defendants as follows:

(1) on December 14, 2006 by telephone regarding Defendants' initial disclosures;

(2) on December 19, 2006 by written correspondence which was transmitted by facsimile, electronic mail and U.S. Mail, first class postage prepaid regarding Defendants' initial disclosures;

(3) on the morning of January 8, 2007 by telephone regarding Defendants' initial disclosures and answers to discovery;

(4) on January 8, 2007 by written correspondence which was transmitted by facsimile, electronic mail and U.S. Mail, first class postage prepaid regarding Defendants' initial disclosures and answers to discovery; and,

(5) on January 9, 2007 by telephone regarding Defendants' initial disclosures and answers to discovery

all in an attempt to confer for purposes of amicably resolving the issues regarding the outstanding initial disclosures and answers to discovery that are past due. Counsel for defendants has refused to so confer after reasonable notice.

S/Daniel D. Holliday, III
DANIEL D. HOLLIDAY, III