

**IN THE UNITED STATES DISTRICT COURT
 FOR THE CENTRAL DISTRICT OF ILLINOIS**

JENNIFER J. MILLER, DARIN E. MILLER)	
SECOND AMENDMENT FOUNDATION, INC.)	
ILLINOIS STATE RIFLE ASSOCIATION, and)	
ILLINOIS CARRY,)	
)	Case No. 18 cv 3085
Plaintiffs,)	
)	Hon. Sue E. Myerscough
MARC D. SMITH, in his official capacity as)	Presiding Judge
Acting Director of the Illinois Department of Children and)	
Family Services, and KWAME RAOUL, in his)	Hon. Tom Schanzle-Haskins
official capacity as Attorney General of the State of)	Magistrate Judge
Illinois,)	
)	
Defendants.)	

**DEFENDANTS’ RESPONSE TO PLAINTIFFS’ MOTION FOR EXTENSION OF TIME
 AND CROSS-MOTION FOR STAY, OR IN THE ALTERNATIVE FOR
 EXTENSION OF CASE DEADLINES**

Defendants respectfully submit this response to Plaintiffs’ request for an extension of time to complete fact discovery (Dkt. 39). Since October 2019, Defendants have been seeking basic organizational documents about the Plaintiffs’ organizations (articles of incorporation, bylaws, annual reports, etc.) and their operations (statements on gun safety and gun storage, etc.). For months, Plaintiffs have repeatedly promised and failed to search for and supply this information. In early April, Defendants moved to compel Plaintiffs to produce these documents. Plaintiffs failed to respond, and the Court ordered full production by May 8, 2020. Now, at 11:42 p.m. on the day responses were due, the Plaintiffs again ask this Court for additional time (to mid-June, at the earliest) to comply with this Court’s discovery order.

Plaintiffs’ arguments for additional time are untimely and unpersuasive. In addition, the failure to provide these basic documents precludes Defendants from being able to move forward

with critical Rule 30(b)(6) depositions of the Plaintiffs. Further delay in fully producing the requested documents will prejudice Defendants' ability to adequately complete fact discovery by the current deadline of August 1, 2020.

In addition to the obstacles created by Plaintiffs' last-minute extension request, the COVID-19 pandemic has greatly impacted the workload and schedules of Defendants and their counsel. Consequently, Defendants seek an extension of relevant case management deadlines, as detailed below, so long as Plaintiffs provide full production, as ordered, by a date certain. In support, Defendants state as follows:

1. On April 7, 2020, Defendants moved to compel the Second Amendment Foundation, Illinois State Rifle Association, and Illinois Carry ("the Organizational Plaintiffs") to produce records responsive to Defendants' Requests for Production 2 and 7. *See* Dkt. 38. Request 2 is for organizational documents, such as bylaws, annual reports, etc., that relate to the Plaintiffs' organizational purposes. Request 7 is for documents related to public statements and information provided to the Organizational Plaintiffs' members related to gun safety, gun storage, and other topics directly at issue in this case.

2. Plaintiffs did not respond to Defendants' Motion to Compel. Consequently, the Court ordered the Plaintiffs to fully produce responsive documents by May 8, 2020. *See* April 22, 2020 Text Order. Between April 22 and May 8, Plaintiffs made no effort to communicate with Defendants. At 11:42 p.m. on May 8—the day responses were due—Plaintiffs moved for an extension of time. *See* Dkt. 39. Notably, the first time Plaintiffs contacted Defendants about any need for additional time came in an email from Plaintiffs' counsel sent after 9:00 pm on May 8. *See* May 8, 2020 Email, attached as **Ex. A**.

3. Plaintiffs contend that they are unable to gather and produce the documents at issue in part because the offices of the Second Amendment Foundation (“SAF”) are closed due to Washington’s stay-at-home order. Dkt. 39 ¶ 5. Governor Jay Inslee issued Washington’s first “stay-at-home” order on March 23, 2020. See <https://www.governor.wa.gov/sites/default/files/proclamations/20-25%20Coronavirus%20Stay%20Safe-Stay%20Healthy%20%28tmp%29%20%28002%29.pdf>. Since that date, SAF has filed at least eight separate lawsuits in seven different federal district courts around the country. See *Walters, et al., v. Kemp, et al.*, 20-cv-1624 (N.D. Ga.) [filed April 16, 2020]; *Aragon, et al., v. Grisham, et al.*, 20-cv-325 (D. N. Mex.) [filed April 10, 2020]; *McCarthy, et al., v. Baker, et al.*, 20-cv-10701 (D. Mass.) [filed April 9, 2020]; *Altman, et al., v. County of Santa Clara, et al.*, 20-cv-2180 (N.D. Cal.) [filed March 31, 2020]; *McDougall v. County of Ventura, et al.*, 20-cv-2927 (C.D. Cal.) [filed March 28, 2020]; *Stafford et al., v. Baker*, 20-cv-123 (E.D.N.C.) [filed March 27, 2020]; *Brandy, et al., v. Villanueva, et al.*, 20-cv-2874 (C.D. Cal.) [filed March 27, 2020]; *Kashinsky, et al., v. Murphy, et al.*, 20-cv-3127 (D.N.J.) [filed March 23, 2020]. SAF may also have filed state court actions. This flurry of activity is difficult to square with Plaintiffs’ protests.¹

4. Plaintiffs also state that the Illinois State Rifle Association (“ISRA”) has been “largely” closed. Dkt. 39 ¶ 7. They further claim that certain responsive documents were located in the office of ISRA’s accountant, yet, even at the date of filing, they did not know whether the

¹ Plaintiffs’ motion also states that the head of SAF experienced a health issue approximately 10 days before Plaintiffs’ deadline to produce. Defendants are sympathetic to any possible health issues experienced by Plaintiffs or their employees. However, Plaintiffs’ motion is silent as to any attempts by counsel to reach any other individual at SAF to handle or respond to the discovery issue. SAF is governed by a seven-member board of trustees, with over \$5 million in assets and over \$3.5 million in annual donations. See SAF 2017 Form 990, available at <https://www.saf.org/wp-content/uploads/2018/11/SAF-2017-IRS-990-Tax-Form.pdf>

accountant's office was open and whether they could obtain the documents. *Id.* at ¶ 8. Since filing their motion, Plaintiffs produced ISRA documents responsive to RFP #2. These were the documents purportedly in possession of ISRA's accountant, but Plaintiffs did not explain how COVID-19 prevented them from obtaining this information prior to the initial May 8, 2020 deadline.

5. In addition to their request for more time, Plaintiffs also assert that SAF has already disclosed "everything in its possession responsive to Request for Production #2." *Id.* at ¶ 9. This is both legally insufficient and patently implausible. First, a responding party must produce all items within its "possession, custody, or control"—not just possession. Fed. R. Civ. P. 34; *see also Meridian Laboratories, Inc. v. OncoGenerix USA, Inc.*, 333 F.R.D. 131, 135 (N.D. Ill. 2019). Second, it is far-fetched, if not absurd, for SAF to assert it is unable to provide basic organizational documents about itself, other than a single annual report from 2019 and a one-paragraph mission statement on its website. *See* Dkt. 38 at 4 (describing Plaintiffs' meager compliance in this case).

6. Although Defendants take issue with the timing and basis of Plaintiffs' request for additional time, good cause exists for an extension of all case management deadlines in this case because of the COVID-19 pandemic. Defendants therefore request a stay, or in the alternative, a 90-day extension of all case management deadlines.

7. On March 20, 2020, Defendants and Plaintiffs (collectively, "Parties") jointly moved for a stay of all case management deadlines, or in the alternative for a 90-day extension because of the COVID-19 pandemic. *See* Dkt. 37. The motion was made in the wake of executive orders by Illinois Governor JB Pritzker mandating that residents remain at home unless they are required to leave to perform certain essential functions. *See* Ill. Exec. Ord. 2020-10 (Mar. 20, 2020). The Court granted the parties' motion in part, allowing a 30-day extension of relevant discovery deadlines, but not granting an extension of deadlines to file a motion to compel. *See* Mar.

26, 2020 Minute Entry. At the time the motion was filed and granted, the stay-at-home order was due to remain in effect until April 7, 2020.

8. Since the Court's ruling, Defendants have done their best to advance the litigation as much as possible. They have complied with the court-ordered filing deadline for Defendants' motion to compel, prepared and produced a large number of documents to Plaintiffs in response to discovery requests, and issued a third-party subpoena. However, in recent weeks, changed circumstances have seriously hampered the parties' ability to conduct oral discovery and fact depositions.

9. Defendants' counsel have been assigned to respond to urgent public health and safety matters related to the COVID-19 pandemic, thus limiting their availability to take any depositions, either in-person or by video, for the foreseeable future. The Office of the Attorney General's Workplace Rights Bureau has quadrupled in size since the beginning of the COVID-19 pandemic, pulling attorneys from across the Office, including all of Defendants' counsel, to respond to and investigate constituent complaints regarding safety in the workplace. *See* "What Happens When The Workers Who Make Hand Soap Get COVID-19? They Protest," *available at* <https://www.propublica.org/article/what-happens-when-the-workers-who-make-hand-soap-get-covid-19-they-protest>. As of the time of publication of that article, the Office had already received over 1,000 workplace safety complaints. *Id.* Defendants' counsel anticipate being assigned to this team as the State stay-at-home order is modified and as more businesses are allowed to reopen, thus limiting their availability for any depositions, in-person or by video, for the foreseeable future.

10. Additionally, on April 30, 2020, Governor JB Pritzker signed the second extension of the Illinois stay-at-home order, which now lasts until May 30, 2020. *See* Ill. Exec. Ord. 2020-18 (April 1, 2020) (extending the stay-at-home order until April 30, 2020); Ill. Exec. Ord. 2020-

32 (Apr. 30, 2020) (extending stay-at-home order until May 30). As a result, Defendants' counsel continue to work from home, and in-person depositions are not possible until June at the earliest.

11. Furthermore, on May 5, 2020, Governor Pritzker released a plan to reopen various businesses statewide, and outlined various requirements for gatherings of 10 or more people. *See* "Restore Illinois: A Public Health Approach To Safely Reopen Our State," May 5, 2020, *available at*: <https://coronavirus.illinois.gov/sfc/servlet.shepherd/document/download/069t000000BadS0AAJ?operationContext=S1>. The plan divides the state into four regions, which are permitted to move through the various phases of reopening independently, depending on whether they meet certain public health benchmarks. *See id.* Because the reopening of various businesses and easing of social restrictions likely will occur in phases, and at different paces in different parts of the state, it is unclear whether the parties will be able to schedule depositions, or gather in large enough groups to take in-person depositions, until later in the summer.

12. The restrictions on Defense counsel's time and logistical difficulties aside, Defendants cannot adequately prepare to depose the Organizational Plaintiffs' Rule 30(b)(6) witnesses without the documents subject to Plaintiffs' request for extension, and Defendants would be greatly prejudiced if required to depose said witnesses without said documents.

13. Ultimately, Defendants seek an extension because, since the parties last sought an extension, the COVID-19 pandemic has created unforeseen changes in their counsel's schedules and required them to aid in responding to urgent issues regarding health and safety.² However, Defendants also seek accountability for Plaintiffs. Defendants' counsel have diligently worked to

² Defendants anticipate that this case will be resolved on cross-motions for summary judgment. However, should the Court grant Defendants' request for a stay and/or extension, the current June 15, 2021 trial date will also require adjustment. The current deadline for dispositive motions is March 15, 2021. A 90-day extension of that deadline would create a June 13, 2021 dispositive motion deadline, two days before the scheduled trial date.

move this case forward, even as their COVID-19-related workloads have grown. Plaintiffs, on the other hand, have lobbed repeated excuses as to why certain documents are unavailable, or, in the case of statements about gun safety and storage, simply asserted they will check for documents but doubted they would find anything, despite claiming to provide education and outreach related to firearms and the Second Amendment. *See* Dkt. 19 ¶¶ 17–21. Defendants therefore request this Court enter a date certain on which Plaintiffs must produce all responsive documents.

WHEREFORE, Defendants respectfully request that this Court enter an Order requiring Plaintiffs to produce all responsive information on a date certain. Defendants further request that the Court enter an Order staying the proceedings in this case and setting a status date in late June to determine new deadlines, or in the alternative, to grant a 90-day extension to all case management deadlines. Defendants further request such relief that the Court deems just and equitable.

Dated: May 13, 2020

Respectfully Submitted,

/s/ Matthew V. Chimienti

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Counsel for Defendants

CERTIFICATE OF SERVICE

I, Matthew V. Chimienti, certify that on May 13, 2020, I filed the foregoing **Defendants' Response to Plaintiffs' Motion for Extension of Time and Cross-Motion for Stay, or in the Alternative for Extension of Case Deadlines** via the Court's CM/ECF System, which caused a copy of the foregoing motion and all exhibits thereto to be electronically served on all counsel of record.

/s/ Matthew V. Chimienti
Assistant Attorney General