

**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,)

Plaintiffs,)

v.)

Case No. 3:18-CV-3085

BEVERLY J. WALKER, in her official capacity as)
Director of the Illinois Department of Children and)
Family Services, and LISA MADIGAN, in her)
official capacity as Attorney General of the State)
of Illinois,)

Defendants.)

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

NOW COME the Plaintiffs, JENNIFER J. MILLER, DARIN E. MILLER,
SECOND AMENDMENT FOUNDATION, INC., ILLINOIS STATE RIFLE
ASSOCIATION, and ILLINOIS CARRY, by and through LAW FIRM OF DAVID G.
SIGALE, P.C., their attorney, and for their Response to the Defendants' Cross-
Motion for Stay or for Extension of Case Deadlines (Dkt. #40), states as follows:

Plaintiffs do not oppose the Defendants' request for a stay and an extension
of deadlines until such time as the COVID-19 pandemic allows counsel and
witnesses to progress this matter in safety. Numerous depositions were scheduled
and canceled in light of these concerns. Further, Defendants are correct that even if
the depositions were scheduled, and even if counsel decided to risk all to conduct

them, it is unknown when, pursuant to the Governor's stay-at-home order and re-opening plan, they will be allowed to occur.

Plaintiffs also recognize Defendants' counsels' concerns about other emergency matters regarding workplace health and safety as a result of the pandemic, and would have acquiesced to such a request in any event.

However, while Plaintiffs do not oppose the setting of a date certain for final document compliance, and indeed asked for one in their Motion for Extension (Dkt. #39), there are innuendos that demand clearing up.

First, the organizational Plaintiffs answered Rule 34 discovery in January, 2020. When Defendants' counsel asked if there were additional responsive documents, Plaintiffs said they would look, especially given the general duty to supplement. Then, the Court issued its Order of April 22, 2020, which the Plaintiffs of course attempted to follow.

As for Request No. 2, ("All Documents, including articles of incorporation, by-laws, mission statements, statements of purpose, annual reports, or other similar materials that relate to the purposes for which [the SAF/Illinois State Rifle Association/Illinois Carry] was organized or operates"), the organizational Plaintiffs have fully complied with producing all information in their possession. Plaintiffs' counsel had forwarded ISRA's belief that ISRA's accountant possessed the relevant public filing information, but that information turned out to be at the ISRA office when the appropriate employee, who had been ill, was able to go to the ISRA office and retrieve it. This took a couple of extra business days, but it was fully produced.

The other organizational Plaintiffs, as requested, reviewed documents again for Request No. 2. SAF had nothing in its possession, custody or control beyond what it turned over, but Plaintiffs' counsel did find the requested documents on the Washington Secretary of State website (though a previous search did not), and turned over those downloaded documents on this date to Defendants' counsel. Illinois Carry found and produced supplemental public information. Presumably, the Defendants could also have accessed these public filings, but as the Defendants now have all information as to Request No. 2 in the Plaintiffs' possession or control that was sought in Defendants' Motion to Compel (Dkt. #38, p.4), the issue should be considered resolved.

This leaves Request No. 7, which was a much broader request ("All documents related to any information provided or made publicly available by [the Second Amendment Foundation/Illinois State Rifle Association/Illinois Carry] to its members or to the public on gun safety, gun storage, hunting safety, children and guns, self-defense, foster parenting, or day care"). The Defendants do not accept that the Plaintiffs largely have not disseminated information on these topics beyond their relatedness to legislation and litigation, and that has been the root of this dispute.

However, SAF and ISRA want to reiterate – the alleged paucity of information in the initial responses was not due to a failure to consider Request #7 and give the response it required, it was because SAF and ISRA asserted that what

they provided *was* the full required response. Through counsel, SAF and ISRA certified that to be the case.

Despite this, Plaintiffs have never refused the Defendants' request to review its materials for additional responsive information, but the Plaintiffs' ability to conduct that review has been unfortunately stymied due to the COVID-19 pandemic, the governmental restrictions imposed as a result, and the health issues referenced in Plaintiffs' Motion.

This is the reason for Plaintiffs' extension request, and it is only to June 15, 2020¹, by which time Plaintiffs will be back in their offices (given the expected governmental re-openings of their respective States), and can complete the review. At that point, Plaintiffs will either find additional information, or will certify that none exists.

It is a far different situation for SAF to have its counsel file lawsuits over the last few months (no matter how many) regarding emergency situations that have only arisen in the last few months, when the lawsuits and counsel are in different locations from SAF's headquarters, when the complaints can be filed by said counsel electronically without any actual involvement from SAF personnel (other than, *e.g.*, approval to file).² It is another to go through the work of discovery compliance when

¹ Unless the Court sees fit to a further extension, given the Defendants' general extension request.

² Plaintiffs' counsel did not file any of the cases Defendants reference, but he is filing this Cross-Response, and filed Plaintiffs' Motion for Extension (Dkt. #39), from his home in Illinois. Counsel's ability to type and e-file from his home is not affected by the pandemic, but his ability to communicate with his clients, and have his clients go into their offices to

the offices are closed, employees are home, and the head of the organization is ill. And it makes no difference that there are other Board members, or the amount of SAF's assets or donations; the people that counsel needed for answering/supplementing discovery were and remain unavailable.

In the meantime, and as noted, ISRA has stated they have given all the information on the requested topics that they have disseminated to the public or their members (though supplemental review was halted due to the Governor's stay-at-home Orders). Like, SAF, ISRA is an organization dedicated to the preservation and advancement of the Second Amendment right through political and legal means. While ISRA has a popular outdoor range, its writings are about legislative and legal occurrences and goings-on, which is not, from a fair reading of Defendants' discovery requests, what they are seeking. Nevertheless, all writings regarding legal action on the referenced topics were provided. As noted previously, ISRA and SAF said they would go through the materials again, but the pandemic has necessitated the Plaintiffs' pending extension request, of which the Defendants are aware, given their own Cross-Motion to Stay or Extend Deadlines (Dkt. #40) and the previous Joint request for same (Dkt. #37).

Ultimately, Defendants did not like the organizational Plaintiffs' discovery responses, assuming there must be "more," and Plaintiffs agreed to review materials for any supplemental disclosures, but circumstances waylaid that effort. Given that fact discovery closes on August 1, 2020, and depositions cannot be

look for documents, has been severely affected by the COVID-19 crisis and coinciding health issues.

conducted given the present state of affairs, Plaintiffs' request for an extension until June 15, 2020 to finalize that review is not unreasonable. On or before that date, Plaintiffs will turn over any supplemental material it locates, or certify again there is nothing else. And Plaintiffs will *still* be under a continuing duty to supplement.

CONCLUSION

Defendants seek a stay or extension of deadlines due to the COVID-19 crisis, which Plaintiffs do not oppose, but then Defendants seek to blame Plaintiffs when the same COVID-19 crisis (and other health concerns) has hampered their ability to complete a document search to which they have not objected, but are only seeking a reasonable extension of time to complete. The Court's Order to compel referenced two document requests, and one has been completed fully. Plaintiffs have complied with every other discovery request, even over objection, and in fact depositions were scheduled until circumstances prevented them from taking place. If not for the pandemic, fact discovery would be much further along towards completion.

Defendants seek to ignore these circumstances when it comes to the Plaintiffs' difficulties, while seeking an extension due to their own. Plaintiffs are not "lobbing excuses," (Dkt. #40, p.7), they have been severely affected by a global pandemic that has upended the daily workings and life of most every business and individual in the civilized world. The Defendants know this, and even plead their own hardships, which the Plaintiffs recognize and to which they accede, especially since scheduling depositions which require travel accommodations is a near-impossibility at this moment.

In sum, Plaintiffs seek a reasonable extension to complete their supplemental document search for Request No. 7, and agree to the stay and/or extension of deadlines in Defendants' Cross-Motion. While Plaintiffs want this matter to move forward, COVID-19 has made both requests necessary.

WHEREFORE, the Plaintiffs, JENNIFER J. MILLER, DARIN E. MILLER, SECOND AMENDMENT FOUNDATION, INC., ILLINOIS STATE RIFLE ASSOCIATION, and ILLINOIS CARRY, request this Honorable Court grant the organizational Plaintiffs an extension of time as detailed above to complete discovery compliance, as well as any and all further relief as this Court deems appropriate, including granting the Defendants' Motion for a Stay or Extension of Deadlines to accommodate the extenuating circumstances brought on by the Coronavirus pandemic.

Dated: May 27, 2020

Respectfully submitted,

/s/ David G. Sigale

Attorney for Plaintiffs

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CERTIFICATE OF ATTORNEY AND NOTICE OF ELECTRONIC FILING

The undersigned certifies that:

1. On May 27, 2020, the foregoing document was electronically filed with the District Court Clerk *via* CM/ECF filing system;
2. Pursuant to F.R.Civ.P. 5, the undersigned certifies that, to his best information and belief, there are no non-CM/ECF participants in this matter.

/s/ David G. Sigale

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