

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION**

**LINCOLN MEMORIAL ACADEMY;  
MR. EDDIE HUNDLEY; DR. MELVIA SCOTT;  
MS. JAUANA PHILLIPS; MS. KATRINA ROSS; and  
ANGELLA ENRISMA**

**Plaintiffs,**

v.

**Case No. 8:20-cv-309-T-36AAS**

**STATE OF FLORIDA, DEPARTMENT OF EDUCATION;  
SCHOOL BOARD OF MANATEE COUNTY, FLORIDA; and  
THE CITY OF PALMETTO**

**Defendants.**

**DEFENDANT’S, THE SCHOOL BOARD OF MANATEE COUNTY, FLORIDA,  
MOTION FOR SANCTIONS FOR FAILURE TO COMPLY WITH COURT  
ORDERS**

Defendant, the School Board of Manatee County, Florida (“School Board”), by and through the undersigned counsel, pursuant to Rule 37 of the Federal Rules of Civil Procedure, moves the Court for an award of reasonable expenses and attorney’s fees against Plaintiffs<sup>1</sup> as sanctions for failure to comply with the Court’s orders to produce written responses and documents in response to the School Board’s discovery requests. (Dkt. 36, 68). This Motion is supported by the following Memorandum of Law.

**I. Procedural Background**

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<sup>1</sup> This Motion does not seek sanctions of Plaintiff Scott as she is in compliance with the Court’s discovery order and has no outstanding discovery disputes with the School Board. Further reference to Plaintiffs only relates to Plaintiffs LMA, Hundley, Phillips, Ross, and Enrisma.

On June 10, 2020, the School Board served each Plaintiff with its First Requests for Production and Interrogatories. Plaintiffs' individual responses to those discovery requests were due on July 10, 2020. The School Board extended professional courtesy to Plaintiffs' counsel in gathering the responses and responsive documents for more than a month after they were due. (Ex. 1: 8.2.20 Email). After multiple failed attempts to resolve the matter without Court intervention, the School Board was left without any other option but to seek Court intervention to compel Plaintiffs to respond to the School Board's requests.

On August 28, 2020, the School Board moved to compel the Plaintiffs to produce discovery responses and requested an award of attorney's fees in relation to the Motion. (Dkt. 31). On September 8, 2020, the Court granted the School Board's Motion in part, and ordered the Plaintiffs to produce all remaining discovery responses and documents by September 23, 2020. (Dkt. 36). On October 5, 2020, the Court held a discovery conference to address any remaining discovery issues. At the hearing, the School Board made ten oral motions to address remaining discovery deficiencies and failures to respond or produce documents. (Dkts. 56-66). On October 6, 2020, the Court issued a written Order granting the School Board's oral motions regarding the Plaintiffs' discovery deficiencies. The Court ordered the Plaintiffs to address all of their discovery deficiencies by October 23, 2020. (Dkt. 68). The Court also ordered the School Board to resend to Plaintiffs' counsel electronic copies of its discovery requests for each Plaintiff by October 6, 2020. (Dkt. 68). The Court scheduled another discovery conference to address any outstanding discovery disputes for October 30, 2020 at 10:00 a.m.

In accordance with the Court's Order, the School Board resent to Plaintiffs' counsel electronic copies of its discovery requests for each of the Plaintiffs – each request was sent by separate email for each Plaintiff on October 5, 2020. (Exs. 2-7: 10.5.20 Discovery Emails). Each email contained a Word and PDF version of each discovery request. Additionally, the email intended for Plaintiff Jauana Phillips also contained the three documents that were illegible, which had been addressed at the discovery conference. (Ex. 7, p. 2-7: Phillips' Discovery Email). Each email was sent to all of the contacts identified in the e-service list.

Between October 12, 2020 and October 21, 2020, Plaintiffs' counsel filed notices of compliance regarding the Court's Order for each Plaintiff. (Dkts. 71-77). On October 22, 2020, the School Board's counsel sent a letter to Plaintiffs' counsel noting that the notices misrepresented the Plaintiffs responses and production, and in fact, Plaintiffs were mostly not in compliance with the Court's Order. (Ex. 8: 10.22.20 Letter). The letter highlighted every outstanding response and discovery deficiencies for each Plaintiff, as follows:

**a. Lincoln Memorial Academy**

The Court ordered Plaintiff Lincoln Memorial Academy ("LMA") to provide a revised answer to number 12 of the School Board's First Set of Interrogatories to Plaintiff LMA, and to provide written responses and produce documents in response to the School Board's Request for Production to Plaintiff LMA. (Dkt. 68). LMA filed a notice of compliance, stating that it had complied with the Court's Order granting the School Board's Oral Motion to Compel (Dkt. 57). (Dkt. 75). LMA complied with the Court's Order and provided the School Board with a revised answer to interrogatory number 12. Although

Plaintiff LMA did not file a notice of compliance with the Court's order compelling it to provide written responses and to produce documents in response to the School Board's Request for Production, LMA provided written responses and produced documents in response to the School Board's Request for Production. However, LMA's production was deficient. The School Board requested the following:

**i. Request for Production No. 9 seeks the following:**

*Any statements or recordings of Lincoln Memorial Academy's current or former employees relating to the allegations in the Amended Complaint.*

LMA responded to this request by stating that it does not have any documents in its possession. (Ex. 9, p. 2: LMA's Response). However, contained in the documents produced in response to requests numbers, 1, 2, and 3, is an email pertaining to a public records request to Amber LaRowe regarding a video recording of a meeting attended by Plaintiff Eddie Hundley. (Ex. 10: Dropbox Email). The email contains a Dropbox link to the video. The School Board cannot access the Dropbox link as it was not the original recipient. The School Board requested that LMA produce the video immediately. However, LMA has not produced the video.

**ii. Request for Production No. 10 seeks the following:**

*Any documentation that shows the amount of damages for which you are seeking compensation from Defendant.*

Plaintiff LMA responded to this request with its Rule 26 Disclosures, which states "TBA" for any accounting/audit or economic damages. (Ex. 11: Rule 26 Disclosures). The School Board requested that LMA produce any documents that are responsive to request number 10 immediately. However, LMA has not produced responsive documents.

**iii. Request for Production No. 21 seeks the following:**

*Any and all contracts entered into between you and any of the named Plaintiffs.*

LMA responded to this request by stating that it did not have any documents in its possession. (Ex. 9, p. 3: LMA's response). However, the School Board has direct knowledge that LMA entered into contracts with named Plaintiffs and entities owned, operated, or otherwise represented by Eddie Hundley. The School Board requested that LMA provide all documents that are responsive to request number 21 immediately. However, LMA has not produced responsive documents.

**b. Eddie Hundley**

The Court ordered Plaintiff Eddie Hundley ("Hundley") to answer the School Board's First Set of Interrogatories to Hundley and to provide written responses and produce documents in response to the School Board's Requests for Production to Hundley. (Dkt. 68.) Hundley filed a notice of compliance, stating that he had complied with the Court's Orders. (Dkt. 77). However, this is not accurate. Hundley has **not** answered the School Board's First Set of Interrogatories. The School Board's First Set of Interrogatories to Hundley was resent to Plaintiffs' counsel on October 5, 2020 at 6:45 p.m. (Ex. 3: Hundley Discovery Email). The email included a Word and PDF version of the First Set of Interrogatories, which contains 13 interrogatories. (Ex. 3, p. 16-28: Hundley Discovery Email). In response, Hundley's counsel resent interrogatory answers signed by Hundley on July 30, 2020 which contains 14 interrogatories. (Ex. 12: Hundley Email re Roggs). Those answers are to the interrogatories propounded on LMA **not** Hundley. *Compare* (Ex. 2, p. 16-29: LMA Discovery Email) *with* (Ex. 3, p. 16-38: Hundley Discovery Email) *and* (Ex. 12, p. 9-16:

Hundley Email re Roggs). The School Board requested that Hundley respond to the School Board's First Set of Interrogatories directed to him immediately. Hundley has failed to provide answers to the interrogatories directed to him.

Additionally, Hundley has not served a response to the School Board's Request for Production. The School Board's Request for Production to Hundley was resent to Plaintiffs' counsel on October 5, 2020 at 6:45 p.m. (Ex. 3: Hundley Discovery Email). The email included a Word and PDF version of the School Board's First Request for Production, which contains 35 requests. (Ex. 3, p. 2-8: Hundley Discovery Email). Although Hundley sent an email response with a ZIP file folder containing documents, Defendant never received the written responses to the First Request for Production. (Ex. 13: Hundley RFP). The School Board requested that Hundley provide the responses to the School Board's Request for Production immediately. Hundley has not provided written responses to the request for production.

Furthermore, in reviewing Hundley's production, the School Board identified a number of deficiencies as explained below:

**i. Request No. 9 seeks the following:**

*Any notes or documents that record, summarize, show, or reflect conversations between you and any other person concerning your employment with Defendant or the allegedly discriminatory treatment that you believe you suffered while employed by Defendant.*

Hundley produced a Word document in response to this request stating that he does not have access to his email content. (Ex. 14: Hundley RFP 9). The School Board has reason to believe that this is not a truthful statement. Mr. Hundley still has access to his LMA Trojans email account. This is evident because he has produced emails which he sent

from the email “hundleye@lmatrojans.org” to the email “eddiehundley@gmail.com” as recently as October 2020. Therefore, he has access to both of these emails. It is worth noting that Hundley testified, under oath, that the School Board obtained access to his lmatrojans.org email address and therefore it was no longer in existence and he did not have access to it. (Ex. 15, p. 4:18-25; Hundley Dep. Excerpt).<sup>2</sup> Hundley’s deposition was on September 1, 2020 and he accessed the lmatrojans.org email address before and after that day, as is evident from documents he produced. For example, on July 10, 2020, Hundley forwarded an email regarding LMA’s FEFP from his “hundleye@lmatrojans.org” email to his “eddiehundley@gmail.com” email. (Ex. 16: 07.10.20 Email). Hundley continued having access to the email after his deposition. For example, on September 13, 2020 Hundley forwarded an email regarding a phone call with Adam Emerson from his “hundleye@lmatrojans.org” email to his “eddiehundley@gmail.com” email. (Ex. 17: 09.13.20 Email). The School Board requested that Hundley produce all responsive emails to request number nine.

Moreover, Hundley has been untruthful in his deposition. The School Board is aware that Hundley has a personal email address which he utilized for LMA business. For example, on June 27, 2018, Cornelle Maxfield, LMA’s CFO, sent an email to Hundley’s personal Gmail email address regarding an LMA sign project. (Ex. 18: 6.27.18 Email). Further, the School Board has reason to believe that Hundley utilized text messaging or similar kind of instant messaging to communicate with others regarding LMA. In fact, Plaintiff Melvia Scott testified that she communicated with Hundley through text messages.

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<sup>2</sup> Page citation refers to PDF page and not deposition page.

(Ex. 19, p. 4:17-5:13; Scott Dep. Excerpt). Plaintiff Angela Enrisma also testified that she communicated with Hundley through text messages and that there was a group text thread that included Hundley. (Ex. 20, p 5:6-11:23; Enrisma Dep. Excerpt). For instance, Enrisma testified that there was a group text thread that discussed getting together at a church to meet a “lady” and collecting letters from students. (Ex. 20, p. 8-9: Enrisma Dep. Excerpt). Notably, requests numbers 20, 21, 22, 23, 24, 25, 26, 27, and 28 call for the production of responsive texts or communication pertaining to different subjects. (Ex. 3: Hundley Discovery Email). The School Board requested that Hundley produce all documents that are responsive to request number nine and any of the aforementioned requests immediately. Hundley has not produced any of these responsive documents.

**ii. Request No. 13 seeks the following:**

*Any documents or records that show your receipt of income from any source other than the Defendant from February 2018 to the present.*

Hundley produced a folder with two documents which are purportedly responsive to this request. One of the documents, titled “~RFP18.docx” cannot be opened. (Ex. 21: RFP unreadable). The School Board requested that Hundley produce an accessible version of this file immediately. Hundley has not produced the responsive document.

**iii. Request No. 32 seeks the following:**

*Any and all contracts entered into between you and Lincoln Memorial Academy.*

The School Board has knowledge that Hundley, in his role as owner, executive, or otherwise representative of Total Life Prep, entered into contracts with Plaintiff LMA. The School Board requested that Hundley produce all documents that are responsive to request

number 32 immediately in accordance with the Court's orders. Hundley has not produced the responsive document.

**c. Jauana Phillips**

The Court ordered Plaintiff Jauana Phillips ("Phillips") to produce legible versions of previously produced illegible documents. (Dkt. 68). Phillips filed a notice of compliance, stating that she had complied with the Courts Order. (Dkt. 73). However, this is a misrepresentation. Phillips' production is deficient.

On September 8, 2020, Phillips' produced a batch of documents. The batch contained many documents, including three documents titled "Gmail Doc #3," "Gmail Doc #4," and "Gmail Doc #5," which were illegible. (Ex. 7; Phillips Discovery Email). Because Phillips did not label her original production to the School Board, it is not possible to decipher what request these documents were intended to be responsive to. After the Court's discovery conference, the School Board resent its First Request for Production to Plaintiffs' counsel on October 5, 2020 at 6:55 p.m. and included the documents that were illegible for counsel and Phillips' reference. (Ex. 7: Phillips Discovery Email).

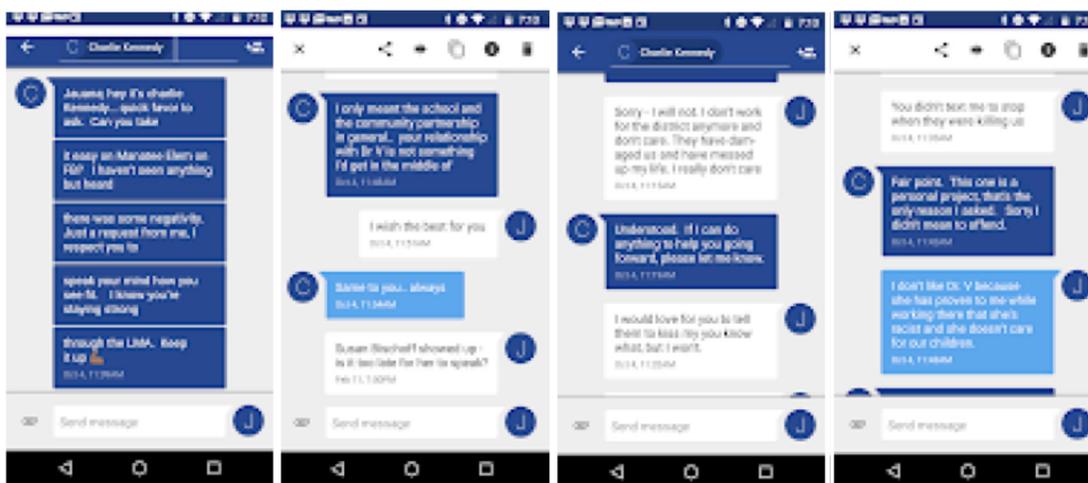
On October 13, 2020, Plaintiffs' counsel served on the School Board Phillips' amended production. (Ex. 22: 10.13.20 Email). The email contained a link to a Google Drive titled "Amended RFP – SDMC – Jauana Phillips – 10-9-20." It also included a letter from Phillips dated October 9, 2020, which stated that this production was in response to the School Board's Motion to Compel and that there had been no specification of which documents were illegible. (Ex. 22, p. 6: 10.13.20 Email). It is worth noting that the email served to Plaintiffs' counsel regarding Phillips' discovery deficiencies on October 5, 2020

with a copy of the Request for Production also included copies of the documents which the School Board explained are illegible.

After careful review of every document within the Google Drive Folder, the legible version of the documents in question were not found. The School Board requested that Phillips provide the legible version of the documents immediately.

On October 23, 2020 Phillips sent two emails to Plaintiffs' counsel and copied Defendants' counsels on the email, where she stated that she had not received a request by the School Board's counsel to access the Google Drive Folder. (Ex. 23: 10.23.20). To make it clear, the School Board's counsel was able to access the Google Drive Folder without requesting any specific permission, but by merely clicking on the link sent by Plaintiffs' counsel on October 13, 2020. Additionally, the School Board reviewed all of the documents produced by Phillips before sending the letter to Plaintiffs' counsel detailing deficiencies in Phillips' production.

In this October 23 email, Phillips also stated that the illegible documents in question, titled "Gmail Doc #3," "Gmail Doc #4," and "Gmail Doc #5," were in the Google Drive Folder under the subfolder titled RFP - SDMC #5 and in a later email, stated that it was in subfolder titled RFP - SDMC #13. (Ex. 24: Phillips Discovery). Neither of these folders contain a document that resembles the screenshots which are illegible in the above referenced documents. For further clarity, below is a screenshot of the illegible attachments to "Gmail Doc #3," "Gmail Doc #4," and "Gmail Doc #5:"



**d. Katrina Ross**

The Court ordered Plaintiff Katrina Ross (“Ross”) to produce written responses and to produce documents in response to the School Board’s Request for Production to Ross. (Dkt. 68). Ross filed a notice of compliance, stating that she had complied with the Court’s Order. (Dkt. 71). However, Ross’ response is deficient.

**i. Request No. 34 seeks the following:**

*Any and all messages and/or posts posted by you on any social media platform, including but not limited to all such platforms and accounts identified by you in response to Interrogatories No. 10 and 11, regarding your employment with Defendant.*

Ross produced a social media post in response to request number 34. (Ex. 25: Ross RFP 34). However, the document is not a complete document as it does not fully display comments and replies made on the post. It is clear that Ross made comments or replied to comments on her post. Additionally, in her responses, Ross states that some of the documents have been sent via certified mail. (Ex. 26: Ross RFP). The School Board’s counsel has not received any documents from Ross by mail. The School Board requested that Ross provide the social media post and its comments and replies in their entirety, and

any other document that were allegedly sent via certified mail immediately. Ross has not produced the responsive documents.

**e. Angella Enrisma**

The Court ordered Plaintiff Angella Enrisma (“Enrisma”) to produce documents responsive to requests numbers 3, 13, and 14 of the School Board’s Request for Production to Enrisma. (Dkt. 68). Enrisma filed a notice of compliance, stating that she had complied with the Court’s Order. (Dkt. 73). However, Enrisma’s response was deficient in the following ways:

**i. Request No. 3 seeks the following:**

*Your tax returns for 2018 and 2019 including all supporting schedules and W-2 and 1099 forms.*

Enrisma produced a responsive document for request number three. (Ex. 27: Enrisma #3 RFP). However, Enrisma only produced one page of her 2019 tax return. Further, Enrisma failed to produce her 2018 tax return.

Additionally, in her October 12, 2020 amended responses to the request for production, Enrisma stated that she has documents in her possession that she is currently compiling that are responsive to requests numbers 1, 2, 4, 5, 6, 7, 8, 9, 10, 12, 16, 17, 18, 20, 21, 22, 23, 24, 26, 27, 28, 31, 35, and 36. (Ex. 27: Enrisma RFP). However, no additional documents have been produced. To the extent that Enrisma has failed to produce outstanding documents, the School Board requested Enrisma to produce all responsive documents. Enrisma has not produced the requested documents.

On October 29, 2020, the School Board contacted Plaintiffs' counsel and asked for his position with regard to the subject of this Motion. Plaintiffs' counsel objected to the relief sought by the School Board.

## II. Legal Analysis

Rule 37(b)(2)(A) of the Federal Rules of Civil Procedure, a Court may sanction a party for failure to obey an order to provide or permit discovery. The Court may also treat “as contempt of court the failure to obey any order except an order to submit to a physical or mental examination.” Fed. R. Civ. P. 37(b)(2)(A)(vii). Further, under Rule 37(b)(2)(C), if a party “fails to obey an order to provide or permit discovery,” “the court must order **the disobedient party, the attorney advising that party, or both** to pay the reasonable expenses, including attorney’s fees, caused by the failure, unless the failure was substantially justified or other circumstances make an award of expenses unjust.” Fed. R. Civ. P. 37(b)(2)(C) (emphasis added); see Phipps v. Blakeney, 8 F.3d 788, 790 (11th Cir. 1993) (citing Rule 37(b)(2)(C) and explaining that the “district court has broad discretion to control discovery,” including “the ability to impose sanctions on uncooperative litigants”).

“Rule 37 sanctions are imposed not only to prevent unfair prejudice to the litigants but also to insure the integrity of the discovery process.” Perry v. Modern Homotech, Inc., 2009 WL 1140121, at \*2 (M.D. Fla. Apr. 28, 2009) (quoting Aztec Steel Co. v. Florida Steel Corp., 691 F.2d 480, 482 (11th Cir. 1982)). Plaintiffs have had since June 10 to respond, gather, and produce responsive documents and answers to interrogatories. The School Board has agreed to extensions and has repeatedly relayed its concerns to counsel regarding the Plaintiffs' failure to comply with the Federal Rules of Civil Procedure. (Ex. 1; 8.2.20). The Court has twice ordered the Plaintiffs to respond and produce documents responsive to the School Board's discovery

requests. (Dkt. 36 and 68). This delay has caused prejudice to the School Board and has required it to incur attorneys' fees unnecessarily in sorting through the piecemeal and unorganized manner of production and communications to ascertain the continued deficiencies. The School Board has had to expend resources in drafting the Motion to Compel and this Motion, in addition to attending the discovery conferences. Additionally, the School Board has completed Plaintiffs' depositions without the benefit of complete discovery responses. Thus, Plaintiffs' failure has prejudiced the School Board's ability to conduct depositions and defend this action. Plaintiffs have not presented any justifiable reason why they have been unable to properly respond to the School Board's discovery request. Regardless, it is Plaintiffs' burden to show their failure to comply with the Court's Orders and discovery requests is justified or harmless. Fed. R. Civ. P. 37(b)(2)(C); see also Weaver v. Lexington Ins. Co., 2007 WL 1288759, \*2 (M.D. Fla. May 2, 2007) (citation omitted) (stating that non-complying party has the burden of showing that noncompliance is substantially justified or harmless).

The School Board has attempted to resolve this issue in good faith without the Court's intervention. However, once again, Plaintiffs have left the School Board with no other choice than to seek the Court's intervention.

WHEREFORE, the School Board respectfully requests that the Court impose sanctions on Plaintiffs, LMA, Hundley, Phillips, Ross, and Enrisma, and award the School Board's attorney's fees and costs for the unnecessary time and expenses it has incurred as a result of these violations.

Respectfully submitted,

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**CERTIFICATE OF GOOD FAITH**

Pursuant to Local Rule 3.01(g), Defendant hereby certifies that on October 29, 2020, the Defendant contacted Plaintiffs' counsel and asked for his position with regard to the subject of this Motion. Plaintiffs' counsel objected to the relief sought by the School Board.

/s/ Erin G. Jackson \_\_\_\_\_  
Attorney

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 29th day of October 2020, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to all counsel of record.

/s/ Erin G. Jackson \_\_\_\_\_  
Attorney