

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

CASE NO. 5:13-00143-ACC-PRL

LARRY KLAYMAN,

Plaintiff,

vs.

CITY PAGES *et al.*,

Defendants.

**DEFENDANTS' MOTION TO STRIKE PLAINTIFF'S MOTION TO COMPEL
AND TO ALTER THE TIME FOR RESPONDING TO THE MOTION TO COMPEL**

Defendants, pursuant to the Court's Case Management and Scheduling Order [ECF No. 36], move for the entry of an Order striking Plaintiff's Motion to Compel [ECF No. 87] and, pursuant to Rule 6(b) of the Federal Rules of Civil Procedure, move for the entry of an Order providing that Defendants' response to the Motion to Compel shall not be due until ten days after the Court rules upon this Motion to Strike. The grounds for this Motion are:

1. The Court's Case Management and Scheduling Order "controls the subsequent course of these proceedings."
2. In §I.A of that Order, the Court warned the parties: "The Court may deny as untimely all motions to compel filed after the discovery deadline."
3. As this Court has previously found, Plaintiff waited until almost the end of the discovery period to begin taking discovery and, because of that delay, Plaintiff has run into problems complying with the requirements governing the timing and taking of discovery [ECF Nos. 82 & 86].

4. Plaintiff's Motion to Compel [ECF No. 87] – filed eleven days after the discovery deadline – is the most recent manifestation of Plaintiff's problem in this regard.

5. The deadline for completing discovery was September 22, 2014 [ECF No. 36].

6. As detailed in a prior order entered by Magistrate Judge Lammens [ECF No. 66], Plaintiff did not seek the production of documents from Defendants until August 19, 2014. That meant Defendants' responses to the requests were not due until September 22, 2014 (*Id.*), which was the deadline for completing all discovery.

7. Thus, by choosing to delay in requesting the production of documents, Plaintiff ensured it would be impossible for him to file a motion to compel on or before the discovery deadline.

8. Additionally, this is not a situation where Plaintiff filed a motion to compel a few days after the discovery deadline, or even a week after the discovery deadline. Instead, he filed his motion eleven days after the deadline.

9. Plaintiff's Motion to Compel also asks that the Court expedite Defendants' response to the motion and that the Court rule upon the motion on an expedited basis.

10. Before either the Court or the parties expend their time and resources addressing the "merits" of the Motion to Compel, the Court should first determine whether the motion is timely.

11. Thus, Defendants request that they not be required to respond to the Motion to Compel until ten days after the Court rules upon Defendants' Motion to Strike.

WHEREFORE, Defendants respectfully request the entry of an Order striking Plaintiff's Motion to Compel and providing that Defendants' response to the Motion to Compel shall not be due until ten days after the Court rules upon Defendants' Motion to Strike.

CERTIFICATE OF COUNSEL

Counsel for Defendants placed a telephone call to Plaintiff at 9:00 a.m. on October 3, 2014 to discuss the relief sought in this Motion. The call was answered by an automated message saying that the voice mailbox had not yet been set up. Counsel for Defendants immediately sent an e-mail to Plaintiff asking whether Plaintiff would agree to withdraw the Motion to Compel because it is untimely. Plaintiff has not responded and, because the Motion to Compel seeks expedited relief, Defendants could not wait any longer to file this Motion.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of October 2014, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF System.

/s/ Scott D. Ponce

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