IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

TYLER GRIFFIN, Plaintiff, v. CITY OF ATLANTA, DONALD VICKERS, MATTHEW ABAD, and JOHN DOE NO. 1-5, Defendants.	CIVIL ACTION FILE NO. 1:20-cv-02514-TWT

PLAINTIFF'S REPLY IN SUPORT OF HIS RENEWED MOTION TO COMPEL

Plaintiff stands by the merits of his Renewed Motion to Compel. Plaintiff submits this Reply Brief to address Defendants' new arguments about meeting-and-conferring, which appeared for the first time in Defendants' brief filed earlier today.

1. Introduction.

On Friday, November 20, 2020 at 9:16pm, the City served its Responses to Plaintiff's Third Set of Requests for Production. ECF No. 77-4. The City's responses raised many objections but provided no documents relating to Plaintiff's

Monell claim against the City. *Id.* Within twenty-four hours, Plaintiff sent the City a detailed letter laying out Plaintiff's positions and requested that the City produce documents responsive to his requests.[1] ECF No. 77-5.

On Monday, November 23, 2021, the City requested a telephone conference to discuss Plaintiff's issues with the City's discovery responses. Nair to Kahn 11/23/20 (Ex. 1). The undersigned promptly responded and agreed. *Id.*

On the phone call, the City explained that it believed that it was entitled to withhold any documents relating to non-physical use of force (*e.g.*, baton, firearm, pepper spray). Plaintiff explained that the type of force used does not matter, but rather, what matters it how the City responded to a finding of excessive force. After the undersigned explained Plaintiff's position, the City's lead attorney ended the discussion by acknowledging that the parties simply did not agree.

The undersigned made one more effort to get documents without involving the Court by asking the City to produce the requested documents relating to physical use of force—which the City admitted are relevant. During the same call, the City's lead attorney firmly said the City would not produce any additional

[1] Plaintiff sent the letter so soon in an effort to complete discovery within the original discovery period.

documents. The only way to keep the case moving and get the documents Plaintiff needs was to file a motion to compel.

2. Plaintiff met his duty to meet and confer in good faith.

Before filing a motion to compel, the movant must make a good faith attempt to meet and confer with the opposing party to resolve the discovery dispute. Fed. R. Civ. P. 37(a)(1). If the attempt to meet and confer fails, the movant must certify to the Court that he or she "has in good faith conferred or attempted to confer with the person or party failing to make disclosure or discovery in an effort to obtain it without court action." *Id.*; *see also* LR 37.1(A), NDGa.

This Court has found that a party may discharge his or her duty to meet and confer through the exchange of letters and a follow-up telephone conference. *See*, *e.g.*, *N. Georgia Elec. Membership Corp. v. Nat'l Union Fire Ins. Co. of N. Pittsburgh, Pa.*, 2018 WL 6422632, at *4 (N.D. Ga. Oct. 22, 2018); *Ferguson v. Maryland*, 2012 WL 12835874, at *3 (N.D. Ga. Mar. 8, 2012) ("A reasonable effort to confer generally requires counsel . . . to address and discuss the discovery requests either in person or by telephone . . ."); *accord Rolex Watch U.S.A., Inc. v. Capetown Diamond Corp.*, 2009 WL 10669248, at *1 (N.D. Ga. Mar. 30, 2009); *Godby v. Marsh USA, Inc.*, 2008 WL 11407322, at *3 (N.D. Ga. Feb. 7, 2008)

(finding that letter writing and telephone conference was sufficient to satisfy duty to meet and confer prior to filing motion to compel). That is exactly what Plaintiff did.

Plaintiff did everything he reasonably could before filing his motions to compel. Plaintiff sent the City a letter and the parties followed up with a phone call. During the phone call, it became clear that the parties simply did not agree—Plaintiff believed that the evidence should be produced, and Defendants disagreed. In other words, despite Plaintiff's requests and arguments, Defendants refused to produce the requested evidence. The disagreement was clear, and counsel for Defendants acknowledged as much on the phone. Plaintiff's counsel noted that if the parties could not agree, Plaintiff would have to file a motion with the Court. Defendants were not persuaded and declined then—as they have ever since—to produce the requested information.

It feels strange that Defendants now complain that there was not enough meeting-and-conferring. The position taken by Defendants in their recent brief is at odds with their words during the phone call on November 23, 2021 and with their inaction since that date. The proof is in the three months that has elapsed since Plaintiff filed the motion to compel on December 2, 2020. If at any time during those past three months Defendants had changed their position or come to

believe that the motion could be resolved with additional calls or emails, Defendants could have called or emailed the undersigned. If Defendants had changed their position, Plaintiff could have (and would have) withdrawn the motion. Defendants did not call or email, for the very good reason that the issues had already been fully discussed and the City was simply not willing to produce the evidence. Where the parties fundamentally disagree, no amount of conferring in the world will solve the problem.

The meet-and-confer requirement is supposed to be a practical rule that limits disputes, not a tactical tool to be used by parties who have impermissibly withheld evidence.

3. Conclusion

Each of Plaintiff's requests seek documents that are relevant to his *Monell* claims, which are already supported by existing evidence. The City withheld the evidence, claiming production would be an undue burden. The City provides no evidence to accurately reflect the nature of the burden and the time and expense it would incur to comply with Plaintiff's requests, as required by law. Instead, the City complains that responding to Plaintiff's discovery would require it spend

"countless manhours" to produce 'thousands of pages of discovery." Opp Br. at 2, ECF No. 80. Those complaints are overblown.

This is a significant case. The City is not relieved of its duty to produce evidence merely because producing it will take work. *Cottone v. Cottone*, 2017 WL 9250366, at *2 (N.D. Ga. Oct. 11, 2017) ("'[t]he mere fact that compliance . . . will cause great labor and expense or even considerable hardship . . . does not of itself require denial of the motion.'") (quoting 8 Wright & Miller § 2214, at 647-48); *see also U.S. ex rel. Carter v. Bridgepoint Educ., Inc.*, 305 F.R.D. 225, 238 (S.D. Cal. 2015) ("'[I]t cannot be argued that a party should ever be relieved of its obligation to produce accessible data merely because it may take time and effort to find what is necessary.'") (internal citation omitted); *Keco Indus., Inc., v. Stearns Elec. Corp.*, 285 F. Supp. 912, 914 (E.D. Wis. 1968) (allowing the inspection of 100,000 files). Further, the City refused to respond to Plaintiff's request for all "sustained" OPS files, which would allow Plaintiff to incur any purported burden and expense of sorting through the documents.

The City must produce the requested evidence. Plaintiff respectfully requests that the Court grant his Motion to Compel and order the City to produce the requested documents within fourteen days of the Court's Order.

Respectfully submitted this 11th day of March 2021.

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CERTIFICATION OF FONT SIZE

I hereby certify that the foregoing has been prepared with one of the font and point selections approved by the Court in Rule 5.1(C) of the Civil Local Rules of Practice for the United States District Court for the Northern District of Georgia, specifically, Times New Roman 14 point.

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CERTIFICATE OF SERVICE

I hereby certify that on March 11, 2021, I electronically filed ***PLAINTIFF'S REPLY IN SUPORT OF HIS RENEWED MOTION TO COMPEL*** with the Clerk of Court using the CM/ECF system, which will automatically serve following attorneys of record:

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