

Ross C. Anderson (#0109)  
Walter M. Mason (#16891)  
LAW OFFICES OF ROCKY ANDERSON  
The Judge Building  
Eight East Broadway, Suite 450  
Salt Lake City, Utah 84111  
Telephone: (801) 349-1690  
Fax: (801) 349-1682  
rocky@andersonlawoffices.org  
walter@andersonlawoffices.org  
*Attorneys for Plaintiffs*

---

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION**

---

CALVIN DONALD OSTLER, individually  
and as personal representative of the Estate of  
Lisa Marie Ostler, KIM OSTLER, and the  
minor children of Lisa Marie Ostler through  
their adoptive parents and next friends,  
CALVIN DONALD OSTLER and KIM  
OSTLER,

Plaintiffs,

v.

HOLLY PATRICE HARRIS, ZACHARY  
PAUL FREDERICKSON, TODD ALLAN  
BOOTH, TODD RANDALL WILCOX, M.D.,  
RONALD PAUL SEEWER, JR., BRENT LEE  
TUCKER, JAMES M. WINDER, PAM  
LOFGREEN, RICHARD BELL, JOHN DOE,  
whose true name is unknown, and SALT LAKE  
COUNTY, a political subdivision of the State of  
Utah,

Defendants.

**PLAINTIFFS' MOTION FOR  
SANCTIONS FOR DISCOVERY  
ABUSES RELATING TO  
WRITTEN DISCOVERY AND  
DISCLOSURES AND  
MEMORANDUM IN SUPPORT**

Case No. 2:18-cv-00254-001

Judge Bruce S. Jenkins

---

**TABLE OF CONTENTS**

Table of Authorities ..... iii

Plaintiffs’ Motion for Sanctions for Discovery Abuses Relating  
to Written Discovery and Disclosures ..... 1

Memorandum in Support ..... 3

I. In Violation of Rules 26(a)(1)(A) and 26(g)(1),  
Defendants’ Counsel Unjustifiably Provided in Initial  
Disclosures the Address and Phone Number of the  
Office of the District Attorney Instead of the  
Addresses and Phone Numbers of Witnesses, Which  
Obstructed Plaintiffs’ Investigations and the  
Subpoenaing of Witnesses ..... 4

II. Defendants’ Counsel Wrongfully Certified  
Responses to Written Discovery That Were  
Inaccurate, Incomplete, and in Violation of the  
Federal Rules of Civil Procedure..... 5

A. Defendants’ Counsel Served Unverified  
Interrogatory Answers That Were Unequivocally  
False in That They Denied Any Disciplinary  
History for Defendants Frederickson and Harris  
When Both of Them Have Been Subject to  
Severe Discipline for Grossly Inappropriate  
Conduct..... 6

B. Defendants’ Counsel Refused to Provide  
Addresses and Phone Numbers of Witnesses,  
Causing Unnecessary Delay and Expense to  
Plaintiffs in Arranging the Witnesses’  
Depositions ..... 7

C. In Violation of Rule 33(b)(5), Defendants’  
Counsel Provided Unsigned Verifications with

Defendants’ Interrogatory Answers, Then Provided Verifications, Without Accompanying Interrogatory Answers, Signed by Some Defendants Who Had Not Seen, and Did Not Agree with, the Answers .....	7
D. Defendants’ Counsel Failed to Provide Information to Plaintiffs About Who Communicated with Lisa Ostler Until Approximately Five Months After Plaintiffs Served Interrogatories .....	9
E. Defendants’ Counsel Served Responses to Requests for the Production of Documents That Were Incomplete, Including Not Providing an “Inmate Handbook” That Was Ostensibly Given to Lisa and Specified How to Request Medical Help .....	10
III. In Violation of Rule 26(b)(5)(B), Defendants’ Counsel Retained and Used a Document That Plaintiffs Had Previously Identified as Inadvertently Produced Attorney Work Product.....	10
IV. Defendants’ Counsel Used Mr. Anderson’s Electronic Signature Without His Authorization.....	11
Conclusion .....	12
Certificate of Compliance with Word-Count Limit.....	13

**TABLE OF AUTHORITIES**

	Page(s)
 Cases	
<i>Cal Dive Int’l, Inc. v. M/V Tzimin (ex Stena Seahorse)</i> , 127 F.R.D. 213 (S.D. Ala. 1989).....	2
<i>Hartman v. Am. Red Cross</i> , No. 09-1302, 2010 WL 1882002 (C.D. Ill. May 11, 2010) (unpublished).....	4
<i>Marshall v. McGill</i> , No. CV 10-01436, 2011 WL 13118589 (D. Ariz. June 8, 2011) (unpublished) .....	11
<i>Regions Bank v. Chicago Title Ins. Co.</i> , No. 10-80043-CIV, 2011 WL 13225145 (S.D. Fla. July 8, 2011) (unpublished) .....	11
<i>Tamas v. Family Video Movie Club, Inc.</i> , 304 F.R.D. 543 (N.D. Ill. 2015) .....	4
<i>Thurby v. Encore Receivable Management, Inc.</i> , 251 F.R.D. 620 (D. Colo. 2008).....	4
 Rules	
District of Utah CM/ECF and E-Filing Administrative and ProceduresManual ...	11
DUCivR 1-2 .....	11
Rule 26(a)(1)(A), Federal Rules of Civil Procedure .....	4
Rule 26(b)(5)(B), Federal Rules of Civil Procedure .....	10, 11
Rule 26(c)(3), Federal Rules of Civil Procedure .....	2
Rule 26(g)(1), Federal Rules of Civil Procedure .....	4, 5
Rule 26(g)(3), Federal Rules of Civil Procedure .....	2, 3, 5
Rule 30(d)(2), Federal Rules of Civil Procedure .....	3
Rule 33(b)(3), Federal Rules of Civil Procedure .....	7
Rule 33(b)(5), Federal Rules of Civil Procedure .....	7
Rule 34, Federal Rules of Civil Procedure .....	10
Rule 37(a)(5)(C), Federal Rules of Civil Procedure.....	2
Rule 37(c)(1), Federal Rules of Civil Procedure .....	1, 3, 5

**PLAINTIFFS' MOTION FOR SANCTIONS FOR DISCOVERY ABUSES**  
**RELATING TO WRITTEN DISCOVERY AND DISCLOSURES**

Plaintiffs respectfully move the Court for an order requiring the payment by Defendants or Defendants' counsel of Plaintiffs' attorneys' fees, including fees related to this Motion, incurred as a result of the following discovery abuses:

(1) The failure by Defendants' counsel to disclose witnesses' contact information and other highly relevant information in the possession of Defendants, which is sanctionable pursuant to Rule 37(c)(1), Federal Rules of Civil Procedure,<sup>1</sup> regarding which Plaintiffs also move the Court for an order that Defendants may not call witnesses or present documents at trial that were not identified—including, if known, addresses and phone numbers of witnesses—in Defendants' initial disclosures unless Defendants can demonstrate the information was not known to, or reasonably discoverable by, Defendants or their counsel on the date Defendants' initial disclosures were due.

(2) The wrongful certifications by Defendants' counsel of initial disclosures

---

<sup>1</sup> “If a party fails to provide information or identify a witness as required . . . the party is not allowed to use that information or witness . . . on a motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless. In addition to or instead of this sanction, the court, on motion and after giving an opportunity to be heard: (A) *may order payment of the reasonable expenses, including attorney's fees, caused by the failure. . . .*”

and responses and objections to written discovery, for which the Court “must” impose sanctions against Defendants or Defendants’ counsel pursuant to Rule 26(g)(3), Federal Rules of Civil Procedure.<sup>2</sup>

Pursuant to Rules 37(a)(5)(C)<sup>3</sup> and 26(c)(3), Federal Rules of Civil Procedure, respectively, Plaintiffs further move the Court for an order requiring the payment of Plaintiffs’ attorneys’ fees incurred in connection with (1) Plaintiffs’ Motion to Compel [ECF 46], which was necessitated by Defendants’ baseless objections to Plaintiffs’ written discovery requests, and (2) Defendants’ baseless motions for protective orders [ECF 80 and 83], seeking to avoid the depositions of Richard Bell and Rocky Finocchio.

For the reprehensible conduct exhibited by Defendants’ counsel described here and in Plaintiffs’ Motion for Sanctions for Discovery Abuses Relating to Depositions (“Plaintiffs’ First Motion for Sanctions”) [ECF 97], Plaintiffs urge

the \_\_\_\_\_

<sup>2</sup> “If a certification [under Rule 26(g)(1)] violates this rule without substantial justification, the court . . . **must impose an appropriate sanction** on the signer, the party on whose behalf the signer was acting, or both. The sanction may include an order to pay the reasonable expenses, including attorney’s fees, caused by the violation.”

<sup>3</sup> “If the motion is granted in part and denied in part, the court . . . may, after giving an opportunity to be heard, apportion the reasonable expenses for the motion.” *See also Cal Dive Int’l, Inc. v. M/V Tzimin (ex Stena Seahorse)*, 127 F.R.D. 213, 218 (S.D. Ala. 1989) (affirming award of attorneys’ fees for 379.25 hours expended pursuing motions to compel where movant was successful on approximately 70% of claims).

Court to strike Defendants' Answer [ECF 75] and enter default judgment against Defendants as to liability,<sup>4</sup> or, at the least, to warn Defendants' counsel that similar abuses of the discovery process in the future may result in an entry of judgment as to liability.

### MEMORANDUM IN SUPPORT

Defendants' counsel has repeatedly, unreasonably, and unjustifiably failed to follow the applicable Federal Rules of Civil Procedure. Rather than serving to efficiently expose the truth, discovery in this matter has become a cat-and-mouse game where Defendants have sought, at every turn, to impede the discovery of relevant information. The Rules were designed to prevent this kind of gamesmanship and provide measures, which Plaintiffs respectfully urge the Court to utilize, to reign in litigants and their counsel who, like Defendants' counsel, obstruct and delay the fair discovery of information.

---

<sup>4</sup> See Rule 37(c)(1), Fed. R. Civ. P. (“ . . . the court . . . *may impose other appropriate sanctions*, including any of the orders listed in Rule 37(b)(2)(A)(i)–(vi) [*including ‘striking pleadings in whole or in part’ and ‘rendering a default judgment’*]” (emphasis added)); Rule 26(g)(3), Fed. R. Civ. P. (the court “must impose an appropriate sanction”); Rule 30(d)(2), Fed R. Civ. P (“The court may impose an appropriate sanction . . .”).

**I. In Violation of Rules 26(a)(1)(A) and 26(g)(1), Defendants’ Counsel Unjustifiably Provided in Initial Disclosures the Address and Phone Number of the Office of the District Attorney Instead of the Addresses and Phone Numbers of Witnesses, Which Obstructed Plaintiffs’ Investigations and the Subpoenaing of Witnesses.**

Rule 26(a)(1)(A), Federal Rules of Civil Procedure, provides that parties “must” provide to the other parties “the name and, if known, *the address and telephone number* of each individual likely to have discoverable information . . .” “Numerous courts have held that this obligation is satisfied only by producing individual addresses for individual witnesses; *disclosure of an attorney’s address . . . is not sufficient.*”<sup>5</sup> Defendants’ counsel failed to provide the addresses and phone numbers of dozens of witnesses and, instead, provided the address and phone number of the Office of the District Attorney.<sup>6</sup>

Failing to disclose witnesses’ contact information also violated Rule 26(g)(1), which provides as follows (emphasis added):

Every disclosure under Rule 26(a)(1) or (a)(3) . . . must be signed . . . .  
By signing, an attorney or party certifies that to the best of the person's knowledge, information, and belief formed *after a reasonable inquiry*: . . . it is *complete and correct* as of the time it is made; . . . .

---

<sup>5</sup> *Hartman v. Am. Red Cross*, No. 09-1302, 2010 WL 1882002, at \*1 (C.D. Ill. May 11, 2010) (unpublished) (emphasis added). *See also Tamas v. Family Video Movie Club, Inc.*, 304 F.R.D. 543, 545–46 (N.D. Ill. 2015); *Thurby v. Encore Receivable Management, Inc.*, 251 F.R.D. 620, 622 (D. Colo. 2008) (requiring disclosure of personal contact information for employee witnesses).

<sup>6</sup> Declaration of Ross C. Anderson, Exhibit “A” to Plaintiffs’ First Motion for Sanctions (“Anderson Decl.”), ¶¶ 81–82.



The contact information for witnesses was available to Defendants' counsel, who even had communicated with many of the witnesses while refusing to provide Plaintiffs with the witnesses' contact information.<sup>7</sup> Under Rule 26(g)(3), because the certification by Defendants' counsel violates Rule 26(g)(1) without "substantial justification," the court "must impose an appropriate sanction," which should include barring Defendants from calling witnesses or presenting documents at trial that were not properly identified in Defendants' initial disclosures, pursuant to Rule 37(c)(1).

**II. Defendants' Counsel Wrongfully Certified Responses to Written Discovery That Were Inaccurate, Incomplete, and in Violation of the Federal Rules of Civil Procedure.**

Rule 26(g)(1), Federal Rules of Civil Procedure, provides as follows:

[E]very discovery . . . response . . . must be signed . . . . By signing, an attorney or party certifies that to the best of the person's knowledge, information, and belief formed after a reasonable inquiry: . . . [that the discovery response] is: (i) consistent with these rules . . .

Sanctions are *mandatory* where, as here, there is no "substantial justification" for the violations.<sup>8</sup>

---

<sup>7</sup> Anderson Decl., ¶¶ 4, 8, 11.

<sup>8</sup> Rule 26(g)(3), Fed. R. Civ. P.

**A. Defendants’ Counsel Served Unverified Interrogatory Answers That Were Unequivocally False in That They Denied Any Disciplinary History for Defendants Frederickson and Harris When Both of Them Have Been Subject to Severe Discipline for Grossly Inappropriate Conduct.**

The unverified answers to interrogatories signed and submitted by Defendants’ counsel, purportedly on behalf of Defendants Frederickson and Harris, indicated Frederickson and Harris have *not* been subject to any disciplinary investigation.<sup>9</sup> Documents produced by Salt Lake County, however, reflect Frederickson and Harris were subject to severe discipline for serious misconduct at the Salt Lake County Jail. Sheriff Winder even determined to fire Frederickson.<sup>10</sup> Defendant Harris violated policies relating to “Dereliction of Duty,” “Attention to Duty,” and the prohibition of “romantic or intimate” communications with prisoners.<sup>11</sup>

The false interrogatory answers required Plaintiffs’ counsel to spend substantial portions of the depositions of Defendants Frederickson and Harris ferreting out the truth.<sup>12</sup>

---

<sup>9</sup> Anderson Decl., ¶¶ 74–76.

<sup>10</sup> Anderson Decl., ¶¶ 77–78.

<sup>11</sup> Anderson Decl., ¶¶ 77, 79.

<sup>12</sup> Anderson Decl., ¶ 80.

**B. Defendants' Counsel Refused to Provide Addresses and Phone Numbers of Witnesses, Causing Unnecessary Delay and Expense to Plaintiffs in Arranging the Witnesses' Depositions.**

As they did with initial disclosures, Defendants' counsel identified witnesses in response to interrogatory answers but provided the address and phone number of the Office of the District Attorney rather than the witnesses' contact information. Plaintiffs' counsel intended to depose a number of those witnesses, but Defendants' counsel refused to answer whether they would accept service of subpoenas on their behalf *and* refused to produce the witnesses' contact information, causing multiple depositions to be cancelled.<sup>13</sup>

**C. In Violation of Rule 33(b)(5), Defendants' Counsel Provided Unsigned Verifications with Defendants' Interrogatory Answers, Then Provided Verifications, Without Accompanying Interrogatory Answers, Signed by Some Defendants Who Had Not Seen, and Did Not Agree with, the Answers.**

In cavalier violation of the mandate that “[e]ach interrogatory must . . . be answered . . . in writing under oath” and that the “person who makes the answers must sign them,”<sup>14</sup> Defendants' counsel served on Plaintiffs' counsel interrogatory

---

<sup>13</sup> Anderson Decl., ¶¶ 1–12. Additionally, the delay of depositions to be taken by Plaintiffs is consistent with the fact that Defendants have repeatedly requested dates for depositions, then failed to take the depositions even though Plaintiffs' counsel has set aside those dates at the request of Defendants' counsel. Anderson Decl., ¶¶ 41–52.

<sup>14</sup> Rule 33(b)(3) and (5), Fed. R. Civ. P.

answers, purportedly on behalf of Defendants Harris, Frederickson, and Tucker, with no verification signature.<sup>15</sup> Days later, Defendants' counsel served on Plaintiffs signed verification pages, but they were unaccompanied by interrogatory answers.<sup>16</sup>

When Defendant Holly Harris ("Harris") was questioned in her deposition, she communicated that, in chronological order:

- (a) Harris provided Defendants' counsel with her answers to interrogatories;
- (b) Defendants' counsel provided Harris a lone verification page to sign, which Harris believed was to verify the answers she previously provided;
- (c) Harris did not see the final version of the interrogatory answers, which she had purportedly verified under criminal penalty of perjury, until during her deposition, when she learned that words were added to her answers and that one answer was completely unfamiliar to her and not part of the answers she intended to verify.<sup>17</sup>

Additionally, Defendants Frederickson and Tucker made clear that an identical interrogatory answer provided for both of them was inaccurate and, according to Tucker, was not the statement of either Frederickson or Tucker.<sup>18</sup>

---

<sup>15</sup> Anderson Decl., ¶ 23.

<sup>16</sup> Anderson Decl., ¶¶ 24, 28.

<sup>17</sup> Anderson Decl., ¶¶ 25–27.

<sup>18</sup> Anderson Decl., ¶¶ 29–31.

Again, Plaintiffs' counsel was required to spend substantial time and money during their depositions to get to the truth, which varied significantly from the interrogatory answers signed and served by Defendants' counsel.<sup>19</sup>

**D. Defendants' Counsel Failed to Provide Information to Plaintiffs About Who Communicated with Lisa Ostler Until Approximately Five Months After Plaintiffs Served Interrogatories.**

Since Lisa's death, Defendant Salt Lake County has been in possession of jail logs identifying which employees in Central Control could have received communications from Lisa through the intercom in her cell.<sup>20</sup> Defendants failed, for several months, to provide those documents, as well as other information about who communicated with Lisa Ostler.<sup>21</sup> Defendants and Defendants' counsel failed to make reasonable inquiries, which is demonstrated by the fact that employees in Central Control who could have communicated with Lisa have testified that *no one asked them about their communications with Lisa until, at the earliest, January 2019*, at least four months after Plaintiffs served written discovery and ten months after this action was commenced.<sup>22</sup>

---

<sup>19</sup> Anderson Decl., ¶¶ 25–30.

<sup>20</sup> Anderson Decl., ¶¶ 35.

<sup>21</sup> Anderson Decl., ¶¶ 35–40.

<sup>22</sup> Anderson Decl., ¶ 37.

**E. Defendants’ Counsel Served Responses to Requests for the Production of Documents That Were Incomplete, Including Not Providing an “Inmate Handbook” That Was Ostensibly Given to Lisa and Specified How to Request Medical Help.**

Rule 34, Federal Rules of Civil Procedure, permits requests for the production of documents that are “in the responding party’s possession, custody, or control.” In addition to the documents Defendants failed to produce that were subject to Plaintiffs’ motion to compel [ECF 46], Plaintiffs’ counsel informed Defendants’ counsel numerous times that a document, referred to as an “Inmate Handbook,” had not been produced by Defendants and was required to be produced by Defendants.<sup>23</sup> Obviously having never reasonably endeavored to find it, counsel for Defendants wrote, “*To the best of my present understanding, the Inmate Handbook . . . is not available in paper copy.*” (Emphasis added).<sup>24</sup> The Inmate Handbook *was* available, as a reasonable inquiry would have revealed.<sup>25</sup>

**III. In Violation of Rule 26(b)(5)(B), Defendants’ Counsel Retained and Used a Document That Plaintiffs Had Previously Identified as Inadvertently Produced Attorney Work Product.**

In blatant violation and disregard of Rule 26(b)(5)(B), Defendants’ counsel, Jacque Ramos, brought a document, which Plaintiffs’ counsel had properly

---

<sup>23</sup> Anderson Decl., ¶¶ 68–70.

<sup>24</sup> Anderson Decl., ¶ 70.

<sup>25</sup> Anderson Decl., ¶ 71.

identified as inadvertently produced attorney work product, to a deposition and read it to herself while questioning the witness.<sup>26</sup>

Rule 26(b)(5)(B) unambiguously provides as follows (emphasis added):

After being notified [of the inadvertent production of claimed trial-preparation material], a party *must* promptly return, sequester, or destroy the specified information and any copies it has; *must not use* or disclose the information until the claim is resolved; . . .

“The rule’s clarity favors sanctions. It does not contemplate an attorney deciding whether the claim is valid. Nor does it take effect only if the documents are privileged.”<sup>27</sup>

#### **IV. Defendants’ Counsel Used Mr. Anderson’s Electronic Signature Without His Authorization.**

In further disregard for applicable rules, Defendants’ counsel filed a Proposed Order [ECF 44-1] reflecting that Ms. Ramos was authorized to include Mr. Anderson’s electronic signature when no such authorization had been granted.<sup>28</sup>

---

<sup>26</sup> Declaration of Walter M. Mason, attached hereto as Exhibit “A”, at ¶¶ 1–4 and Exhibit 2 thereto.

<sup>27</sup> *Regions Bank v. Chicago Title Ins. Co.*, No. 10-80043-CIV, 2011 WL 13225145, at \*2 (S.D. Fla. July 8, 2011) (unpublished). *See also, e.g., Marshall v. McGill*, No. CV 10-01436, 2011 WL 13118589, at \*3 (D. Ariz. June 8, 2011) (unpublished) (awarding attorneys’ fees incurred in bringing a motion for violations of Rule 26(b)(5)(B)).

<sup>28</sup> Anderson Decl., ¶¶ 72–73. *See also* CM/ECF and E-filing Administrative Procedures Manual, at 3 (requiring approval from attorney before submitting a document carrying that attorney’s electronic signature). *See also* DUCivR 1-2 (“The court . . . may impose sanctions for violation of these civil rules).

**CONCLUSION**

The conduct of Defendants' counsel has been an affront to the fair, efficient discovery of information in this matter. Plaintiffs respectfully urge the Court to impose sanctions on Defendants or Defendants' counsel commensurate with the degree of abuse shown in their pattern of relentless and unjustifiable delays, obstructions, and failures to abide by the Federal Rules of Civil Procedure.

DATED this 14th day of March 2019.

LAW OFFICES OF ROCKY ANDERSON

/s/ Walter M. Mason

Walter M. Mason

*Attorney for Plaintiffs*



**CERTIFICATE OF COMPLIANCE WITH WORD-COUNT LIMIT**

In compliance with the word-count limit of DUCivR 7-1(a)(3)(C), I certify that the foregoing Motion for Sanctions for Discovery Abuses Relating to Depositions and Memorandum in Support contains 2,494 words, excluding the items that are exempted from the word count under DUCivR 7-1(a)(3)(C).

DATED this 14th day of March 2019.

LAW OFFICES OF ROCKY ANDERSON

/s/ Walter M. Mason  
Walter M. Mason  
*Attorney for Plaintiffs*