

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION**

WILLIAM H. DURHAM, M.D.

PLAINTIFF

v.

CIVIL ACTION NO.: 2:20-cv-112-KS-MTP

ANKURA CONSULTING GROUP, LLC

DEFENDANT

ORDER

THIS MATTER is before the Court on Ankura Consulting Group, LLC's Motion for Sanctions [157]. Having considered the submissions of the parties and the applicable law, the Court finds that the Motion [157] should be denied.

On March 7, 2022, the Court granted Defendant's Motion to Compel [121] and required Plaintiff to produce additional responsive documents on or before March 22, 2022. *See* Order [150]. Plaintiff failed to produce the documents by the deadline as ordered.

On March 23, 2022, Defendant filed the instant Motion [157] arguing that sanctions should be imposed for Plaintiff's failure to comply with the Court's deadline. On March 24 and March 25, Plaintiff filed two Notices [159] [160] indicating that additional documents had been produced to Defendant. On March 25, 2022, Plaintiff also filed a Response [161] to the instant Motion arguing that sanctions should not be imposed because counsel for Plaintiff was on vacation, the delay was not in bad faith, and counsel for Plaintiff was relying on a technology firm to produce the documents as instructed. *See* [161] at 2. Defendant filed its Reply [162], and this matter is now ripe for review.

This Court has broad discretion to exercise its various sanctioning powers. *Topalian v. Ehrman*, 3 F.3d 931, 934 (5th Cir. 1993); *Shipes v. Trinity Indus.*, 987 F.2d 311, 323 (5th Cir. 1993) ("The imposition of sanctions is a matter of discretion for the district court."). Federal

Rule of Civil Procedure 37(b) allows for sanctions when a party fails to obey a discovery order. The sanctions may include directing that facts be taken as established, prohibiting the party from supporting or opposing claims or defenses, striking pleadings, staying the proceedings until the order is obeyed, dismissing the action, rendering default judgment, or finding the party in contempt of court. Fed. R. Civ. P. 37(b)(2)(A). In lieu of, or in addition to the aforementioned sanctions, “the court must order the disobedient party, the attorney advising the 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).

Generally speaking, courts should punish parties no more harshly than is necessary to vindicate the injury inflicted by the particular misbehavior at issue. *Carroll v. Jaques Admiralty Law Firm, P.C.*, 110 F.3d 290, 294 (5th Cir. 1997). “Rule 37 sanctions must be applied diligently both to penalize those whose conduct may be deemed to warrant such a sanction, and to deter those who might be tempted to such conduct in the absence of such a deterrent.” *Roadway Express, Inc. v. Piper*, 447 U.S. 752, 763-64 (1980).

Plaintiff’s reasons for the late supplementation are not compelling. Counsel for Plaintiff could have requested an extension of time to comply with the Court’s order at any time prior to the expiration of the deadline. Pre-planned vacations or working with an outside IT vendor do not excuse Plaintiff’s delay. On the other hand, Defendant suffered no real prejudice as a result of the short delay in responding, and the case deadlines were suspended at the time. As the delay

was minimal and Defendant has not suffered any significant prejudice, the Court declines to impose sanctions.¹

IT IS, THEREFORE, ORDERED that Ankura Consulting Group, LLC's Motion for Sanctions [157] is DENIED.

SO ORDERED this the 7th day of April, 2022.

s/Michael T. Parker
UNITED STATES MAGISTRATE JUDGE

¹ In its Reply [162] brief, Defendant claims that Plaintiff's production is still deficient. The Court declines to consider an argument raised for the first time in a Reply. Defendant's Motion concerns the delay in production, not its sufficiency. If there is a remaining dispute over sufficiency of the production, the parties shall confer as appropriate and, failing resolution, may set another discovery conference with the Court.