

**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
CIVIL DIVISION**

JOHN WILLIAM LICCIONE,

Plaintiff,

v.

Case No.: 24-003939-CI

JULIE MARCUS, et al.,

Defendants.

**PLAINTIFF'S REPLY TO DEFENDANT GRIFFITH'S MEMORANDUM IN
OPPOSITION TO PLAINTIFF'S MOTION TO COMPEL DISCOVERY**

Comes now Plaintiff, in reply to Defendant Griffith's memorandum, and respectfully provides the following in support of Plaintiff's Motion to Compel Discovery:

A. Defendant Griffith was Properly Served on September 12, 2024, and the Response Deadline was October 28, 2024.

1. **Proof of Service Confirms Personal Service Date:** Defendant Griffith was personally served with the **Request for Production**, along with the **Summons and First Amended Complaint**, by Plaintiff's process server, Stephen Cerda, at her residence at 305 S. Tessier Cr., St. Pete Beach, FL 33706, on **September 12, 2024**. This is documented in the proof of service affidavit, e-filed on October 19, 2024, and attached as **Exhibit A** to Plaintiff's Motion to Compel.
2. **Response Deadline Based on Service Date:** According to the Rules of Civil Procedure, Defendant Griffith's response was due **45 days from the date of personal service** on September 12, 2024, setting the response deadline as

October 28, 2024. Defendant's response on October 29, 2024, is therefore untimely.

B. Griffith's Failure to Inform Her Attorney of the Request for Production When She Was Served on September 12th Constitutes Intentional Party Misconduct, Not Excusable Neglect.

3. **Intentional Concealment by Defendant:** Defendant Griffith's failure to deliver the Request for Production to her attorney, Mr. Thurlow, and her failure to inform him of the service, cannot be characterized as attorney error or neglect. This is a matter of **party misconduct**, as Griffith was fully aware of the Request for Production but allegedly chose not to disclose it to her attorney.
4. **Distinction from Attorney Willful Neglect Doctrine:** The willful neglect doctrine applies when an **attorney** fails to file something on time or otherwise mishandles a case, and the client argues that they were unaware or uninvolved in the neglect. Here the opposite is true. Griffith herself is responsible for not relaying the request for production document to her attorney, meaning her actions fall squarely under party misconduct. Courts do not excuse discovery violations resulting from a party's own intentional withholding of information from their attorney. (See *Smith v. J.L. Marks Enterprises, Inc.*, 888 So. 2d 787, 789 (Fla. 4th DCA 2004) [affirming trial court's authority to impose sanctions on a party who fails to fulfill their discovery obligations]; *Cessna v. Montgomery*, 63 Md. App. 65, 491 A.2d 347 (1985) [holding that parties are ultimately responsible for ensuring compliance with discovery requirements].)
5. **Party Obligation to Cooperate with Attorney:** It is well established that parties have a duty to provide their attorneys with all necessary information and

documents. Failure to do so is not grounds for excusable neglect but instead may lead to sanctions due to non-compliance with discovery obligations. (See *Harris v. Harris*, 984 So. 2d 1155, 1158 (Fla. 1st DCA 2008) [holding that a party's failure to provide relevant information to counsel can constitute intentional disregard for the discovery process].)

C. Defendant's Opposition Conflates and Confuses the Service Date with the E-Filing Date of the *Proof of Service*.

6. **Misleading Interpretation of Service/Filing Dates:** Defendant's opposition memo conflates and confuses the relevance and ramifications of the *e-filing date of the proof of service*, October 19, 2024, with the actual *date of service*, September 12, 2024. The Rules of Civil Procedure clarify that the relevant timeline for discovery response begins from the date of personal service, not the subsequent date of the filing of proof of service. Defendant attempts to confuse the Court with this misrepresentation of the law and timeline is not a valid defense and only serves to delay compliance.

D. Plaintiff's Motion to Compel Discovery is Properly Filed, and Defendant's Attempt to Avoid Discovery is Untenable.

7. **Defendant's Argument on Relevance is Baseless:** Defendant's assertion that Plaintiff's Request for Production is immaterial to the Motion to Dismiss is irrelevant. Florida courts maintain that discovery obligations are not suspended by the pendency of motions unless explicitly stayed, which is not the case here. Defendant's delay is simply an attempt to sidestep discovery, which courts have routinely rejected. (See *Garcia v. Wal-Mart Stores E., LP*, 302 So. 3d 553, 556

(Fla. 5th DCA 2020) [holding that discovery may proceed despite pending motions unless stayed by court order]; Patrowicz v. Wolff, 110 So. 3d 973, 975 (Fla. 2d DCA 2013) [stating that the filing of a motion to dismiss does not automatically stay discovery].)

8. Discovery Obligations Are Not Suspended by a Motion to Dismiss:

Defendant's reliance on the pendency of a Motion to Dismiss to justify her delayed response is misplaced. Even if the Motion to Dismiss addresses procedural issues or matters of law, it does not override her obligation to comply with discovery timelines, absent a stay, which she did not request, *and has still failed to request even now.*

E. Plaintiff's Motion to Shorten Time is Justified Due to Defendant's Deliberate Delay.

9. **Intentional Delay Justifies Expedited Relief:** Defendant Griffith's intentional concealment of the Request for Production from her attorney has severely delayed Plaintiff's access to discovery materials necessary for trial preparation. Granting Plaintiff's Motion to Shorten Time is both necessary and appropriate given Defendant's obstructive actions and will allow Plaintiff adequate time to review the documents in preparation for upcoming proceedings.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

- A. Grant Plaintiff's Motion to Compel Discovery and order Defendant Griffith to produce all requested documents immediately;

- B. Sanction Defendant Griffith and her attorney for her intentional obstruction of the discovery process by means of willful concealment and subterfuge; and,
- C. Grant any further relief this Court deems just and proper.

Respectfully submitted,



John William Liccione
Plaintiff, Pro Se
6800 Gulfport Blvd S, Ste 201-116
South Pasadena, FL 33707
443-698-8156
jliccione@gmail.com

CERTIFICATE OF SERVICE

I, John W Liccione, HEREBY CERTIFY that on this 31st day of October 2024, the foregoing Response to Defendant Griffith's Memorandum in Opposition to Plaintiff's Motion to Compel Discovery was filed with the Clerk of the Circuit Court by using the Florida Courts E-Filing Portal and simultaneously served through the E-Portal to Kirby Kreider, attorney for Julie Marcus, George A.D. Thurlow, Esq., Attorney for Defendant Jennifer Griffith, James B. Lake, Esq., Attorney for Defendant Cathy Salustri Loper, and via postage pre-paid first-class mail to Defendant Patrick Heinzen at 4200 54th Ave S #1382, St. Petersburg, FL 33711, and Defendant Mark Weinkrantz at 4738 Belden Circle, Palm Harbor, FL 34685.



John W Liccione