IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

FILED
DISTRICT COURT
CLEVELAND COUNTY, OKLAHOMA
October 12, 2026 2:06 PM
MARILYN WILLIAMS, COURT CLERK
Case Number CJ-2023-1426

DON and **BRENDA FOSTER,**

Plaintiffs,

v.

STATE FARM FIRE AND CASUALTY COMPANY, DAVID CAMP, and **RITA WALLENBERG INSURANCE AGENCY, INC.,**

Defendants.

Case No. CJ-2023-1426
Hon. Thad Balkman

PLAINTIFFS' RENEWED MOTION TO ENFORCE AND FOR SANCTIONS

State Farm has had nearly eleven months, multiple extensions, and repeated opportunities to comply with the Court's discovery orders. The Court has been patient. But State Farm remains in contempt. The Court explicitly allowed Plaintiffs to re-raise the issue of sanctions if State Farm's non-compliance continued. It has.

The history that has led the parties here is telling. The Court ordered State Farm to make its production back in November of 2025, affording it 150-days (at State Farm's request) to comply. State Farm failed. When Plaintiffs first sought sanctions, the Court gave State Farm a second chance to make it right—extending the deadline to July 30, 2026. State Farm failed again. Indeed, State Farm produced nearly 29,000 additional documents in September alone—many directly relevant to its FME program. And despite Plaintiffs' repeated inquiries, State Farm refuses to confirm whether its production is complete, or when Plaintiffs can finally expect full compliance.

The prejudice is apparent. Plaintiffs have continued to conduct depositions and ready their case for trial without any assurance that they actually possess the information the Court ordered many months ago. Meanwhile, discovery inches forward on State Farm's chosen timeline. Each extension the Court has allowed has been met with further noncompliance. And each passing day of State Farm's contempt brings this case closer to trial. To be clear, Plaintiffs do not seek an extension of their trial date—in fact, Plaintiffs believe State Farm's delay may be manufactured in an effort to stall trial. But the time for further indulgence has passed. Discovery orders are not suggestions, and State Farm cannot substitute its preferred schedule for the Court's deadlines. Oklahoma law authorizes sanctions for precisely this conduct. Plaintiffs therefore renew their earlier request for sanctions and submit as follows:

I. RELEVANT FACTS

1. The Court granted Plaintiffs' First Motion to Compel on November 17, 2025 ("Order").

2. About a month later, on December 16, 2025, State Farm requested 150 days to fully comply with the Order, which the Court granted.

3. The very next day, State Farm moved to reconsider, clarify, and stay the Order. The Court denied that motion on January 23, 2026.

4. State Farm subsequently sought a writ from the Oklahoma Supreme Court to modify or overrule the Order on March 6, 2026. The Supreme Court denied State Farm's application on April 28, 2026.

5. All the while, the Court's 150-day order remained in effect. It came and passed on April 1, 2026. On that day, State Farm made a minimal production of a handful of its Operation Guides, a few training transcripts, and four deposition transcripts the Court had ordered.

6. Due to State Farm's failure to comply with the Court's 150-day deadline, Plaintiffs previously moved to show cause and for sanctions back on May 1, 2026.

7. The Court held a hearing on that motion on May 23, 2026. Following the hearing, the Court ultimately allowed State Farm until July 30, 2026 to finally complete its production. The Court chose to defer Plaintiffs' request for sanctions, noting it "may be reconsidered again after the July 30, 2026 deadline." *See* Jun. 23, 2026 Order.

8. But State Farm didn't complete its production by July 30, 2026 either. Instead, coming on three months later, it still continues its production. Since July 30, 2026:

   a. State Farm produced approximately 22,915 documents on September 9, 2026

   b. State Farm produced approximately 4,607 documents on September 17, 2026; and

c. State Farm produced approximately 1,137 documents on September 29, 2026.

These are not paltry productions. Rather, each has contained a robust collection of responsive documents, many of which bear on State Farm's motivation and execution of its FME program.

9. Plaintiffs have repeatedly asked State Farm when (or if) its production would be complete:

> Thanks for working late on it Peyton, we all know how that goes. We'll download it and start reviewing. If you could please, let me know when you believe you all have provided everything we discussed yesterday.
>
> NICK MARR

Sept. 10, 2026 Email from Plaintiffs' counsel.

> At what point can State Farm actually and finally confirm it has produced all documents responsive to the Court's orders? The time for compliance has long since passed, but I'd like to know before these depositions begin if State Farm is aware of additional responsive documents that have not yet been produced.
>
> NICK MARR

Sept. 18, 2026 Email from Plaintiffs' counsel.

> State Farm has repeatedly requested extensions of time to comply with the Court's discovery orders. At the June 23, 2026 hearing, the Court established a deadline for State Farm's production to occur on or before July 30, 2026. State Farm has repeatedly disregarded that deadline. It produced approximately 23,000 documents on September 10 and another 4,600 documents on September 18. Now we learn it is making an additional production today of unknown scope, with yet another production of unidentified documents to follow. And despite our repeat requests, no one can tell us when State Farm will in fact confirm its final compliance with the Court's orders. This is untenable.

Sept. 22, 2026 Email from Plaintiffs' counsel.

> Thanks, Peyton. When will production be complete?
>
> NICK MARR

Sept. 24, 2026 Email from Plaintiffs' counsel.

> Where are we at with the rest of the production? Specifically:
>
> 1. The rest of the documents we previously identified by Bates number from the Carson case.
> 2. The entirety of the production the Court has ordered.

Sept. 24, 2026 Email from Plaintiffs' counsel.

> Can you please confirm whether production is complete? I've yet to get an answer on this but we do keep getting more production.
>
> NICK MARR

Sept. 30, 2026 from Plaintiffs' counsel.

10. At no point has State Farm advised as to whether its production is complete, nor when it expects the production to be complete. Plaintiffs simply continue to receive additional production.

11. Moreover, Plaintiffs additionally advised State Farm of documents missing from its production on August 19, 2026. Plaintiffs' counsel sent their letter after realizing inconsistencies in State Farm's production between cases. Namely, State Farm had produced documents in a parallel case that were responsive to Plaintiffs' requests, but never produced here. To date, State Farm has not confirmed whether it has produced all documents Plaintiffs identified in their August 19 letter. That Plaintiffs were able to identify any discrepancies at all, however, is disturbing and emblematic of State Farm's inconsistent discovery habits and representations across cases.

12. State Farm has been in violation of the Court's Order for more than two months. And this is after State Farm received an extension from the Court for its non-compliance. Plaintiffs and the Court have been patient. But the reward of that patience, to date, has been obstinance. This record requires sanctions.

II. LEGAL STANDARD

Under 12 O.S. § 3237(B)(2), the Court may issue any sanctions "as are just" for State Farm's failure to comply with the Order, including (but not limited to):

> (a) an order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order,
>
> (b) an order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters in evidence,
>
> (c) an order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceedings or any part thereof, or rendering a judgment by default against the disobedient party,
>
> (d) in lieu of or in addition to the orders provided for in subparagraphs a through c of this paragraph, an order treating as a contempt of court the failure to obey any orders …

12 O.S. § 3237(B)(2)(a)–(d). Further, the same section provides: "the court ***shall require*** the party failing to obey the order or the attorney advising the party or both to pay the reasonable expenses, including attorney fees, caused by the failure." *Id.* at § 3237(B)(2) (emphasis added).

Discovery sanctions are reviewed for an abuse of discretion. *Barnett v. Simmons*, 2008 OK 100, ¶ 23, 197 P.3d 12, 20 ("A trial court's ruling on a request for sanctions will not be disturbed unless contrary to the weight of evidence or to a governing principle of law."). "The task of determining a correct sanction for a discovery violation is a fact-specific inquiry that the trial court is best qualified to make." *Id.* at ¶ 26. Importantly:

> Section 3237(B)(2) contains no requirement of willfulness … [it] states that if a party has "failed to obey" an order of the court, the court may enter orders that are just. Willfulness or bad faith, or intentional conduct, goes to the *severity* of the sanctions to be imposed, and the most severe sanctions … should be imposed only where the party's conduct is intentional, willful or in bad faith.

Id. at ¶ 24 (emphasis original). There is no question that State Farm has willfully and intentionally violated the Court's Order. Considering the factors set forth by the Oklahoma Supreme Court, severe sanctions are warranted. *See id.* at ¶ 26 (severity factors include "willfulness, prejudice, whether there was a warning that failure to cooperate could lead to dismissal, whether less drastic sanctions were imposed or considered, and the amount of interference with judicial process").

III. ARGUMENT AND AUTHORITY

It is nearing a year since Plaintiffs prevailed on their first Motion to Compel. And still, State Farm has not complied with the Court's Order or the subsequent deadlines State Farm itself has requested. State Farm is out of excuses. State Farm's "fail[ure] to demonstrate an inability to comply with the court order[s]" weighs heavily towards sanctions. *Id.* at ¶ 11. And its repeated failure to follow orders—including meeting deadlines State Farm itself requested—evinces bad faith and willful disregard. Tenth Circuit authority here is pertinent. Writing for the court in *Lee v. Max Int'l, LLC*, 638 F.3d 1318, 1320 (10th Cir. 2011), then-Judge Gorsuch recognized that a court's "considerable discretion" in issuing discovery sanctions where:

> [the non-moving parties] in this case were given no fewer than three chances to make good their discovery obligation: first in response to [the requesting party's] document requests, then in response to the October 2009 order, and finally in response to the January 2010 order. Plaintiffs failed at all three turns. And three strikes are more than enough to allow the district court to call a litigant out … a party's thrice repeated failure to produce materials that have always been and remain within its control is strong evidence of willfulness and bad faith, and in any event is easily fault enough, we hold, to warrant dismissal or default judgment.

There is no doubt that State Farm's continued flouting of the Court's Order prejudices Plaintiffs' case. Here again, the Tenth Circuit is on point:

> When a party feels at liberty to disobey not just a discovery request but two court orders compelling production of the same material in its control, weeks or months (as in this case) pass without progress in the litigation. Hours, days, weeks of lawyers' time are consumed at great expense. Focus shifts from the merits to the collateral and needless. This is not speedy, inexpensive, or just. Just the opposite.

> And no doubt tolerating such behavior would encourage only more of it. But there is such thing as discovery karma. Discovery misconduct often may be seen as tactically advantageous at first. But just as our good and bad deeds eventually tend to catch up with us, so do discovery machinations. Or at least that's what Rule 37 seeks to ensure.

Id. at 1321; *see also Hicks v. Cent. Oklahoma United Methodist Ret. Facility, Inc.*, 2017 OK CIV APP 23, ¶ 8, 423 P.3d 684, 692 (affirming issuance of default judgment where "[t]he trial court and Plaintiff were required to go through a protracted, complicated process to ensure the production of documents which should have been produced by [defendant] in a timely and orderly fashion."); *Discover Bank (Discover Card) v. Gardner*, 2007 OK CIV APP 69, ¶¶8-9, 166 P.3d 499, 502 (Appeals court affirmed entry of judgment in favor of the plaintiff (the credit card issuer) on the basis of the defendants (the credit card holder's) failure to comply with trial court order compelling answers to interrogatories.). This prejudice is all the more palpable considering the pending discovery deadline and upcoming trial date in this case. State Farm is not taking the Court's orders seriously.

Plaintiffs respectfully suggest the Court issue the following sanctions, as it finds just:

- a monetary sanction for each day State Farm is (and has been) in violation of the Court's Order accruing from July 31, 2026 until State Farm certifies (via sworn statement) its court-ordered production is full and complete, in an amount to be determined by the Court considering State Farm's average annual marketing budget from 2019 to 2025;

- a shift of fees and costs for any depositions that have been either scheduled or conducted following the Court's July 30, 2026 production deadline;

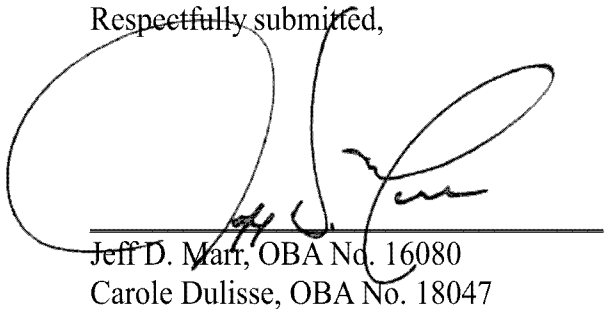
- an order requiring State Farm to make its deponents Kathy Ress, Scott Welsh and all corporate representative witnesses available to testify at trial;

- an award of fees and costs for this motion and any subsequent reply, hearing, and motion practice regarding the need for the Court to settle a journal entry or State Farm's (inevitable) request for reconsideration or clarification (*see* 12 O.S. § 3237(B)(2));

- an order finding State Farm in direct contempt of court (*see, e.g.*, *Autry v. State*, 2007 OK CR 41, ¶¶ 14–15, 172 P.3d 212, 215); and

- an admonishment against State Farm for its knowing violation of the Court's Order.

Respectfully submitted,



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CERTIFICATE OF MAILING

This is to certify that on this 12th day October, 2026, a true and correct copy of the above and foregoing pleading was mailed to the following:

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