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MARILYN WILLIAMS, COURT CLE
Case Number CJ-2023-1426

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

DON FOSTER and BRENDA FOSTER, Plaintiffs, v. STATE FARM FIRE & CASUALTY COMPANY; NOAH BASIC; DAVID CAMP; and RITA WALLENBERG INSURANCE AGENCY, LLC, Defendants.	)	Case No. CJ-2023-1426 Hon. Thad Balkman

DEFENDANT STATE FARM FIRE AND CASUALTY COMPANY'S RESPONSE AND OPPOSITION TO PLAINTIFFS' RENEWED MOTION TO ENFORCE AND FOR SANCTIONS

In this case—which involves a single weather-related roof damage claim with less than $45,000 in dispute—State Farm has spent ***more than $4.5 million*** to comply with the Court's November 17, 2025 Order (the "Order") by collecting potentially responsive documents, engaging a third-party vendor, Consilio, to host, process, and assist with the review and production of these collections, engaging, through Consilio, more than 230 attorneys who have now spent more than 52,000 hours reviewing documents for responsiveness and privilege; and coordinating the production of approximately 148,000 documents. Despite this herculean effort vastly disproportionate to the insurance claim at issue, Plaintiffs seek unprecedented sanctions (including a daily "monetary sanction" based on "State Farm's average annual marketing budget from 2019 to 2025") because State Farm has been unable to complete its production by July 30, 2026 and has continued to work to comply with the Court's Order as expeditiously as possible.

To be clear, State Farm and its attorneys have been working around the clock to complete its production in compliance with the Order. State Farm, by July 30, produced over 118,000

documents responsive to the Court's Order. Since that date, State Farm and its retained review attorneys have worked over 6,500 hours to complete review of the remaining documents, and State Farm anticipates that it will complete any additional productions by November 3, 2026. Regardless, State Farm's continuing efforts to comply have not prejudiced Plaintiffs in any way and will not delay the November 20, 2026 discovery deadline or the January 25, 2027 trial date. There is no basis on which to award the sanctions Plaintiffs now seek, nor is there any basis to find State Farm's continued efforts to comply with the Order to be in contempt. The Court should deny Plaintiffs' Motion.

BACKGROUND

This case involves a single weather-related roof damage claim with less than $45,000 in dispute. The parties disagree as to whether State Farm correctly attributed certain claimed damage to the roof of Plaintiffs' house to pre-existing, non-covered issues rather than a July 2021 storm. (*See* Am. Pet. ¶ 3.) After a prompt investigation, including an independent engineer's evaluation of Plaintiffs' home, State Farm concluded that most of the claimed damages were the result of pre-existing issues that Plaintiffs' Policy did not cover, including age-related deterioration and mechanical damage. (*See id.* ¶ 161.) State Farm estimated the cost to repair the covered damages and issued payment to Plaintiffs accordingly. Plaintiffs disputed State Farm's assessment and filed this lawsuit. As to State Farm, Plaintiffs plead claims for breach of contract and breach of the duty of good faith and fair dealing, premised in part on an alleged "scheme to deny Oklahomans insurance benefits associated with wind and hail storms." (*See id*. ¶¶ 21–194, *id*. ¶ 68.)

On November 13, 2025, the Court granted Plaintiffs' Motion to Compel in part, requiring State Farm to produce responsive documents to numerous and extensive requests for production, often spanning 15 years across dozens of categories of information, including institutional communications, training materials, personnel files, third-party vendor contracts, and documents

from State Farm's P&C Claims division—***the vast majority of which State Farm has never collected, reviewed, or produced before in any Oklahoma matter***.[1] At a subsequent hearing, the Court set a production deadline of April 1, 2026.[2]

Thereafter, State Farm filed a Motion to Reconsider, Clarify, and Stay the Court's November 13, 2025 Order. The Court denied State Farm's stay request, and State Farm subsequently pursued its right to seek appellate review by filing an Application to Assume Original Jurisdiction and Petition for Writ of Prohibition ("Application") with the Supreme Court on March 6, 2026. Four days later, State Farm sought a stay of its related discovery obligations from the Supreme Court. The Supreme Court set a hearing before a referee for April 1, 2026, but later rescheduled the argument to April 7, 2026 due to the referee being ill and thereafter denied State Farm's Application on April 28, 2026. Three days later, on May 1, 2026, State Farm filed a Motion for Extension of Time with this Court requesting until July 30, 2026, to complete its production (and detailing the efforts taken to date for review and production of documents).

On June 23, 2026, the Court granted State Farm's Motion for Extension of Time, providing

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[1] Plaintiffs continue to suggest, as in their original motion, that State Farm has produced the ordered discovery in other litigation. (*See* Pls.' Mot. at 5 (claiming "inconsistencies in State Farm's production between cases").) Although State Farm produced some of the same responsive documents in other matters, the Court's Order covers different discovery requests and numerous new categories of documents, as well as different time periods, which have required additional searches and collections that State Farm has not previously conducted. As such, compliance with the Court's Order requires much more than simply reproducing documents that State Farm previously produced.

[2] Over the next month, the parties' counsel met and conferred and exchanged several drafts of the proposed journal entry, but failed to reach any agreement. Contrary to Plaintiffs' contention that State Farm "refused to sign a journal entry," State Farm objected to Plaintiffs' mischaracterization of the Court's ruling and declined to sign a document that did not accurately reflect that ruling. Indeed, after motion practice, the Court adopted language for its journal entry that drew from Plaintiffs' and from State Farm's competing proposals, including language from State Farm's proposal limiting production of personnel files, training transcripts, and training materials to the individuals identified in State Farm's Response to Interrogatory No. 2.

State Farm until July 30, 2026 to complete its production in compliance with the Order.

Ever since the Court entered its Order, State Farm began taking steps to identify, collect, and review documents that are potentially responsive to the Court's Order. As counsel for State Farm has repeatedly made clear, ***the scale of the ordered discovery is enormous and implicates hundreds of thousands of potentially responsive documents across the enterprise***. To comply with the Order, State Farm interviewed custodians across numerous business units to identify potentially responsive documents and searched for emails and communications from the files of tens of thousands of P&C Claims employees that may be responsive to Plaintiffs' broadly worded discovery requests. Due to the volume of potentially responsive data, State Farm engaged a third-party vendor, Consilio, to host, process, and assist with the review and production of State Farm's collections. To date, Consilio has employed ***more than 230 attorneys*** who have spent ***more than 52,000 hours*** on first-level responsiveness and privilege review. (Ex. 1, Declaration of Julie Buccella ¶ 4.) Through September 2026, Consilio has invoiced total costs of ***more than $4.5 million for hosting, processing, first-level review, and production.*** (*Id*. ¶ 6.) In addition, State Farm's outside counsel has dedicated more than 30 attorneys to second-level review and quality control.

Due to the tremendous volume of documents and data to be reviewed and produced, State Farm was unable to complete its production by July 30, 2026, but continues to work to comply with the Court's Order. As this filing, State Farm and its attorneys produced approximately 148,000 documents responsive to the Order. State Farm anticipates that it will complete its production of the remaining documents responsive to the Order by November 3, 2026.

On July 8, 2026, the parties—recognizing that State Farm would need additional time to complete its production—jointly moved the Court to extend its scheduling deadlines by sixty days.

(*See* July 8, 2026 Joint Mot. to Extend Scheduling Order.) The Court granted this Joint Motion and, on August 6, entered an Amended Scheduling Order. Pursuant to the Amended Scheduling Order, the Discovery Completion Deadline is November 20, 2026, and the trial is set for January 25, 2027. (*See* Am. Scheduling Order at 1, 2.) State Farm expects to have its remaining production completed well in advance of those deadlines.

ARGUMENT AND AUTHORITY

I. STATE FARM IS COMPLYING WITH THE COURT'S ORDER TO THE BEST OF ITS ABILITY, AND EXPECTS TO COMPLETE ITS PRODUCTION SHORTLY.

Despite its best efforts, State Farm was unable to complete its production by July 30, 2026. State Farm apologizes to the Court for its inability to meet that deadline, which was not in any way intentional. In truth, the sheer volume of the documents and data to be reviewed made it impossible to complete the production by July 30. Members of State Farm's 230-attorney review team have worked 40-hour weeks plus weekends in an effort to complete the review. (Ex. 1, J. Buccella Decl. ¶ 5.) They have now completed their review, and State Farm expects to make its final production by November 3, 2026. While State Farm was able to complete the bulk of its production—over 118,000 documents—by July 30, it was unable to complete the review by that date, but supplemented this production with additional documents on September 9, September 17, September 29, and October 19. In total, State Farm has produced 29,248 documents since July 30. State Farm is endeavoring to complete its production no later than November 3, 2026—well before the November 20, 2026 discovery deadline and the January 25, 2027 trial date.

State Farm's extraordinary document review and production efforts are not the actions of a party in contempt. Indeed, each of the cases Plaintiffs cite to support their request for sanctions involves ***willful and intentionally deceptive*** conduct.

For example, in *Lee v. Max Int'l*, 638 F.3d 1318 (10th Cir. 2011), the plaintiffs "blatantly and without apparent excuse" failed to produce documents responsive to an Order compelling their production. *See id*. at 1319. The trial court, upon the defendant's first motion for sanctions, provided the plaintiffs a date certain by which to produce the requested materials, and warned that "continued non-compliance will result in the harshest of sanctions." *Id*. Thereafter, the plaintiffs filed a ***false*** declaration "certifying that they had now produced *all* of the requested documents," only later to produce only some of the requested materials. *See id*. at 1320.

Likewise, in *Hicks v. Central Oklahoma United Methodist Retirement Facility, Inc.*, 2017 OK CIV APP 23, ¶ 8, 423 P.3d 684, 692, the defendant, following a court order compelling production, failed to produce "any documents" by the Order's deadline. *See id*. ¶ 5. At subsequent hearings, the defendant ***falsely*** "denied that it had certain documents within its control or possession, represented to the trial court that it was unaware of the existence of additional responsive documents, and had produced all documents responsive to [the] requests." *Id*. Thereafter, and only once the falsity of these representations was revealed in subsequent depositions, the defendant produced the requested documents. *See id*. And in *Discover Bank (Discover Card) v. Gardner*, 2007 OK CIV APP 69, ¶¶ 8–9, 166 P.3d 499, the plaintiff made "frivolous objections and evasive answers" to defendant's interrogatories. *See id*. ¶ 6. After the Court overruled the objections and ordered the plaintiff to answer the interrogatories, the plaintiff answered with responses that "mirror[ed] the first in evasiveness." *Id*. ¶ 7. ***None*** of these cases awarded sanctions based on a party's good faith but incomplete attempts to comply with a Court Order.

II. SANCTIONS ARE NEITHER JUSTIFIED NOR APPROPRIATE.

Further, given State Farm's continued good faith efforts to comply with the Court's Order, the discovery sanctions Plaintiffs seek are neither justified nor appropriate. Any discovery sanctions under 12 O.S. § 3237 for failure to obey a court order "must be both fair and related to the particular

claim (or defense) at issue in the discovery order." *Payne v. Dewitt*, 1999 OK 93, ¶ 9, 995 P.2d 1088, 1093. Because discovery sanctions "serve a predominantly punitive purpose," "the proof of the sanctionable conduct should satisfy a 'clear and convincing evidence' standard of proof." *Markham v. Nat'l States Ins. Co.*, No. CIV-02-1606-F, 2004 WL 3019309, at *1 (W.D. Okla. Dec. 27, 2004) (quotations omitted)[3]; *see also Henry v. Schmidt*, 2004 OK 34, ¶ 21, 91 P.3d 651, 656. The Oklahoma Supreme Court has adopted a five-factor test to determine the propriety of discovery sanctions. *See Payne,* 1999 OK 93, ¶ 8, 995 P.2d at 1093. Four of those factors are relevant here: (1) the quantum of prejudice noncompliance has caused the moving party, (2) the extent of interference with the judicial process, (3) culpability of the litigant, and (4) the efficacy of lesser sanctions. *Id.*[4] Determining whether to issue sanctions for a discovery violation is a "fact-specific inquiry." *See Barnett v. Simmons*, 2008 OK 100, ¶ 26, 197 P.3d 12, 21.

Under this standard, sanctions are unwarranted. State Farm has diligently worked to comply with the Court's Order, producing over 118,000 documents (of its approximately 148,000 total production) responsive to the Order by July 30, and spending more than ***$4.5 million*** to date on review and production. Plaintiffs have not shown, by clear and convincing evidence or otherwise, any prejudice from the alleged noncompliance. Nor have Plaintiffs shown that their requested sanctions are "both fair and related" to their claims, given the exponential amount State Farm has already spent and estimates it will spend to comply with the Order. The sanctions Plaintiffs request

[3] Section 3237 is patterned after Rule 37 of the Federal Rules of Civil Procedure and, therefore, "federal jurisprudence is instructive when interpreting the Oklahoma provisions." *Barnett*, 2008 OK 100, ¶ 16, 197 P.3d. at 18 (citing *Payne*, 1999 OK 93, ¶ 8, 995 P.2d at 1092-93).

[4] The fifth factor is whether the court warned the party in advance that noncompliance could lead to dismissal or default judgment where such sanctions are sought. *See Payne*, 1999 OK 93, ¶ 8, 995 P.2d at 1093. Plaintiffs here have not sought dismissal or default judgment.

are entirely unwarranted and unnecessary, as State Farm has demonstrated its commitment to compliance through its massive review effort and ongoing production.

Prejudice. Plaintiffs have not identified a single specific document that they need but do not have; nor have they explained how the timing of State Farm's production has prejudiced their claims. Indeed, Plaintiffs' only references to "prejudice" are to contend that it is "apparent" (*see* Pls.' Mot. at 1) and "palpable" (*id*. at 8), without any facts supporting such rhetoric. Plaintiffs assert that State Farm has produced "thousands" of documents after July 30, but do not append a single document produced after that date to their Motion or explain why the production of any such document after July 30 has prejudiced their discovery efforts. Nor could they. State Farm produced—months ago—the documents related to State Farm's handling of Plaintiffs' insurance claim. While Plaintiffs contend that State Farm's recently produced documents are relevant to their "scheme" theory centering on State Farm's Fire Model Enhancement ("FME") efforts, State Farm produced more than 31,000 documents related to the FME *before* the deadline. And although State Farm produced 3,200 additional FME documents after the deadline, it did so *before* Plaintiffs deposed Nicole Manduca, whom they contend was the leader of the FME. There can be no prejudice resulting from additional, supplementary productions of FME documents over a month before the discovery deadline and over three months before the trial date.

Interference with the judicial process. State Farm's conduct has not interfered with the judicial process. State Farm produced the vast majority of the documents responsive to the Order by July 30. Its continued supplemental production of other documents has not interfered with the discovery process and will not require an extension of the Amended Scheduling Order.

Culpability. State Farm has not acted in bad faith or with willful disregard of the Court's Order. On the contrary, State Farm began its compliance efforts before it even filed its Motion to

Reconsider, produced documents not at issue in the Writ request on the April 1 deadline, and promptly filed for an extension with this Court three days after the Supreme Court denied its Writ request and functionally denied its request to the Supreme Court for a stay. State Farm then completed the production of 118,000 documents by July 30, 2026. And State Farm has continued to work around the clock to produce any remaining responsive documents in a timely manner—at a cost of more than $4.5 million and requiring more than 52,000 attorney review hours. The rules of discovery "do not demand perfection, clairvoyance, or miracle workings in the production of documents." *Fisher v. Ciba Specialty Chem. Corp.*, No. CIVA 03-0566 WSB, 2007 WL 987457, at *3 (S.D. Ala. Mar. 30, 2007).

Efficacy of lesser sanctions. No sanctions are needed at all, because State Farm is already doing what any sanction would aim to accomplish: producing documents as expeditiously as possible. State Farm has committed substantial resources to the review process, is making rolling productions, and has attempted to complete its production as expeditiously as possible, despite incurring enormous costs disproportionate to the claim at issue here. The fact that State Farm has some outstanding supplementations does not render its discovery efforts inadequate. *See Reinsdorf v. Skechers U.S.A., Inc.*, 296 F.R.D. 604, 615 (C.D. Cal. 2013) ("A party may comply in good faith with its discovery obligations and yet there may be supplemental productions or even additional responsive documents that were inadvertently omitted. Such supplemental productions or responses do not necessarily equate to discovery misconduct."). State Farm's actions are the *opposite* of discovery misconduct.

Appropriateness of Requested Sanctions. Finally, the sanctions Plaintiffs suggest are intensely punitive and not at all "fair and related" to any purported prejudice Plaintiffs have incurred. For example, Plaintiffs seek outsized "monetary sanction[s] for each day" State Farm takes to

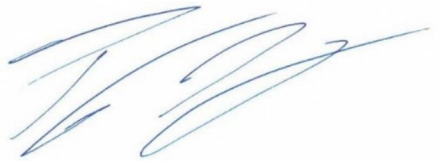
complete its production following July 30 based on "State Farm's average annual marketing budget from 2019 to 2025." (Pls.' Mot. at 8.) Plaintiffs ignore that State Farm has already expended more than $4.5 million to complete its production (an amount that exceeds ***by a factor of 100*** the $45,000 Plaintiffs alleged State Farm should have paid on their insurance claim). Likewise, Plaintiffs demand that the Court "shift fees and costs" for any deposition Plaintiffs have taken after July 30 and that the Court "require[ ] State Farm to make its deponents" available for trial—ignoring that Plaintiffs chose to proceed with those depositions and have failed to identify any document State Farm produced following July 30 that would have substantively altered their examination of any of State Farm's deponents. Plaintiffs cite no case supporting such extraordinary sanctions, nor is there any. State Farm's inability to produce documents by July 30 does not give Plaintiffs a license to demand sanctions solely for Plaintiffs' own benefit.

CONCLUSION

WHEREFORE, State Farm respectfully requests that the Court deny Plaintiffs' Renewed Motion to Enforce and for Sanctions. State Farm has acted in good faith to comply with the Court's Order, has devoted extraordinary resources to complete its production in a timely fashion, and will finish producing documents no later than November 3, 2026—well before the discovery deadline and the January 25, 2027 trial date. Sanctions are neither warranted nor necessary.

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Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that on October 30, 2026, a correct copy of the foregoing document was sent via both email and U.S. mail, postage prepaid, to:

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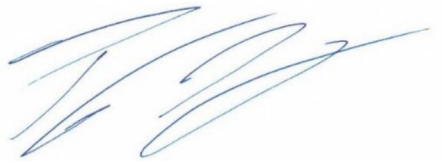


EXHIBIT 1

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

DON FOSTER and BRENDA FOSTER, Plaintiffs, v. STATE FARM FIRE & CASUALTY COMPANY; NOAH BASIC; DAVID CAMP; and RITA WALLENBERG INSURANCE AGENCY, LLC, Defendants.	)	Case No. CJ-2023-1426 Hon. Thad Balkman

DECLARATION OF JULIE BUCCELLA

I, Julie Buccella, hereby certify, under penalty of perjury, that the following is true and correct:

1. I am over the age of 21 years, of sound mind, legally capable of making this Declaration, and have personal knowledge of the facts contained in this Declaration.

2. I am employed as an Associate Director at Consilio LLC. Consilio is a legal services and technology provider. I have held several positions at Consilio and its acquired companies, including reviewer, quality management professional, review manager and senior review manager. I have personal knowledge of the costs associated with reviewing State Farm data and experience preparing cost estimates for various managed review projects.

3. State Farm engaged Consilio to assist with hosting, processing, reviewing, and producing documents in response to the Court's Order in *Foster v. State Farm*, Case No. CJ-2023-1426, in the District Court of Oklahoma County, State of Oklahoma (herein, the "Foster Engagement").

4. To date, Consilio has employed more than 230 attorneys, who have spent more than 52,000 hours on first-level responsiveness, redaction and privilege reviews on the Foster Engagement.

5. Various members of this review team of over 230 attorneys have been working 40-plus- hour weeks and weekends to complete this review.

6. Through September 2026, Consilio has invoiced total costs of more than $4.5 million to State Farm for hosting, processing, review, and production related to the Foster Engagement.

I state under penalty of perjury that the foregoing is true and correct.

SIGNED this 29th day of October, 2026 in Houston, Texas.

Julie Buccella

Julie Buccella