IN THE DISTRICT COURT OF CLEVELAND COUNTY
STATE OF OKLAHOMA

FILED
DISTRICT COURT
CLEVELAND COUNTY, OKLAHOMA
November 6, 2026 10:17 AM
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' REPLY IN SUPPORT OF RENEWED MOTION TO ENFORCE AND FOR SANCTIONS

REDACTED FOR PUBLIC FILING

State Farm's Response to Plaintiffs' Motion to Enforce and for Sanctions ("Rsp.") admits it failed to comply with the Court's orders—with the deadline State Farm itself requested. State Farm seemingly granted itself yet another extension to possibly complete production by November 3, 2026, more than three months after the Court's July 30 deadline. *See* Rsp. at 4. State Farm gives no indication of either the nature or extent of outstanding production. But it contends none of this matters because the nation's largest insurer—with its $170 billion net worth[1]—simply cannot be expected to comply with discovery orders on its requested timeline. It is time for the Court to act.

1. State Farm Admits its Violation of the Court's Discovery Orders.

State Farm argues Plaintiffs have not shown "clear and convincing evidence" of State Farm's sanctionable conduct. *Id*. at 7. Nothing is clearer or more convincing than State Farm's own admission. In its Response, State Farm admits it failed to meet the Court-ordered July 30 deadline it requested and "apologizes to the Court for its inability to meet that deadline." *Id*. at 5. State Farm's sanctionable conduct is not in question. The only question is the remedy.

Though it has since apologized, State Farm never sought relief that might have kept it in compliance. For instance, State Farm apparently realized it would be "impossible to complete the production by July 30" but did not ask the Court for another extension. *Id*. at 5. Nor did State Farm inform Plaintiffs or the Court of its purportedly unavoidable delay. And State Farm has yet to confirm whether it has finally produced all documents Plaintiffs identified in their deficiency letter, sent August 19, 2026. Instead, State Farm has pointedly ignored Plaintiffs' letter and no less than six emails asking when production will be complete. Only in response to Plaintiffs' Motion did State Farm acknowledge its noncompliance. Notwithstanding the fact that State Farm failed to

[1] *See* https://newsroom.statefarm.com/state-farm-reports-2025-financial-results/ ("State Farm Mutual ended the year [2025] at $170 billion compared to $145.2 billion at year-end 2024.").

seek relief, it now presents the Court with yet another excuse. This case is set for trial in two months. There is no justification for failing to meet the deadline State Farm requested.

Where a party fails to obey a discovery order, it bears the burden to establish "substantial justification" for why sanctions should not be had. *Payne v. Dewitt*, 1999 OK 93, ¶ 18, 995 P.2d 1088, 1096. State Farm offers one "justification" for continuing to produce documents more than three months past its extended deadline: it tried its best. *See* Rsp. at 7-10. State Farm argues its violation "was not in any way intentional," and that sanctions require "willful and intentionally deceptive" conduct. *Id*. at 5. But good intentions are no defense. "The suggestion that sanctions cannot be imposed absent a showing of willful refusal to produce is 'clearly wrong.'" *Barnett v. Simmons*, 2008 OK 100, ¶ 17, 197 P.3d 12, 19. Only severe sanctions "such as dismissal or default judgment" required a finding of "bad faith." *Id*. at ¶ 18. Regardless, "to be 'willful' the failure need not necessarily be accompanied by wrongful intent. It is sufficient if it is conscious or intentional, not accidental or involuntary." *State of Ohio v. Crofters, Inc*., 75 F.R.D. 12, 24 (D. Colo. 1977), *aff'd sub nom. State of Ohio v. Arthur Andersen & Co.*, 570 F.2d 1370 (10th Cir. 1978).

State Farm's failure was neither accidental nor involuntary. It proposed the July 30 deadline itself, knowing the discovery "implicates hundreds of thousands of potentially responsive documents." Rsp. 3-4. And by July 8, State Farm knew it "would need additional time to complete its production," yet it never asked the Court to extend the deadline. *Id*. at 4. It simply let July 30 pass. The *Payne* factors State Farm attempts to invoke (*see id*. at 7-10)[2] weigh heavily against it:

Prejudice. State Farm claims no prejudice in completing production 17-days before the discovery deadline and after Plaintiff has completed the Court-ordered corporate representative

[2] The Response lists "appropriateness of related sanctions" as an apparent factor (Rsp. at 9-10). *Payne* never lists this factor, and State Farm cites no binding authority for its application.

depositions. *See id*. at 8. Per State Farm, Plaintiffs should have waited an indeterminate time for State Farm to make its months-late production, then conducted all depositions in a 17-day window. This position ignores common sense and published authority alike. *See Icon Int'l, Inc. v. Elevation Health LLC*, 347 F.R.D. 274, 297 (S.D.N.Y. 2024) (collecting cases finding "courts find that prejudice results from a failure to timely produce documents where, as here, the documents are ultimately produced after depositions occur"); *see also Paice, LLC v. Hyundai Motor Co.*, 2014 WL 3819204, at *17 (D. Md. June 27, 2014) ("Courts have recognized that piecemeal, less than complete, and slow production takes a toll and inflicts a disadvantage on the requesting party.").

Interference with judicial process. State Farm admits the parties already had to extend the scheduling order in this case due to its need for "additional time to complete production." Rsp. at 4-5. Moreover, its noncompliance has required multiple hearings and extensions, each further interfering with the prosecution and management of this case for discovery the Court ordered back in *November of 2025*. *Compare* Mtn. at 1-3 *with Hicks v. Cent. Oklahoma United Methodist Ret. Facility, Inc.*, 2017 OK CIV APP 23, ¶ 7, 423 P.3d 684, 692 (upholding sanctions where trial court found failure to obey discovery orders necessitated "trial delays and multiple discovery hearings").

Culpability. State Farm knowingly failed to meet the deadline it asked this Court to set after multiple extensions. And despite knowledge of its impending noncompliance, it never sought another extension and it ignored Plaintiffs' inquiries as to the completion of production. *See EBI Sec. Corp. v. Hamouth*, 219 F.R.D. 642, 647 (D. Colo. 2004) (finding culpability warranting sanctions where noncompliant parties "were aware of their obligation to fully respond to" discovery requests and "did not produce the requested documents by this deadline, seek an extension of this deadline or offer any explanation" for noncompliance). Nor was July 30 the first deadline State Farm chose to miss. By the original April 1 deadline, State Farm unilaterally decided

to produce only "documents not at issue in the Writ request," even though this Court and the Supreme Court of Oklahoma denied State Farm's attendant requests for a stay. Rsp. at 9. And once State Farm missed July 30, its efforts slowed rather than intensified. State Farm reports more than 52,000 review hours overall but only about 6,500 since July 30. *Id*. at 2, 4. Spread across its 230-attorney review team, that is roughly two hours per attorney per week for three months—not exactly working "around the clock," as State Farm would have the Court believe. *Id*. at 1, 9.

Efficacy of lesser sanctions. The Court has made every attempt to exercise patience and understanding for State Farm's continued delay. The Court granted State Farm at least two extensions to make its production, but also warned State Farm at the hearing on Plaintiffs' original Motion to Enforce that sanctions may follow continued noncompliance. *See* Mtn. at 1-3. The Court's repeat chances and warnings are more than enough. *See Calsep A/S v. Dabral,* 84 F.4th 304, 314 (5th Cir. 2023) (noncompliance with discovery order is "doubly problematic when the lower court issues—like it did here—a warning"); *Gripe v. City of Enid, Okl*., 312 F.3d 1184, 1188 (10th Cir. 2002) (upholding dismissal sanction where trial court previously warned sanctions may be forthcoming). State Farm has only rewarded the Court's patience with further obstinance.

2. State Farm's Discovery Violations Continue.

State Farm attempts to flip its burden onto Plaintiffs, arguing "Plaintiffs have not identified a single specific document that they need but do not have." Rsp. at 8. This unfounded argument would require Plaintiffs to maintain a comprehensive knowledge of documents State Farm has withheld. Notwithstanding this nonsensical position, State Farm's noncompliance is obvious. By way of a few examples:

The 2013 Haag response. State Farm's existing production includes [redacted]. *See* Ex. 1 (FOSTER0046301). State

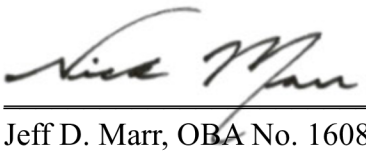
Farm has failed to produce its [redacted].

The Haag peer review. State Farm and its witnesses have mentioned the existence of [redacted] following the *Warkins* jury verdict. *See* Ex. 2 (Welsh Depo.) at 276:4-287:17. State Farm has failed to produce any such [redacted]

The weekly leadership playbooks. State Farm's internal communications mention "[redacted]" concerning wind/hail claims. *See* Ex. 3 (FOSTER00040952). State Farm has failed to produce any such [redacted].

Manduca's deposition storm out. State Farm's response claims Plaintiffs were able to depose State Farm's corporate representative, Nicole Manduca, despite State Farm's discovery noncompliance. This is false. During the deposition, Plaintiffs confronted Manduca with documents that starkly contradicted her prior representation that [redacted]. Plaintiffs showed Manduca her own [redacted]l that made clear State Farm's use of the term "[redacted]" [redacted] and that State Farm and Accenture only removed the word "[redacted]" because it "[redacted]." *See* Ex. 4 (Manduca Depo.) at 108:18-109:12, 323:5-328:13; *see also* Ex. 5 (FOSTER00587453) (the [redacted] itself). Manduca demanded a break before Plaintiffs' counsel completed questioning on the exhibit. But **Manduca never returned to the Court-ordered deposition**. After a 45-minute break, counsel for State Farm returned to state its refusal to complete the deposition, despite the Court's order. Ex. 4 at 323:5-335:22. This conduct precisely demonstrates the need for a sanction requiring State Farm's previously-deposed witnesses to appear live at trial. Neither Plaintiffs nor the Court should be forced to engage in additional depositions necessitated by discovery misconduct. Those witnesses can complete their testimony before the Court and jury.

Respectfully submitted,



Jeff D. Marr, OBA No. 16080
Carole Dulisse, OBA No. 18047
Nick Marr, OBA No. 34284
Ashton Poarch, OBA No. 34308
MARR LAW FIRM
3100 Northwest 149th Street
Oklahoma City, Oklahoma 73134
Telephone: (405) 236-8000
Facsimile: (405) 236-8025
Email: jeffdmarr@marrlawfirm.com
cdulisse@marrlawfirm.com
nmarr@marrlawfirm.com
apoarch@marrlawfirm.com

Chad E. Ihrig, OBA No. 19491
MANSELL & ENGEL
204 North Robinson, 21st Floor
Oklahoma City, OK 73102-7201
Telephone: (405) 232-4100
Facsimile: (405) 232-4140
E-mail: cihrig@meclaw.net

J. Revell Parrish, OBA No. 30205
GLASS & TABOR, LLP
1601 NW 36th Ave.,
Norman, OK 73072
Telephone: (405) 360-9700
Facsimile: (405) 360-7902
revell@glasstaborlaw.com

Attorneys for Plaintiffs

CERTIFICATE OF MAILING

This is to certify that on this 6th day of November, 2026, a true and correct copy of the above and foregoing pleading was mailed, via U.S.P.S., postage pre-paid to the following, to-wit:

Justin T. Hiersche, OBA No. 31658
Peyton S. Howell, OBA No. 33917
Jessica Dickerson, OBA No. 21500
McAfee & Taft
8th Floor, Two Leadership Square
211 N. Robinson Ave., Suite 800
Oklahoma City, OK 73102
Telephone: (405) 235-9621
Email: justin.hiersche@mcafeetaft.com
peyton.howell@mcafeetaft.com
jessica.dickerson@mcafeetaft.com

Erica B. Zolner (*pro hac vice*)
Redgrave LLP
230 West Monroe Street
Suite 210
Chicago, IL 60606
Telephone: (773) 636-2456
Email: ezolner@redgravellp.com

Tiffany L. Powers (*pro hac vice*)
Alston & Bird, LLP
1201 West Peachtree Street NW
Atlanta, GA 30308
Telephone: (404) 881-7000
Email: tiffany.powers@alston.com

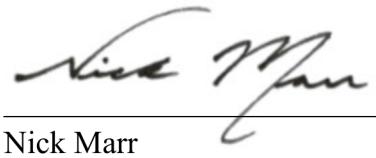
Attorneys for Defendants

Larry Ottoway, OBA No. 6316
Amy Sherry Fischer, OBA No. 16651
Peyton S. McMillin, OBA No. 34721
Foliart, Huff, Ottaway, & Bottom
201 Robert S. Kerr Avenue, 12th Floor
Oklahoma City, Oklahoma 73102

Telephone: (405) 232-4633
Fax: (405) 232-3462
larryottaway@oklahomacounsel.com
amyfischer@oklahomacounsel.com
peytonmcmillin@oklahomacounsel.com

Douglas Fuchs (*pro hac vice*)
GIBSON DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071-3197
Telephone: 213.229.7000
Facsimile: 213.229.7520
DFuchs@gibsondunn.com

Attorneys for Accenture



Nick Marr