

ELECTRONICALLY FILED - 2020 Mar 04 3:29 PM - DORCHESTER - COMMON PLEAS - CASE#2018CP1801960

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER	)	
	)	
Carl Michael Funny,	)	Civil Action No.: 2018-CP-18-001960
	)	
Plaintiff	)	
	)	
v.	)	
	)	<b>ORDER OF DENIAL OF MOTION TO</b>
Waffle House, Inc. and	)	<b>RECONSIDER</b>
Christopher Heithaus,	)	
	)	
Defendants.	)	

This matter came before the Court for a hearing on April 11, 2019, on Plaintiff's Motion to Compel discovery responses filed on February 16, 2019. I signed an Order on May 31, 2019. On June 10, 2019 Defense Counsel filed a Motion to Alter or Amend the Order. A telephone conference was held, with both parties on July 11, 2019. On October 21, 2019, I denied the Defendant's Motion to Alter or Amend and signed an Order reflecting the same on November 21, 2019. Subsequently, Defendant's counsel filed an additional Motion to Alter or Amend the Order. I deny the Rule 59(e) motion for the foregoing reasons:

The five issues that are a concern in the Defendant's Motion to Alter or Amend are ruled on as followed. To the first concern, Plaintiff's counsel sent an email on Friday, May 24<sup>th</sup> with Defense Counsel copied so that Defense counsel had ample time to review it before it was then later uploaded to efile.

Secondly, regarding the motion to compel, the Court did hear arguments on the Motion to Compel (Transcript, April 11, 2019 Hearing, p. 4, line 11 through p. 5, line 10; p. 6, line 8 through p. 7 through line 9). What is excerpted in the June 10<sup>th</sup> Motion to Alter or Amend is taken out of context and is misleading as to what occurred during the actual hearing. This Court was under the

assumption that what was needed to be handed over, was provided on the eve of the hearing. The Defendants are able to request a hearing on the specific issues regarding the motion to compel; however, the court did not believe, given the information it had at the hearing, that this was disputed. Please request a hearing on the specifics of the motion to compel if this is still contested at this date.

Third, this Court finds that Defendants missed a discovery deadline, request and extension, and then missed that extension. Defendants waited until the day before the hearing on Plaintiff's Motion to Compel Defendants to Produce Discovery to serve their responses. As stated, Defendants may request a hearing on the merits of the motion to compel if they are still contested. However, this Court found that as to the Defendant's own admission (Transcript p. 6, line 8 through p. 6 line 13) that the failure to timely serve discovery responses or appropriately object to the reasons why they were not answering were not justified. Thereby requiring the award of costs and fees pursuant to SCRCP 37.

Fourth, the Defendant's may proceed with leave to amend if the issue about discovery is still contested. The Court is willing to hear the merits of that argument.

Finally, the award of money sanctions was addressed by the ruling of the court in the May 21, 2019 email granting Plaintiff's motion to compel. The Plaintiff's motion to compel prayed for the sanctions that were given. Providing the discovery a day before the hearing does not absolve the Defendant of the financial requirements as provided for in Rule 37. In the Order dated May 31, 2019 the Court explicitly did not require the Defendant to pay the time spent in travel or preparation for the hearing because the Plaintiff was required to be at the hearing for another motion. However, this Court did find that the time in filing the Motion to Compel, attending the

hearing, and draft and file a proposed order of 3 hours to be reasonable and it does find that the Defendant is required to pay those fees to Plaintiff.

Therefore, Defendant may request a leave to amend for the hearing on the merits of the missing document and is with leave to request a hearing on those merits for the next thirty (30) days or produce the material if a hearing is not requested at the 31<sup>st</sup> day. However, the motion to amend for the attorneys' fees granted is denied because they were in compliance with SC Rule 37.

IT IS THEREFORE ORDERED.

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Dorchester Common Pleas

**Case Caption:** Carl Michael Funny VS Waffle House Inc. , defendant, et al  
**Case Number:** 2018CP1801960  
**Type:** Order/Other

So Ordered

S/George M. McFaddin, Jr., #2759

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## FAX COVER SHEET

TO	The Honorable Jenny Abbott Kitchings
COMPANY	South Carolina Court of Appeals
FAX NUMBER	18037341839
FROM	Jennifer Baker
DATE	2020-04-03 20:07:27 GMT
RE	Appellate Case No. 2019-002081 (Funny v Waffle House)

### COVER MESSAGE

Please see attached.

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**RECEIVED**

APR 03 2020

SC Court of Appeals