

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 31st 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.



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

Electronically signed on 2020-03-04 15:17:31 page 4 of 4