

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

JAY AUBREY ISAAC HOLLIS)	
Individually and as Trustee of the)	
JAY AUBREY ISAAC HOLLIS)	
REVOCABLE LIVING TRUST,)	
)	<u>Case No.3:14-cv-03872-M</u>
)	
Plaintiff,)	
)	
v.)	
)	
ERIC H. HOLDER, JR., Attorney General)	
Of the United States; B. TODD JONES,)	
Director of the Bureau of Alcohol Tobacco)	
Firearm and Explosives,)	
)	
Defendants.)	
)	
)	
)	

**PLAINTIFF'S MOTION AND BRIEF TO COMPEL DEFENDANTS TO PARTICIPATE
IN RULE 26(f) CONFERENCE**

COMES NOW Plaintiff, by and through his counsel of record, and files this Motion to Compel Defendants to participate in a Fed. R. Civ. P. 26(f) conference and will show unto the Court the following:

1. Plaintiff filed the instant complaint on October 30, 2014.
2. A copy of the summons and complaint were served on Defendants on or about November 5, 2014.
3. Defendants entered their appearance on November 24, 2014.

4. On January 16, 2015, Defendants moved this Court to dismiss Plaintiff's complaint. Briefing on the Motion to Dismiss was completed on March 11, 2015 by the filing of Defendants' Sur-Sur-Reply.

5. On that same day, Plaintiff corresponded with Defendants regarding a scheduling order pursuant to Fed. R. Civ. P. 16(b)(2) and whether Defendants would oppose Plaintiff's Motion to Enter a Scheduling Order. On March 12, 2015, Defendants responded that they would indeed oppose that motion.

6. On March 12, 2015, Plaintiff requested a Fed. R. Civ. P. 26(f) conference in light of Defendants' response. Plaintiff provided a number of dates that counsel for Plaintiff would be available for an in-person conference in Washington, DC. Plaintiff also requested that if Defendants' position regarding a Rule 26(f) conference was the same as their position on the scheduling order, that Defendants make Plaintiff aware of that position and that Plaintiff would file a Motion to Compel a Rule 26(f) conference. Defendants responded that they would oppose that Motion to Compel. *See* Exhibit "1."

7. Fed. R. Civ. P. 26(f) states: "Except in a proceeding exempted from initial disclosure under Rule 26(a)(1)(B) or when the court orders otherwise, the parties must confer as soon as practicable – and in any event at least 21 days before a scheduling conference is to be held or a scheduling order is due under Rule 16(b)."

8. Fed. R. Civ. P. 16(b)(2) states that a scheduling order must be issued "as soon as practicable, but in any event within the earlier of 120 days after any defendant has been served with the complaint or 90 days after any defendant has appeared."

9. At this time, under Fed. R. Civ. P. 16(b), a scheduling order is timely as Defendants have been served over 120 days ago and both have entered an appearance over 90 days ago.

10. Despite Plaintiff's counsel's request for a convenient date for the Rule 26(f) conference, Defendants refuse to participate in the Rule 26(f) conference until after the Court's ruling on the Motion to Dismiss.

11. Neither Rule 26 nor the Local Rules allow a party to litigation to refuse to participate in a Rule 26(f) conference until after the Court rules on a Motion to Dismiss. Additionally, "Filing a Rule 12(b)(6) motion to dismiss does not automatically stay discovery or require postponing a Rule 26(f) conference until the motion is resolved." *Escareno ex rel. A.E. v. Lundbeck, LLC*, 3:14-CV-257-B, 2014 WL 1976867, at *2 (N.D. Tex. May 15, 2014)

12. To facilitate a near term conference, counsel for Plaintiff is willing and able to travel to Washington, DC (location of defense counsel) for the conference.

13. Plaintiff requests an Order compelling the parties to participate in the Rule 26(f) conference so that this case can get on a track to resolution.

14. A proposed order is attached as Exhibit "2."

Plaintiff respectfully requests this Court to enter an order compelling Defendants to participate in a Rule 26(f) conference as soon as practicable.

This, the 12th day of March, 2015.

Respectfully submitted,

/s/ Stephen D. Stamboulieh
STEPHEN D. STAMBOULIEH
ATTORNEY FOR PLAINTIFF

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CERTIFICATE OF CONFERENCE

Pursuant to LR 7.1(a) and (b), I hereby certify that on March 12, 2015, I conferred with Eric Soskin, Counsel for Defendants, regarding the relief sought in this motion. Counsel indicated that Defendants oppose this Motion, for the following reason: Defendants believe the Rule 26(f) conference should be deferred until ruling on the pending Motion to Dismiss.

/s/ Stephen D. Stamboulieh
Stephen D. Stamboulieh

CERTIFICATE OF SERVICE

I, Stephen D. Stamboulieh, hereby certify that the above Motion to Compel Defendants to Participate in a Rule 26(f) Conference has been filed electronically with the Clerk of this Court, which sends notification of such filing to all counsel of record in this case.

/s/ Stephen D. Stamboulieh
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Stephen Stamboulieh

From: Soskin, Eric (CIV) <Eric.Soskin@usdoj.gov>
Sent: Thursday, March 12, 2015 4:55 PM
To: Stephen Stamboulieh; Riess, Daniel (CIV)
Cc: Alan Beck
Subject: RE: Hollis v. Holder; 3:14-cv-03872-M

Stephen,

As with the scheduling order, we believe it to be both appropriate, and within the Court's discretion, to defer a Rule 26(f) conference until adjudication of the pending motion. Particularly in light of the urgency with which this matter has been pressed, we think it's likely that a Rule 26(f) conference, if held prior to the resolution of that motion, will be unnecessarily contentious with regard to the nature, scope, and timing of discovery. For that reason, although we appreciate your offer to travel to DC, we oppose your motion to compel such a conference at this time.

With regard to the quick and orderly resolution of this litigation, we believe that an order on the pending motion is likely to provide a roadmap to the scope of this litigation that will allow the parties to avoid discovery disputes, and we look forward to a productive discussion with you at that time.

Best,
Eric

From: Stephen Stamboulieh [mailto:Stephen@sdslaw.us]
Sent: Thursday, March 12, 2015 5:13 PM
To: Soskin, Eric (CIV); Riess, Daniel (CIV)
Cc: Alan Beck
Subject: RE: Hollis v. Holder; 3:14-cv-03872-M

Thoughts? I'd like to get this filed as soon as possible but I would like the benefit of your position first.

Stephen

From: Stephen Stamboulieh
Sent: Thursday, March 12, 2015 10:50 AM
To: Soskin, Eric (CIV); Riess, Daniel (CIV)
Cc: Alan Beck
Subject: Re: Hollis v. Holder; 3:14-cv-03872-M

Eric,

Thank you for your reply. In light of that, we would like to schedule a Rule 26(f) conference within the next week or so. We can come to you in DC. We are available on March 18-20; March 23-27; March 31 and April 1, 2015. If your position remains the same regarding the Motion to Dismiss briefing, please let me know that as well and we can consider this our LR 7.1 conference for us to file our Motion to Compel a Rule 26(f) conference. Of course, we would like to move this litigation to a resolution as quickly as possible. Please let me know your position as soon as you can.

Stephen

Exhibit "1"

From: Soskin, Eric (CIV) <Eric.Soskin@usdoj.gov>
Sent: Thursday, March 12, 2015 10:07 AM
To: Stephen Stamboulieh; Riess, Daniel (CIV)
Cc: Alan Beck
Subject: RE: Hollis v. Holder; 3:14-cv-03872-M

Stephen,

Our view is that, out of respect for the Court, litigants should presume its familiarity with the scheduling provisions of the Federal Rules and that a motion to enter a scheduling order is therefore unwarranted. In addition, we don't believe a Rule 16 scheduling order is likely to be helpful at this time, with a dispositive motion fully briefed and pending before the Court. For these reasons, we oppose the motion. We're available to discuss further if you'd like.

Best,
Eric

From: Stephen Stamboulieh [<mailto:Stephen@sdsllaw.us>]
Sent: Wednesday, March 11, 2015 10:43 PM
To: Soskin, Eric (CIV); Riess, Daniel (CIV)
Cc: Alan Beck; elishahollis@gmail.com
Subject: Hollis v. Holder; 3:14-cv-03872-M

Eric and Daniel:

Pursuant to FRCP 16(b)(2), the judge must issue a scheduling order within the earlier of 120 days after any defendant has been served with the complaint or 90 days after any defendant has appeared. The Complaint was served on November 5, 2014 and Eric entered his appearance on November 24, 2014. Under either scenario, the Court is due to enter a scheduling order. We intend to file a Motion to Enter a Scheduling Order within the next day. Under LR 7.1, a conference is required. Please let us know if you will oppose this motion.

Thank you,

Stephen D. Stamboulieh
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