

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA**

ROY L. DENTON)	
)	
Plaintiff)	Case No. 1:07-cv-211
)	
v.)	JURY DEMAND
)	
STEVE RIEVLEY)	Collier/Carter
)	
Defendant)	

**DEFENDANT’S REPLY TO PLAINTIFF ROY L. DENTON’S RESPONSE TO
DEFENDANT STEVE RIEVELY’S MOTION FOR RELIEF FROM THIS COURT’S
JUNE 14, 2010 ORDER**

Comes the Defendant, Steve Rievley, in his individual capacity, (herein “Officer Rievley”), through counsel, and hereby files his Reply to Plaintiff’s Response to Defendant Steve Rievley’s Motion for Relief from this Court’s June 14, 2010 Order.¹ Officer Rievley respectfully requests that this Court grant him partial relief from the June 14, 2010 Order (Doc. 99) which required him to produce certain cellular telephone records by June 25, 2010. For cause, Officer Rievley would show this Court as follows:

In his Response, the Plaintiff raises the issue that Officer Rievley is not the owner or the customer of the city-issued Verizon telephone. Being the owner of a particular cellular telephone

¹Concurrently filed with his Response, the Plaintiff filed a Motion to Show Cause for an Order for an Order to be issued as to Verizon Wireless “why it should not be held in contempt for failure to comply with a federal subpoena.” (See Doc. 105, pg. 1). Counsel for Officer Rievley does not represent Verizon Wireless and has no control over the company’s compliance or non-compliance with the subpoena issued.

number wherein one is requesting the records is vitally important to how quickly one can receive the records and by what route one can receive said records. If Officer Rievley were the owner of the Verizon cellular telephone, he could request the cellular telephone records at issue himself at his local Verizon store without the use of a subpoena (although the same same records would not be certified). Those cellular telephone records requested by a customer or owner of an account would be processed immediately and would have been available before June 25, 2010. As to the issue of whether Officer Rievley was the owner of the Sprint cellular telephone in question, he has already provided that information through written discovery and stated that Sprint was the provider of service for his personal cellular telephone while Verizon provided service to his city-issued cellular telephone during the time period in question. (Court Doc. 95, Ex. B).²

Furthermore, the Plaintiff makes much as to the “hearsay” content of Affidavit of the submitted in support of Officer Rievley’s Motion. With all due to respect to the Plaintiff, counsel for Officer Rievley can only state that, as this Court is aware, affidavits are oftentimes submitted in support of motions because they are sworn statements, hence the notary jurat at the end of the affidavit. Indeed, the Plaintiff himself as provided such affidavits of his wife, his son, and himself in this case in support of his own motions.

Counsel for Officer Rievley can only state that she has done everything in her power to comply this Court’s Order of June 14, 2010. She contacted both cellular telephone companies to discover the companies’ procedure for receiving subpoenas. She faxed the subpoenas in order to expedite the process rather than serving them by certified mail (which would have been appropriate

²Currently, however, Officer Rievley is no longer a customer of Sprint, having switched cellular providers.

under the *Rules of Civil Procedure*).³ Obviously, the subpoenas were submitted in a timely fashion. The Plaintiff received copies of the subpoenas served as well as the Notice of Filing of the Subpoenas. The Sprint cellular telephone records were mailed to the Plaintiff **before** the June 25, 2010 cut-off date mandated by the June 14, 2010 Order. Such actions certainly do not indicate a lack of due diligence on the part of counsel for Officer Rievley.

The mere fact that Sprint was able to comply in a more timely manner than that which Ms. Keep originally represented to Ms. Roderick can be due to a multitude of factors: the vagaries of business; the willingness of one company representative to help a former owner/customer comply with a federal subpoena; the fact that Sprint may not receive the same number of subpoenas in any given month as Verizon represented that it receives, etc. Ultimately, counsel for Officer Rievley **cannot** force Verizon to produce the cellular telephone records any sooner than it will.

Moreover, it is important to remember in his Motion, Officer Rievley is not requesting that this Court relieve him **completely** from the June 14, 2010 Order. He is **not** asking this Court to modify its Order so that he does not have to provide the Verizon cellular telephone records. He is simply requesting relief pursuant to *Federal Rule of Civil Procedure* 60(b)(6) **for additional time to comply with the order** due to circumstances beyond his control. Rule 60(b)(6) allows a court to grant relief from an order for any “reason that justifies relief.” *See id.* There is no reason to believe that Verizon Wireless will not comply with the subpoena. As of the filing of this Motion, it has been approximately three (3) weeks since Verizon informed Attorney Roderick of their time delay in

³Attached to both Subpoenas were this Court’s June 14, 2010 Order so that the litigation departments of both Sprint and Verizon would realize that counsel for Officer Rievley was attempting to comply with an Order issued by a U.S. Federal Court with a compressed timeframe, rather than just issuing a subpoena during the course of discovery with self-imposed compressed timeframe.

gathering cellular telephone records. Based on Verizon's representations, the records requested should be produced in the next three (3) to five (5) weeks.

Again, it should be noted, however, that Officer Rievley and his counsel have done everything that they can to comply with the June 14, 2010 Order of this Court. According to the representations of Verizon, it is simply impossible for the company to produce such records in such a compressed timeframe due to the voluminous amount it receives each month. The subpoenas are handled in the order they are received unless the subpoenas involve criminal cases which take priority over civil cases. Therefore, even with this Court's Order attached to the subpoena issued, Verizon has indicated to Attorney Roderick that it simply cannot produce the records any sooner than it will be able to process it. Such a circumstance is beyond the control of Officer Rievley.

Wherefore, he respectfully moves this Court for an Order granting him relief from the June 14, 2010 Order requiring him to produce said cellular telephone records by June 25, 2010 pursuant to *Federal Rule of Civil Procedure* 60(b)(6) and allowing him additional time to produce the Verizon cellular telephone records as justice so requires.

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CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of July, a copy of the foregoing was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. Mail. Parties may access this filing through the Court's electronic filing system.

This the 8th day of July, 2010.

Robinson, Smith & Wells

By: s/ Elizabeth Roderick

c: Roy L. Denton
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