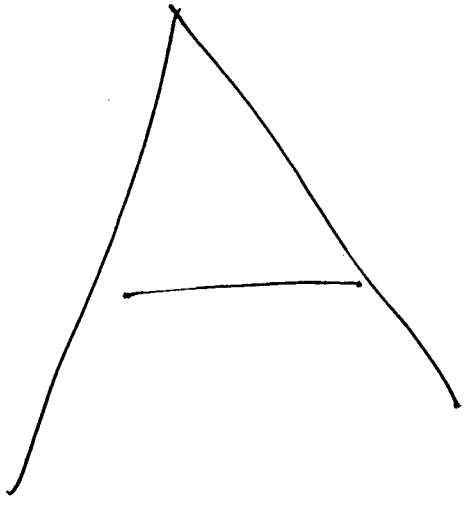
Appendix



UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

SANDRA BLACK,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**Case No. 1:19-cv-00307-WCL-SLC**
	)	
NAOMI FRIEDRICHSEN, *et al.*,	)	
	)	
Defendants.	)	

OPINON AND ORDER

Before the Court is a motion to compel filed by *pro se* Plaintiff, seeking to compel Defendants to more fully respond to her requests for admissions and requests for production and asking that sanctions be imposed against Defendants. (ECF 69). On November 2, 2020, Defendants filed a response to Plaintiff's motion (ECF 71) and a separate motion to compel, together with a supporting memorandum, seeking to compel Plaintiff to appear for her deposition (ECF 72, 73). On November 9, 2020, Plaintiff filed a "reply" (ECF 75) to Defendants' motion to compel, in which she responded to Defendants' response to her motion (ECF 71) as well as to Defendants' motion to compel (ECF 72). No party filed any subsequent response or reply to either motion and their time to do so has now passed. *See* N.D. Ind. L.R. 7-1(d)(3). Accordingly, the Court considers both matters fully briefed and ripe for resolution. For the following reasons, Plaintiff's motion (ECF 69) is DENIED, and Defendants' motion (ECF 72) is GRANTED.[1]

[1] While the Court previously stated that it would set a telephonic hearing on Plaintiff's motion to compel (*See* ECF 70), after reviewing the parties' filings and arguments the Court no longer believes a hearing is necessary.

A. Background

Plaintiff initiated this matter on July 10, 2019, asserting that Defendants discriminated against her on account of her race in violation of the Fair Housing Act ("FHA"), 42 U.S.C. § 3601 *et seq.* (ECF 1 at 2).[2] Plaintiff "alleges in her Complaint that Defendants discriminated against her on the basis of her race, African-American, by falsely accusing her of numerous lease violations over the course of several years in an attempt to force her to vacate the apartment she rented from Defendants in Marion, Indiana." (ECF 28 at 2 (citing ECF 1)). In particular, Plaintiff asserts that Defendants instigated an undue state-court eviction proceeding against her in Grant County Superior Court of Indiana, Small Claims Division, Case No. 27D03-1705-SC-000517,[3] on the grounds that Plaintiff allowed unauthorized guests—her grandchildren—to live in the apartment in violation of her lease. (ECF 1 at 2; ECF 15-1). The parties eventually agreed to allow Plaintiff to remain in the apartment temporarily in exchange for Plaintiff vacating the property by September 21, 2017. (ECF 15-6, 15-7). Accordingly, the state action was dismissed. (ECF 15-8). Plaintiff then filed a complaint of discrimination against Defendants before the Indiana Civil Rights Commission, which subsequently found no reasonable cause to believe that Defendants violated the FHA. (ECF 15-9, 15-10).

[2] Plaintiff initially filed a complaint against Defendants in case number 1:19-cv-222. District Judge William Lee dismissed that case for lack of subject-matter jurisdiction. (1:19-cv-222, ECF 3). In a motion to reconsider, Plaintiff raised for the first time a potential FHA violation, invoking this Court's federal question jurisdiction. (1:19-cv-222, ECF 5). Accordingly, Judge Lee directed the clerk to file Plaintiff's motion to reconsider as a new complaint in this matter. (1:19-cv-222, ECF 6).

[3] Per the Defendants' first motion to dismiss and supporting memorandum, Defendant Hunters Run Apartments and Owners ("Hunters Run") initially filed a Complaint for Possession of Real Property and Past Due Rent in the Grant County Superior Court of Indiana, Small Claims Division, under case number 27D03-1705-SC-000517. (ECF 15 at 2). Following Plaintiff's request for a jury trial, the matter was transferred to the Grant County Superior Court's plenary docket and Hunters Run filed an amended complaint under case number 27D03-1706-PL-000014. (*Id.* at 2). For ease of reference, the Court will refer the state court proceedings under each case number as the "Grant County case."

A. Background

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On June 30, 2020, this Court entered a scheduling order pursuant to Federal Rule of Civil Procedure 16, setting July 26, 2021, as the last date to complete all discovery. (ECF 45, 46). On August 19, 2020, Plaintiff propounded her first set of requests for production on all Defendants. (ECF 55). On September 14, 2020, Plaintiff similarly propounded Requests for Admissions on Defendants Hunter Run and Interstate Realty Management Company (ECF 61), Erika Holliday (ECF 62), and Naomi Friedrichsen (ECF 63). Three days later, on September 17, 2020, Defendants responded to Plaintiff's request for production (ECF 55), raising a variety of objections to each of Plaintiff's requests (ECF 64), but producing 101 pages of responsive documents (ECF 64-1 through ECF 64-5). On October 9, 2020, Defendants filed a notice of deposition—scheduling a deposition of Plaintiff (ECF 65)—as well as responses to each of Plaintiff's requests for admissions—again raising multiple objections to each request (ECF 66-68).

On October 19, 2020, Plaintiff filed the instant motion to compel asserting that Defendants and their counsel did not act in good faith in responding and objecting to her discovery requests. (ECF 69). More specifically, Plaintiff repeatedly claims that Defendants' counsel was "lying" and at numerous points accuses counsel and the individual Defendants of committing perjury. (*See, e.g., id.* at 1, 2, 8). Defendants, in response, attach multiple emails as evidence that they have attempted to confer in good faith with Plaintiff regarding their objections to her discovery requests. (ECF 71-1 through ECF 71-7). Similarly, Defendants maintain that their various objections to Plaintiff's requests were valid—namely that her requests were, at different points, vague, overly broad, compound, and generally improper. (ECF 71).

On November 2, 2020, Defendants filed their own motion to compel (ECF 72), alleging that Plaintiff had refused to attend her scheduled deposition. (ECF 73 at 2; ECF 73-1). Plaintiff,

in response, contends that her deposition should be postponed because Defendants have failed to fully comply with her discovery requests. (ECF 75 at 2). Plaintiff similarly alleges that the deposition will be used to "taunt" her and reiterated her claims that Defendants and their counsel have acted in bad faith. (*Id.*; ECF 75-1).

B. Applicable Law

Pursuant to Federal Rule of Civil Procedure 34, a party may serve another with a request to produce or permit the party to inspect a document or thing "in the responding party's possession, custody, or control." Fed. R. Civ. P. 34(a)(1). Such requests must be within the scope of discovery permitted by Federal Rule 26(b)—that is—it must be relevant to a party's claim or defense and proportional to the needs of the case. Fed. R. Civ. P. 26(b), 34(a). The responding party may object to a request that it believes is improper pursuant to Federal Rule 34(b)(2)(C).

Similarly, per Federal Rule of Civil Procedure 36, "[a] party may serve on any other party a written request to admit . . . the truth of any matters within the scope of Rule 26(b)(1) relating to: (A) facts, the application of law to fact, or opinions about either; and (B) the genuineness of any described documents." "[R]equests for admission must be simple, direct and concise so they may be admitted or denied with little or no explanation or qualification." *Sommerfield v. City of Chi.*, 251 F.R.D. 353, 355 (N.D. Ill. 2008). Further, an answering party may respond to a request for admission by denying, stating in detail why it cannot truthfully admit or deny the request, or objecting to a request—so long as it does not "object solely on the ground that the request presents a genuine issue for trial." Fed. R. Civ. P. 36(a)(4)-(5).

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production of documents. Fed. R. Civ. P. 37(c); *see also Redmond v. Leatherwood*, No. 06-C-1242, 2009 WL 212974, at *1 (E.D. Wis. Jan. 29, 2009). "A motion to compel discovery pursuant to Rule 37(a) is addressed to the sound discretion of the trial court." *Redmond*, 2009 WL 212974, at *1 (citation omitted). While a discovery request is entitled to "broad and liberal treatment," *Goldman v. Checker Taxi Co.*, 325 F.2d 853, 855 (7th Cir. 1963), a discovery request, "like all matters of procedure, has ultimate and necessary boundaries," *Hickman v. Taylor*, 329 U.S. 495, 507 (1947). The moving party generally bears the burden of proving that the discovery it seeks is relevant to the case. *See United States v. Lake Cty. Bd. of Comm'rs*, No. 2:04 CV 415, 2006 WL 978882, at *1 (N.D. Ind. Apr. 7, 2006) (citations omitted). Conversely, "[t]he party opposing discovery has the burden of proving that the requested discovery should be disallowed." *Bd. of Trs. of the Univ. of Ill. v. Micron Tech., Inc.*, No. 211-cv-02288-SLD-JEH, 2016 WL 4132182, at *3 (C.D. Ill. Aug. 3, 2016) (collecting cases).

Subject to certain limited exceptions, "[a] party may, by oral questions, depose any person, including a party, without leave of court" so long as that person and the other parties have "reasonable written notice." Fed. R. Civ. P. 30(a)(1). "In the absence of a showing of a lack of good faith on the part of [her] adversary, a party may not refuse, upon deposition, to reveal matters specifically within the scope of the examination permitted by the [Federal Rules]." *Smith, Kline & French Labs. v. Lannett Co.*, 2 F.R.D. 561, 562 (E.D. Pa. 1942). Courts have found a party's willful failure to attend her deposition grounds for sanctions. *See, e.g., Stewart v. Illinois*, No. 01 C 5520, 2003 WL 21939036, at *1 (N.D. Ill. Aug. 12, 2003).

C. Analysis

1. Plaintiff's Motion to Compel

Having reviewed both Defendants' discovery responses (ECF 64, 66-68) and Plaintiff's motion (ECF 69), the Court agrees with Defendants that Plaintiff's motion is generally meritless and should be denied. In her motion, Plaintiff raises specific arguments as to Defendants' responses to Items 1-7[4] of her requests for production.[5] (ECF 69). Plaintiff also raises more general arguments as to Defendants' responses to her requests for admissions, contending that Defendants have committed perjury and have lied in their responses. (*Id.* at 1-3). Finally, Plaintiff requests sanctions against Defendants and their counsel and asks that Defendants' discovery responses be "excluded." (*Id.* at 10). The Court will address each argument in turn.

i. Request for Production, Item 1

Plaintiff first requests that Defendants produce any documents listing any white, "section 8" tenants, with certain criteria[6]—presumably similar to Plaintiff—that were issued either a "final pet warning without any prior pet warning," a request to vacate due to unauthorized guests, or were served with an eviction lawsuit. (ECF 55 at 2-3). Plaintiff, in the same request,

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[4] Plaintiff labels each request for production as an "item." (*See* ECF 55). For the sake of consistency, the Court will follow suit.

[5] Plaintiff raises additional arguments as to other "items" and responses in her reply brief. (*See* ECF 75). "A reply brief, though, is not the proper vehicle to raise new arguments not presented in an opening brief." *White v. United States*, 23 F. App'x 570, 571 (7th Cir. 2001). In any event, Plaintiff's arguments in her reply largely mirror the arguments raised in her motion. Because such arguments are generally meritless, the Court sees no reason to address the additional points raised in Plaintiff's reply.

[6] In particular, Plaintiff seeks documentation regarding white, "Section 8" tenants who had:

A. **Never** missed paying rent, never paid late rent;
B. Had no criminal activity
C. Had no property damage
D. No immediate neighbor complaints . . . .
E. Very little to no company at the home
F. Maintained an orderly, quiet well ran home

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also seeks the production of any such warning, request, or civil complaint, as well as any documentation of similarly situated white, "section 8" tenants who were not treated "harshly." (*Id.*). Defendants objected on the grounds that Plaintiff's request was "vague, overly broad in time and scope, unduly burdensome, and seeking information that is not relevant and not reasonably calculated to lead to the discovery of admissible evidence," and generally unintelligible. (ECF 64 at 3-4). As such, Defendants produced no responsive documents. (*Id.*).

As an initial matter, the Court reads Plaintiff's request as seeking evidence of similarly situated white tenants who were treated differently than her. Such "comparator" evidence would certainly seem relevant to a claim under 42 U.S.C. § 3604(b) or § 3617, and within the scope of Rule 26. *See Mehta v. Vill. of Bolingbrook*, 196 F. Supp. 3d 855, 867 (N.D. Ill. 2016) ("[T]o prevail on a claim under section 3617, a plaintiff must show (1) [s]he is protected under the FHA; (2) [s]he was engaged in the enjoyment or exercise of [her] FHA rights; (3) defendants were at least partly motivated by an intent to discriminate; and (4) defendants coerced, intimidated, threatened, or interfered with the plaintiff on account of [her] FHA-protected activity."); *Krieman v. Crystal Lake Apartments Ltd. P'ship*, No. 05 C 0348, 2006 WL 1519320, at *7 (N.D. Ill. May 31, 2006) ("[To prevail on a claim under § 3604(b),] Plaintiffs must show: 1) that they are members of a protected class; 2) that they were qualified to receive the services in question; 3) that they were denied or delayed services by the Defendants; and 4) that Defendants treated a similarly situated person outside of the protected class more favorably." (quoting *Flores v. Vill. of Bensenville,* No. 00 C 4905, 2003 WL 1607795, *4 (N.D. Ill. Mar. 26, 2003))). Indeed, in order to survive a motion for summary judgment or proceed at trial, Plaintiff must show that Defendants treated similarly situated tenants differently than her. *See id.* (granting summary judgment in part because "Plaintiffs claim[ed] that the air conditioners of

other tenants were repaired before their own, but could not identify those persons or provide any support for their position.").

That being said, Plaintiff's request, as written, is vague and overly broad for a variety of reasons. "Courts analyzing a claim of hostile housing environment look to cases discussing hostile work environment, under Title VII of the 1968 Civil Rights Act, for guidance." 47 A.L.R. Fed. 3d Art. 3 (2019). "Under [Seventh Circuit Court of Appeals] precedents, . . . an employment discrimination plaintiff may demonstrate pretext by providing evidence that a similarly situated employee outside her protected class received more favorable treatment." *Coleman v. Donahoe*, 667 F.3d 835, 841 (7th Cir. 2012). However, in order to use such comparator evidence, it must contain "enough common factors . . . to allow for a meaningful comparison in order to divine whether intentional discrimination was at play." *Id.* at 847 (quoting *Barricks v. Eli Lilly & Co.*, 481 F.3d 556, 560 (7th Cir. 2007)). As such, requests for discovery should be "limited to the time frame involving the alleged discriminatory conduct." *Johnson v. Jung*, No. 02 C 5221, 2007 WL 1752608, at *2 (N.D. Ill. June 14, 2007) (internal quotation marks omitted) (collecting cases). Limited to time

Here, Plaintiff's request is not limited to the years she was a tenant, the years of the alleged discriminatory actions, or any similarly relevant time period. *See Breon v. Coca-Cola Bottling Co. of New England*, 232 F.R.D. 49, 55 (D. Conn. 2005) (finding interrogatories requesting information going back twenty years overly burdensome). Further, Plaintiff extended her request to other documents concerning white tenants who were not treated "harshly." This would certainly seem to encompass a wide range of conduct which would not provide a meaningful comparison to the alleged discrimination that Plaintiff felt. Accordingly, Plaintiff's

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motion to compel (ECF 69) is DENIED as to Item 1. Plaintiff is ENCOURAGED to work with Defendants to narrow this request in time and scope.

ii. Request for Production, Item 2

In her second request, Plaintiff sought documents "that show that [she] missed paying rent or was late paying rent." (ECF 55 at 3). Defendants again objected on the grounds that the request was vague, overly broad, unduly burdensome, not relevant and not reasonably calculated to lead to admissible evidence, and sought information already in the possession, custody, or control of Plaintiff. (ECF 64 at 4). Nevertheless, Defendants produced one responsive document—a June 6, 2016, letter to Plaintiff stating that there was an outstanding balance on her account. (ECF 64-1). Plaintiff, in turn maintains that "[t]here should be no objection to [her] having this evidence that [D]efendants are admitting to a good payment history of the plaintiff. . . ." (ECF 69 at 4).

As an initial matter, it is not clear what Defendants find vague or unduly burdensome about Plaintiff's request. "The burden rests upon the objecting party to show why a particular discovery request is improper." *McGrath v. Everest Nat'l Ins. Co.*, 625 F. Supp. 2d 660, 670 (N.D. Ind. 2008) (citation and internal quotation marks omitted). Unlike Item 1, it is not clear from the text of the request what Defendants are objecting to, and courts have consistently held that mere "boilerplate" objections to discovery such as the ones employed here—without more—do not constitute grounds for noncompliance with a discovery request. *See Fudali v. Napolitano*, 283 F.R.D. 400, 403 n.2 (N.D. Ill. 2012) (collecting cases); *see also Gingerich v. City of Elkhart Prob. Dept.*, 273 F.R.D. 532, 542-43 (N.D. Ind. 2011). That being said, it appears that Defendants did in fact comply with Plaintiff's request—producing the June 6, 2016, letter.

Plaintiff's main concern seems to be that Defendants did not admit that she had a "good" payment history. (ECF 69 at 4). But that was not the request Plaintiff made. Plaintiff could have posed a question about her payment history by way of an interrogatory pursuant to Federal Rule of Civil Procedure 33 or a request for admission pursuant to Rule 36. Or, Plaintiff could have requested documents showing that she had made full and timely rent payments. But that is not what she did. She asked for any documentation that she missed rent payments and so that is what she received.

Lastly, while Plaintiff takes issue with Defendants objecting to her request, Federal Rule 34(b) specifically contemplates parties objecting to requests for production. Further, objections under Rule 34 are generally considered waived unless raised in a timely manner. *See Whitlow v. Martin*, 259 F.R.D. 349, 354 (C.D. Ill. 2009). While the use of boilerplate objections to discovery requests may not be persuasive, they are not uncommon. The fact that Defendants lodged these objections but otherwise attempted to comply with Plaintiff's discovery requests does not suggest that they acted in bad faith. *See Hashim v. Ericksen*, No. 14-CV-1265, 2016 WL 6208532, at *2 (E.D. Wis. Oct. 22, 2016) ("Plaintiff disagrees with defendants' denial of this admissions requests. However, defendants responded to the request and plaintiff's disagreement with it is not the proper subject of a motion to compel." (internal citation omitted)). Accordingly, because Defendants appear to have complied with Plaintiff's request, her motion to compel is DENIED as to Item 2.

iii. Request for Production, Item 3

In her next request, Plaintiff asked for "documents showing that [she] had criminal activity during her tenancy." (ECF 55 at 3). In addition to the boilerplate objections raised in their other responses, Defendants specifically objected that the phrase "criminal activity" is

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iii. Request for Production, Item 3

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vague, ambiguous, and undefined. (ECF 64 at 4). Nevertheless, Defendants again responded to the request, reporting that they had no responsive documents. (*Id.*).

Again, Plaintiff's gripe does not appear to be with the fact that Defendants do not have any responsive documents. Indeed, her request in Item 1 and her filings throughout this case seem to suggest that she has no criminal history. Rather, Plaintiff seems to take issue with the fact that Defendants objected at all. (*See* ECF 69 at 5 ("Thus [Defendants] must state none without objection."). As already mentioned, though, parties are allowed to raise objections to requests for production. Further, the Court agrees that the phrase "criminal activity" is vague. It is not clear whether Plaintiff is requesting documents showing she was convicted of a crime during her tenancy, or complaints from neighbors that Plaintiff or a member of her household engaged in criminal activity, or for any record that a criminal act perpetrated by a third party occurred in her household. In any event, though, a motion to compel is again inapplicable because Defendants did in fact comply with the request—denying that any such document exists. (ECF 64 at 4). Accordingly, Plaintiff's motion (ECF 69) is DENIED as to Item 3.

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iv. Request for Production, Item 4

In her next request, Plaintiff sought "documents showing that [she] caused damage to her property at the apartment due to neglect or wrong use of the apartment." (ECF 55 at 4). Defendants again raised conclusory boilerplate objections, but specifically objected that the "term[s] 'neglect', 'wrong use' and 'violations' are vague, ambiguous, and undefined." (ECF 64 at 4). Nevertheless, Defendants produced five letters and two "friendly reminder" forms detailing various alleged lease violations. (ECF 64-2). Again, Plaintiff asserts that Defendants should have responded without raising any objections. (ECF 69 at 6 ("If [D]efendants believe that blinds are the property damage requested and that they were used 'wrongful' or broken by

'neglect' . . . . they should state: **refer to the blinds violation . . . without objection**. (emphasis in original))).

For the reasons already discussed *supra*, Plaintiff's motion to compel as to this request is meritless. Defendants are able to object to requests that they, in good faith, find ambiguous or overly broad. Further, Defendants did in fact respond to Plaintiff's request. Accordingly, Plaintiff's motion to compel as to Item 4 is DENIED.

v. Request for Production, Item 5

Plaintiff next requested evidence that her "immediate neighbors complained about her." (ECF 55 at 4). Defendants objected on the grounds that the request was vague, overly broad, unduly burdensome, irrelevant—specifically asserting that "the term 'complained' is vague, ambiguous, and undefined." (ECF 64 at 4). Still, in response to the request, Defendants referred to their response to Item 4—which included a December 5, 2016, letter stating that Plaintiff's surrounding neighbors had complained about her failing to cleaning up after her dog. (ECF 64-2 at 7). A handwritten note signed by Defendant Erika Holliday on the letter, however, states to "please disregard" and that the letter was later "removed from file." *Id.*

Plaintiff's motion as to this request is somewhat contradictory. She asks that Defendants be compelled to "submit all complaints made by neighbors" but states that they cannot refer to a violation that they affirmatively "disregarded and removed from the file." (ECF 69 at 8 (emphasis omitted)). Again, Plaintiff seems to take issue with the form of Defendants' response but not its substance. Plaintiff asked for documentation in Defendants' custody or control showing that neighbors had complained about her. Accordingly, Defendants produced a letter they had sent purporting to be a response to complaints they had received about Plaintiff's dog. Though Defendant Erika Holliday admitted in response to a request for admission that it was

'neglect' . . . . they should state: **refer to the blinds violation . . . without objection**. (emphasis in original))).

For the reasons already discussed *supra*, Plaintiff's motion to compel as to this request is meritless. Defendants are able to object to requests that they, in good faith, find ambiguous or overly broad. Further, Defendants did in fact respond to Plaintiff's request. Accordingly, Plaintiff's motion to compel as to Item 4 is DENIED.

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inadvertently issued (ECF 68 at 5), the letter still seems responsive to Plaintiff's request. Accordingly, Plaintiff's motion as to Item 5 is also DENIED.

vi. Request for Production, Item 6

Plaintiff next asked Defendants to produce "documents showing that [her] grandchildren caused trouble during their stay at Hunters Run." (ECF 55 at 4). Defendants once again raised boilerplate objections while specifically objecting to the phrase "trouble," but otherwise responded that they have no responsive documents. (ECF 64 at 5). Again, Plaintiff's issue appears to be that Defendants raised objections to this request. (ECF 69 at 6 ("Either there is documentation that the children were in trouble as tenants or there is no documentation. No objections.")). But Defendants complied with the request—stating that they had no responsive documents—and thus, Plaintiff's motion as to Item 6 is DENIED.

vii. Request for Production, Item 7

Plaintiff next takes issue with Defendants' response to Item 7 of her requests for production. (ECF 69 at 2). In Item 7, Plaintiff requests that Defendants "[p]roduce documents showing that [she] had ever been SERVED with any lease violation." (ECF 55 at 4). Plaintiff explains that "[j]ust a written account is not a service. Anyone can write and make up 1000 violations." (*Id.*). Rather, Plaintiff requests "ALL service violations . . . [such as a] court eviction and all other such serviced violations or a US mailed violation." (*Id.*). Defendants objected to this request on the grounds that the request is vague—specifically the terms "served" and "service violation"—overly broad in time and scope, unduly burdensome, and seeking evidence that is not relevant or reasonably calculated to lead to the discovery of admissible evidence. (ECF 64 at 5). Nevertheless, Defendants referred to the documents produced in

response to Item 4 (ECF 64-2 at 1-9), as well as Plaintiff's previous filings in the Grant County case (ECF 64 at 5).

Plaintiff's request is vague. It is not clear what Plaintiff means by "service" or a "serviced violation." At least in legal parlance, "to serve" means "to make legal delivery of (a notice of process)," or "to present (a person) with a notice of process required by law." *Serve*, Black's Law Dictionary (11th ed. 2019). A "service" then, is "[t]he formal delivery of a writ, summons, or other legal process, pleading, or notice to a litigant or other party interested in litigation; the legal communication of a judicial process." *Service*, Black's Law Dictionary (11th ed. 2019). Presumably, Plaintiff is requesting that Defendants produce a judicial determination that she did or did not violate her lease.

There is nothing to suggest, though, that there has been any other lawsuit involving Plaintiff or Defendants concerning her lease besides the Grant County case which was dismissed before trial. (ECF 15-8). Plaintiff seems to actually be requesting that Defendants admit that such a document does not exist—that is to say, that there has been no judicial determination she has violated her lease. (*See* ECF 69 at 2 ("[Defendants' counsel] needs to state that no service of any violation ever took place. . . .")). Such a reading, however, is far from clear from the text of the request and is not within the scope of Rule 34—which again is limited to documents and things in Defendants' custody or control.

DENIED

Plaintiff also seems to doubt the authenticity of the documents produced—specifically, the two "friendly reminder" documents. (ECF 69 at 7 ("I argued that the friendly reminders were never issued to me and I have disputed [this] from the first time I ever saw them in [the lower court."]). That being said, it is not clear what that issue—whether or not Plaintiff saw those two documents before now—has to do with discovery. As discussed in greater detail

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below, Plaintiff is free to attack the admissibility of the documents and how much weight they should be afforded in future proceedings. That, though, is a dispute for another time. Accordingly, Plaintiff's motion as to Item 9 is DENED.

viii. Plaintiff's Arguments as to the Request for Admissions

Through much of her motion, Plaintiff also accuses Defendants Naomi Friedrichsen and Erika Holliday, as well as their attorney Brittney Rykovich, of committing perjury and lying to the Court. (ECF 69 at 7-8). For example, in her first request for admissions as to Defendant Friedrichsen, Plaintiff requested that Friedrichsen admit that she "perjured [her]self (LIED under oath) at some point any point during [her] testimony in lower court." (ECF 63 at 1). Defendants objected to the request as unintelligible and to the extent that it called for a legal conclusion, but otherwise denied the allegation. (ECF 66 at 3). Plaintiff also requested that Defendant Friedrichsen admit she had accused Plaintiff of having multiple unauthorized occupants in her apartment, to which Defendants responded that the April 19, 2017, letter and 30-day notice to vacate "speaks for itself." (ECF 66 at 3; ECF 64-2 at 8). Plaintiff similarly requested that Defendant Friedrichsen admit that she "never witnessed unauthorized occupants living in [Plaintiff's] home prior to April 19, 2017." (ECF 66 at 3). Plaintiff now asserts that Defendant Friedrichsen—in addition to perjuring herself in the Grant County case—perjured herself in denying and objecting to these requests for admission. (ECF 69 at 8).

Plaintiff does not attach any transcript from the "lower court"—which the Court assumes to be the Grant County Superior Court—but believes that Plaintiff is reiterating the arguments she first raised in support of her partial motion for summary judgment. (ECF 36). In particular, Plaintiff filed an "Affidavit Testimonies from Lower Court" in which she included a portion of the transcript of Defendant Friedrichsen's testimony from the Grant County case. (ECF 37).

At least as to the first two requests for admission posed to Defendant Friedrichsen, the basis of Plaintiff's accusation of perjury seems to be as follows: In the Grant County case, the trial court held a preliminary possession hearing on June 8, 2017, pursuant to Indiana Code § 32-30-3-5. (ECF 15 at 2; *see also* ECF 15-4). At the hearing, Defendant Friedrichsen testified on direct examination that "it was reported to [her] by [her] assistant and [she] also witness[ed] it as well that there has [sic] been additional people and potential occupants in [Plaintiff's] apartment." (ECF 37 at 8). Defendant Friedrichsen also testified that the April 19, 2017, letter and 30-day notice (ECF 64-2 at 8) "was a result of various lease violations plus [Plaintiff] had what we thought was an unauthorized occupant" (ECF 37 at 15). On cross examination, though, Defendant Friedrichsen testified that she personally had "only noticed one [unauthorized occupant]." (*Id.* at 38). Plaintiff then sought to compare Defendant Friedrichsen's statement on cross examination (ECF 37 at 39), with the April 19, 2017, letter where Defendant Friedrichsen wrote "we have reason to believe that you have unauthorized occupants in your apartment" (ECF 64-2 at 8; *see also* ECF 37 at 3).

If court accepts a NUMEROUS CONFLICT TESTIMONY AS TRUTH, Please

For a variety of reasons, the Court concludes that Defendant Friedrichsen's responses to these requests for admission do not warrant sanctions and that her objections were justified. Fed. R. Civ. P. 36(a)(6). First and foremost, Defendants did in fact respond to the request for admission—denying the request. Further, Defendants' objection—that the request called for a legal conclusion—is proper. Perjury is a crime. Whether someone did or did not commit a crime is a legal conclusion. *See Wimpye v. AK Steel*, No. 1:11-CV-844, 2013 WL 3148234, at *2 n.3 (S.D. Ohio June 19, 2013), *R&R adopted*, No. C-1-11-844, 2013 WL 3975760 (S.D. Ohio Aug. 1, 2013) ("[P]laintiff's conclusory allegation that AK Steel is guilty of discriminatory

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practices is a legal conclusion. . . . "). "Requests to admit may not be used to establish legal conclusions." *Sommerfield*, 251 F.R.D. at 355.

Further, "[a] defendant commits perjury if, while testifying under oath, [s]he gives false testimony concerning a material matter with the willful intent to provide false testimony, rather than as a result of confusion, mistake, or faulty memory." *United States v. Riney*, 742 F.3d 785, 790 (7th Cir. 2014) (citation and internal quotation marks omitted). There is nothing in the record to suggest that Defendant Friedrichsen's statements in the April 19, 2017, letter were made under oath, and she testified in the Grant County case that the suggestion she had personally observed multiple occupants—as opposed to the one she supposedly had firsthand knowledge of—was made by mistake. (ECF 37 at 39). Similarly, whether or not Defendant Friedrichsen had firsthand knowledge of multiple unauthorized occupants does not appear to have been particularly material to the proceeding in the Grand County case, or the proceedings currently before this Court.

While Plaintiff raises similar arguments regarding the state-court testimony of Defendant Holliday, she fails to attach any supporting transcripts.[7] In any event, though, Plaintiff's attacks on Defendants' credibility are not within the purview of a motion to compel. At trial, Plaintiff will be able—within in the bounds of the Federal Rules of Evidence—to question Defendants about prior inconsistent statements. *See* Fed. R. Evid. 613. For each of the requests for admissions, though, Defendants answered, denied, or objected. (*See* ECF 66 through ECF 68). As explained above, each of these responses are acceptable. Plaintiff may disagree with Defendants' answers and may disagree with Defendants' version of the events, but neither of

[7] Plaintiff does provide an "affidavit" summarizing what the supposed testimony was. (ECF 37). The Court, however, declines to impose sanctions based solely on Plaintiff's recollection of what the state court testimony was.

these issues are grounds for a motion to compel. *See Braithwaite v. Bille*, No. 17-CV-706-PP, 2020 WL 4934586, at *7 (E.D. Wis. Aug. 24, 2020) ("The fact that the defendants disagree with the plaintiff, or that they do not remember the incident the way the plaintiff does, does not mean that they are lying under oath. It is not the court's job, or even the plaintiff's, to decide whose version of events is the most credible. That is the jury's job."); *see also Hashim*, 2016 WL 6208532, at *2.

Court fails to see that defendants do not remember the incident the same EVER after defendant KNEW of Bloom court order Before they knew it was ALWAYS PLURAL Consistent!

ix. Plaintiff's Request for Sanctions

As mentioned, Plaintiff also requests that sanctions be imposed on Defendants and their counsel. (ECF 69 at 10). In general, Rule 37(b)(2)(A) permits the Court to imposes sanctions on a party which "fails to obey an order to provide or permit discovery, including an order under Rule 26(f), 35, or 37(a) . . . ." While not always necessary, a successful motion to compel "usually precedes the imposition of Rule 37(b) sanctions . . . ." *Tamari v. Bache & Co. (Lebanon) S.A.L.*, 729 F.2d 469, 472 (7th Cir. 1984). Because Plaintiff's motion to compel (ECF 69) is denied, and because Defendants have not otherwise failed to comply with an order to permit discovery, sanctions pursuant to Rule 37(b) are inappropriate.

It is possible that Plaintiff is requesting sanctions be imposed pursuant to Rule 37(c) for Defendants' alleged lack of truthfulness in responding to Plaintiff's requests for admission. Such sanctions, however, are premature. If at trial Plaintiff is able to establish the truth of a request for admission that was denied, Plaintiff could again move for sanctions under Federal Rule 37(c)(2). *See APC Filtration, Inc. v. Becker*, No. 07 C 1462, 2007 WL 3046233, at *2 (N.D. Ill. Oct. 12, 2007) ("Federal Rule of Civil Procedure 37(c)(2) provides for sanctions '[i]f a party fails to admit ... the truth of any matter as requested under Rule 36, and if the party requesting the admissions thereafter proves . . . the truth of the matter.' Therefore, the proper time for APC

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to move for sanctions based on Becker and SourceOne's responses to APC's requests to admit will come only after the finder of fact determines the truth of the matter. Because this has not occurred (and is not certain to occur) the Court does not impose sanctions on this basis."). At least at this point, though, Plaintiff's request for sanctions is DENIED.

x. Plaintiff's Request to "Exclude" Evidence

Plaintiff also requests that the Court exclude Defendants' discovery responses due to Defendants' various objections. (ECF 69 at 8). Plaintiff, however, does not cite any authority in support of her request. To the extent that Plaintiff is requesting that Defendants be prohibited "from introducing designated matters in evidence" as a sanction pursuant to Federal Rule 37(b)(2)(A)(ii), for the reasons already discussed, such sanctions are not warranted on this record.

To the extent that Plaintiff believes that Defendants' discovery responses are not admissible evidence, her request to exclude is premature. Discovery is a collaborative process between the parties, "designed to facilitate both the preparation for and the trial of cases." *United States v. Am. Locomotive Co.*, 6 F.R.D. 35, 37 (N.D. Ind. 1946). "[R]elevancy in the discovery context is broader than in the context of admissibility." *Piacenti v. Gen. Motors Corp.*, 173 F.R.D. 221, 224 (N.D. Ill. 1997). "Information within [the] scope of discovery need not be admissible in evidence to be discoverable." Fed. R. Civ. P. 26(b)(1). Because Plaintiff is a *pro se* party, the parties are required to file their discovery requests and responses pursuant to Northern District of Indiana Local Rule 26-2(a)(2), but this does not mean that the Court has considered the eventual admissibility of any of the discovery materials filed.

This Court's Local Rules only contemplate parties filing discovery materials pertaining to discovery disputes pursuant to Federal Rules of Civil Procedure 26(c) or 37 and materials "that

the party relies on to support a motion that could result in a final order on an issue." N.D. Ind. L.R. 26-2(b)-(c). Here, the Court has only considered Defendants' discovery responses to the extent that they bear on Plaintiff's motion to compel. (ECF 69). It has not, however, considered the admissibility or weight to be afforded to any discovery response. If Defendants were to file discovery materials in support of a motion for summary judgment which Plaintiff believes are not admissible, she is free to object to such evidence then. Fed. R. Civ. P. 56(c)(2); *see also Cehovic-Dixneuf v. Wong*, 895 F.3d 927, 931 (7th Cir. 2018) ("In the briefing on a motion for summary judgment, either side may object that the other's evidence cannot be presented in a form that would be admissible in evidence." (citation and internal quotation marks omitted)). Similarly, Plaintiff is free to object to the admissibility of evidence before trial by way of a motion *in limine* or at trial. *See Dartey v. Ford Motor Co.*, 104 F. Supp. 2d 1017, 1020 (N.D. Ind. 2000). However, at this time, the Court sees no need to exclude Defendants' discovery responses or otherwise strike them from the record.

2. Defendants' Motion to Compel

i. Defendants' Arguments Regarding Plaintiff's Deposition

As mentioned, Defendants have also filed a motion seeking to compel Plaintiff's attendance at her own deposition. (ECF 72). Plaintiff, in response, contends that her deposition should be postponed until after Defendants have fully complied with her discovery requests. (ECF 75 at 2; *see also* ECF 73-2, ECF 73-3). Plaintiff's argument, however, has no support in the Federal Rules of Civil Procedure or the relevant caselaw.

Pursuant to Federal Rule 30(a)(1), Defendants may "depose any person, including a party, without leave of court . . . ." That being said, the "party who wants to depose a person by oral questions must give reasonable written notice to every other party," with such notice

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including the "time and place of the deposition, and if known, the deponent's name and address." Fed. R. Civ. P. 30(b)(1). Finally, the notice must state "the method for recording the testimony." Fed. R. Civ. P. 30(b)(3)(A). In general, "a failure [of a party to attend its own deposition] is not excused on the ground that the discovery sought was objectionable . . . ." Fed. R. Civ. P. 37(d)(2).

Here, Defendants filed a notice of deposition in compliance with Rule 30 on October 9, 2020. (ECF 65). Plaintiff, however, failed to respond to the notice. Instead, Plaintiff emailed Defendants' counsel explaining that she would not attend her deposition until Defendants cooperated with her discovery requests. (*See* ECF 73-2, 73-3). Plaintiff, however, cannot delay responding to Defendants' discovery requests merely because she believes that Defendants have not been forthright in responding to hers. *Williams v. Biomet, Inc.*, No. 3:12-MD-2391RLM-MGG, 2019 WL 6117594, at *3 (N.D. Ind. Nov. 15, 2019) ("The prematurity argument seems to be based on the proposition that Biomet must complete its own discovery before it can respond to Ms. Williams's discovery requests. Biomet's position has no basis in the law."); *see also Hendrickson v. Wal-Mart Stores Inc.*, No. 17-C-1680, 2019 WL 1877227, at *1 (E.D. Wis. Apr. 26, 2019) ("By failing to attend his deposition, Hendrickson has thwarted Wal-Mart's efforts to conduct discovery and defend against his claims. Hendrickson has provided no reason for the court to believe that his failure to appear for his deposition was substantially justified. His conduct is nothing short of a willful disregard of his discovery obligations.").

In summary, Plaintiff has not shown that she is entitled to postpone or otherwise delay her deposition. As already discussed, the Court does not find that Defendants' objections to Plaintiff's various discovery requests constitute "bad faith." *See Lannett Co.*, 2 F.R.D. at 562. Further, discovery disputes—on their own—do not justify a party's failure to attend her own

deposition. Accordingly, Defendants' motion to compel (ECF 72) is GRANTED. Plaintiff is ORDERED to work with Defendants to schedule a deposition within 21 days of this Order.

ii. Defendants' Request for Fees

Defendants also request that Plaintiff be ordered to pay the "costs and fees incurred . . . as a result of Plaintiff's bad faith in cancelling her previously noticed deposition." (ECF 73 at 3). Rule 37 contemplates sanctions both for failing to attend a deposition and for opposing a motion to compel. Indeed, Rule 37 presumptively requires the loser "to make good the victor's costs." *Rackemann v. LISNR, Inc.*, No. 1:17-cv-00624-MJD-TWP, 2018 WL 3328140, at *2 (S.D. Ind. July 6, 2018) (citation and internal quotation marks omitted). Pursuant to Rule 37(d), the Court may order a party who "fails, after being served with proper notice, to appear at [her] deposition" to pay "the reasonable expenses, including attorney's fees, caused by the failure, unless the failure was not substantially justified or other circumstances make an award of expenses unjust."

Rule 37(a) also provides that "the [C]ourt must, after giving an opportunity to be heard, require the party or deponent whose conduct necessitated the motion [to compel] . . . to pay the movant's reasonable expenses incurred in making the motion, including attorney's fees." Fed. R. Civ. P. 37(a)(5)(A). The Court, however, will not order the payment of fees if "(i) the movant filed the motion before attempting in good faith to obtain the disclosure or discovery without court action; (ii) the opposing party's nondisclosure, response, or objection was substantially justified; or (iii) other circumstances make an award of expenses unjust." Fed. R. Civ. P. 37(a)(5)(A)(i)-(iii); *see also Steadfast Ins. Co. v. Auto Mktg. Network, Inc.*, No. 97 C 5696, 1999 WL 446691, at *1 (N.D. Ill. June 23, 1999). "The burden of persuasion is on the losing party to avoid assessment of expenses and fees, rather than on the winning party [to] obtain such an

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Rule 37(a) also provides that "the [C]ourt must, after giving an opportunity to be heard, require the party or deponent whose conduct necessitated the motion [to compel] . . . to pay the movant's reasonable expenses incurred in making the motion, including attorney's fees." Fed. R. Civ. P. 37(a)(5)(A). The Court, however, will not order the payment of fees if "(i) the movant filed the motion before attempting in good faith to obtain the disclosure or discovery without court action; (ii) the opposing party's nondisclosure, response, or objection was substantially justified; or (iii) other circumstances make an award of expenses unjust." Fed. R. Civ. P. 37(a)(5)(A)(i)-(iii); *see also Steadfast Ins. Co. v. Auto Mktg. Network, Inc.*, No. 97 C 5696, 1999 WL 446691, at *1 (N.D. Ill. June 23, 1999). "The burden of persuasion is on the losing party to avoid assessment of expenses and fees, rather than on the winning party [to] obtain such an

Rules of Civil Procedure, and specifically the rules pertaining to discovery, as a licensed attorney"). Therefore, on this record, an award of fees incurred by Defendants as a result of Plaintiff's failure to attend her deposition and in preparing their motion to compel appears to be appropriate.

"Nevertheless, the Court still must be satisfied that the amount requested in obtaining the order on the motion to compel is reasonable." *Priest v. Brummer*, No. 1:06-CV-65, 2007 WL 2904086, at *2 (N.D. Ind. Oct. 3, 2007). Here, though, Defendants have not set forth the amount of fees they seek to recover, or the means used to calculate that amount. *See id.* ("The Plaintiff, however, does not tell us anything about the copying costs she seeks to have assessed, such as when or why they were incurred, the number of pages copied or the per page charge, and thus we have no way of determining whether the copying expenses are reasonable." (citation omitted)). Accordingly, Defendants are directed to file an affidavit detailing the amount of fees they seek to recover and how they arrived at that amount. Because Plaintiff did not directly address the appropriateness of Defendants' fee request in her filings, she will be permitted to file a response to Defendants' affidavit to explain what—if any—special circumstances make an award of fees unjust.

C. Conclusion

In summary, Plaintiff's motion to compel (ECF 69) is DENIED. The parties are ENCOURAGED, however, to work together—especially as it relates to Plaintiff's Item 1—to narrow their requests and objections. Defendants' motion to compel (ECF 72), on the other hand, is GRANTED. Defendants provided proper notice of Plaintiff's deposition in accordance with Federal Rule 30. Further, while parties may object to discovery requests consistent with the Federal Rules of Civil Procedure, Plaintiff has not identified any legal basis for her refusal to

Rules of Civil Procedure, and specifically the rules pertaining to discovery, as a licensed attorney"). Therefore, on this record, an award of fees incurred by Defendants as a result of Plaintiff's failure to attend her deposition and in preparing their motion to compel appears to be appropriate.

"Nevertheless, the Court still must be satisfied that the amount requested in obtaining the order on the motion to compel is reasonable." *Priest v. Brummer*, No. 1:06-CV-65, 2007 WL 2904086, at *2 (N.D. Ind. Oct. 3, 2007). Here, though, Defendants have not set forth the amount of fees they seek to recover, or the means used to calculate that amount. *See id.* ("The Plaintiff, however, does not tell us anything about the copying costs she seeks to have assessed, such as when or why they were incurred, the number of pages copied or the per page charge, and thus we have no way of determining whether the copying expenses are reasonable." (citation omitted)). Accordingly, Defendants are directed to file an affidavit detailing the amount of fees they seek to recover and how they arrived at that amount. Because Plaintiff did not directly address the appropriateness of Defendants' fee request in her filings, she will be permitted to file a response to Defendants' affidavit to explain what—if any—special circumstances make an award of fees unjust.

C. Conclusion

In summary, Plaintiff's motion to compel (ECF 69) is DENIED. The parties are ENCOURAGED, however, to work together—especially as it relates to Plaintiff's Item 1—to narrow their requests and objections. Defendants' motion to compel (ECF 72), on the other hand, is GRANTED. Defendants provided proper notice of Plaintiff's deposition in accordance with Federal Rule 30. Further, while parties may object to discovery requests consistent with the Federal Rules of Civil Procedure, Plaintiff has not identified any legal basis for her refusal to

attend her deposition. Accordingly, Plaintiff is ORDERED to work with Defendants to schedule a deposition within 21 days of this Order. Additionally, Defendants' request for fees (ECF 72) is provisionally GRANTED. Defendants are DIRECTED to file an affidavit detailing their fee calculation within 14 days of this Order. Plaintiff is permitted to file a response within 14 days of receiving Plaintiff's affidavit.

SO ORDERED.

Entered this 19th day of January 2021.

/s/ Susan Collins
Susan Collins
United States Magistrate Judge

Divider

July 30th order

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

SANDRA BLACK,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**Case No. 1:19-cv-00307-WCL-SLC**
	)	
NAOMI FRIEDRICHSEN, *et al.*,	)	
	)	
Defendants.	)	

ORDER

On July 29, 2021, the Court held a hearing to address a variety of pending motions. (ECF 139-141; *see also* ECF 108, 114, 117, 120, 121). For the following reasons, and for the reasons stated on the record, the Court rules as follows:

- *Pro se* Plaintiff's motion requesting the Court "JUDICIALLY RECOGNIZE THIS DISCRIMINATION CASE AS one POSSIBLE RESOLUTION TO A NATIONAL CRISIS REQUIRING NATIONAL PRESS EXPOSURE" (ECF 114) is DENIED. As the Court explained on record, this matter and its docket are already open to the public. *See Goesel v. Boley Int'l (H.K.) Ltd.*, 738 F.3d 831, 833 (7th Cir. 2013).
- Plaintiff's "MOTION TO WARN AND DISCIPLINE DEFENDANT NAOMI FRIEDRICHSEN for PERJURY" (ECF 117) is DENIED. As explained on the record, Plaintiff will have the opportunity to prove her factual allegations if and when this case proceeds to trial.
    - Further, Plaintiff has not established good cause for maintaining the document entitled "TEMPORARY PROTECTED PRIVACY SEALED FROM DEFENDANTS PROOF OF PERJURY" (ECF 116) filed in support of her

motion (ECF 117) under seal. Accordingly, the Clerk is DIRECTED to unseal that document (ECF 116).

- Defendants' motion (ECF 120) requesting entry of a proposed protective order (ECF 120-2) is GRANTED to the extent set forth in this Order. The proposed order submitted by Defendants is APPOVED and ADOPTED as an Order of this Court, PROVIDED, HOWEVER, that:
    - As set forth in Paragraph VII.B., nothing in the Order authorizes either party to file or maintain any document under seal.[1] That is, NO DOCUMENT OR PORTION OF A DOCUMENT WILL BE MAINTAINED UNDER SEAL IN THE ABSENCE OF AN AUTHORIZING STATUTE, COURT RULE, OR FURTHER LEAVE OF COURT. *See* N.D. Ind. L.R. 5-3;
    - While the Order will remain in force after the termination of the suit as set forth in Paragraphs X.A and XIII, the Court will not retain jurisdiction over the Order, as the Court is unwilling to enter a protective order that suggests it retain jurisdiction of any kind after resolution of the case. *See EEOC v. Clarice's Home Care Serv., Inc.*, No. 3:07-cv-601 GPM, 2008 WL 345588, at *2 (S.D. Ill. Feb. 7, 2008) (encouraging the parties to make a contractual agreement among themselves for the return of sensitive documents without court oversight); *see also Large v. Mobile Tool Int'l, Inc.*, No. 1:02-CV-177, 2010 WL 3120254, at *1 (N.D. Ind. Aug. 6, 2010); and
    - The provision in Paragraph X.B. requiring the return or destruction of confidential information at the conclusion of this litigation will not apply to the Court.
- Plaintiff's "MOTION TO COMPEL DEFENDANTS to PRODUCE and DELIVER PRODUCTION" (ECF 121) is DENIED AS MOOT in light of the Court's ruling on Defendants' motion requesting entry of the proposed protective order (ECF 120), as Defendants agreed to produce the requested material given that the protective order was approved.

[1] "[T]he same scrutiny is not required for protective orders made only for discovery as for those that permit sealed filings." *Containment Techs. Grp., Inc. v. Am. Soc'y of Health Sys. Pharmacists*, No. 1:07-cv-997, 2008 WL 4545310, at *3 (S.D. Ind. Oct. 10, 2008). The Court observes that the definition of "Confidential Information," "Protected Material," and "Attorneys' Eyes Only Information in the Order (ECF 120-2 at 2-4) would be overly broad if the proposed order permitted sealed filings—a point that the parties should bear in mind in the event they seek leave of Court to file any documents under seal.

- Finally, Defendants' motion to extend case management deadlines (ECF 108)—as modified by Defendants' counsel on the record—is GRANTED. Accordingly, Plaintiff is afforded to and including August 12, 2021, to file any new or supplemental Rule 26(a)(2) expert reports.[2] Defendant is afforded to and including September 13, 2021, to file their Rule 26(a)(2) expert reports. The discovery deadline is extended to October 24, 2021, and the dispositive motion deadline is extended to November 23, 2021.

In summary, Plaintiff's motions discussed *supra* (ECF 114, ECF 117, ECF 121) are DENIED. Further, the Clerk is DIRECTED to unseal Plaintiff's "proof of perjury" document (ECF 116). Defendants' motions seeking entry of a proposed protective order (ECF 120) and an extension of the case management deadlines (ECF 108) are GRANTED to the extent provided for in this Order.[3]

SO ORDERED.

Entered this 30th day of July 2021.

/s/ Susan Collins
Susan Collins
United States Magistrate Jude

[2] The Court recognizes that Plaintiff has already filed an expert report on April 28, 2021. (ECF 104).

[3] Defendants' motion requesting a temporary restraining order, preliminary injunction, and sanctions (ECF 128) is not before the Magistrate Judge.

APPENDIX

B

STATE OF INDIANA)
) SS:
COUNTY OF GRANT)

IN THE GRANT SUPERIOR COURT 3
[Originally Case No. 27D03-1705-SC-000517]
CASE NO. 27D03-1706-PL-000014

HUNTER'S RUN APARTMENTS LP, the Plaintiff

v.

SANDRA A. BLACK, the Defendant

FILED

JUN 14 2017

CLERK GSC 3

Denial of Motion for Preliminary Order of Possession

The Court denies the Rule to Show Cause sought by the Plaintiff, Hunter's Run Apartments LP ("Landlord"), against the Defendant, Sandra A. Black ("Tenant"). Based upon the evidence presented at the June 8, 2017, preliminary hearing, the Court enters this preliminary finding that there is a reasonable probability Tenant is entitled to the continued possession, use and enjoyment of her apartment, which is known as 655 E Hunter's Run Dr; Marion IN 46953 ("the Apartment"). [See Ind. Code § 32-30-3-5.] The Court makes the following additional preliminary findings to assist Landlord and Tenant ("the Parties"):

1. On May 23, 2017, Landlord filed its Complaint for Possession of Real Property and Past Due Rent ("the Original Complaint") as a small claims proceeding in Case No. 27D03-1705-SC-000517 ("the Small Claims Case"). Landlord alleged it was entitled to possession of the Apartment for the following reason:

    2. Violation of Lease Agreement – allowing unauthorized occupants to live at apartment.

    No other basis for the eviction proceeding was alleged.

2. On May 31, 2017, Tenant filed her Request for Recusal, which was denied on June 1, 2017. In doing so the Court relies upon the Indiana Commission on Judicial Qualifications' Advisory Opinion #3-07, which dealt with the issue of:

    > whether a judge should disqualify from a case involving a litigant who files a disciplinary complaint or a lawsuit against the judge or who publicly criticizes or attacks the judge through fliers, websites, blogs, or other written material.

    The Court is aware that Tenant has been and remains very unhappy with decisions the Court made in the past concerning Tenant's mother. Tenant has exercised her 1st Amendment right to publically criticize the Judge. Because the Court has no actual bias against Tenant and the Court does not believe a factual basis exists for a conclusion that the Court acted inappropriately in other matters involving Tenant, recusal in this case would be improper. Quoting from Advisory Opinion #3-07:

> (T)he issue is whether an objective person, knowledgeable of all the circumstances, would have a reasonable basis for doubting the judge's impartiality. Unless disqualification is required, Canon 3B(1) of the Code of Judicial Conduct requires a judge to hear and decide all assigned cases.

Neither Tenant nor Landlord filed for a change of venue from the judge pursuant to Ind. Trial Rule 76(B).

3. On May 31, 2017, Tenant also filed her Request for Trial by Jury. She was served on May 25, 2017, with her copy of the Original Complaint, so her request was filed in a timely manner. On June 1, 2017, the Court entered the following Chronological Case Summary ("CCS") entry:

> (Tenant) has timely filed her demand for trial by jury. Ind. Small Claims Rule 4(C) provides: "Request for Jury Trial. . . . (A) defendant may request a jury trial by submitting a written request to the court within ten (10) days after receipt of the notice of claim. No statement of facts supporting the request or verification of the request is required. The party requesting a jury trial shall pay the clerk the additional amount required by statute to transfer the claim to the plenary docket . . . . Once a jury trial request has been granted, it may not be withdrawn without the consent of the other party or parties." The Sheriff's return of service indicates (Tenant) was served with the notice of claim on May 25, 2017. (Tenant) has 10 days from that date to pay the additional fee to transfer the case to the plenary docket. If she fails to do so, her request for trial by jury will be denied.

Tenant paid the $70 fee and the case was transferred to the Court's plenary docket and assigned Case No. 27D03-1706-PL-000014 on June 5, 2017. This means the Parties must comply with the Indiana Rules of Trial Procedure and will no longer be permitted to proceed under Ind. Small Claims Rule 8(A), which states:

> Procedure. The trial shall be informal, with the sole objective of dispensing speedy justice between the parties according to the rules of substantive law, and shall not be bound by the statutory provisions or rules of practice, procedure, pleadings or evidence except provisions relating to privileged communications and offers of compromise.

Because this case is now on the Court's plenary docket, the trial will be formal. It will be done according to statutory provisions and the Ind. Trial Rules. The Parties must properly plead their case(s) and fully comply with the Ind. Evidence Rules.

4. The June 1, 2017 CCS entry also included the following:

> The jury trial demand does not divest the Court of the jurisdiction to enter a preliminary order of possession, if (Landlord) presents facts supporting such an order. Therefore the hearing set for Thursday, June 8, 2017, at 9:15 a.m. will be held.

The Court, not a jury, is to hear and decide matters involving requests for pre-judgment orders of possession. *Bishop v. Hous. Aut. of S. Bend*, 920 N.E.2d 772 (Ind. Ct. App. 2010) dealt with this issue saying:

> We read the Indiana ejection statute to preserve Bishop's right to a jury trial – on the ultimate outcome, i.e., the merits of HASB's claim that it is entitled to possession based upon her breach of an express term of the lease. . . . .
>
> Similarly, Indiana's ejectment statute provides for a pre-judgment possession hearing to allow the defendant to controvert plaintiff's affidavit "or to show cause why the judge should not remove the tenant from the property and put the plaintiff in possession." I.C. § 32-30-3-2; see also *Cunningham v. Georgetown Homes, Inc.*, 708 N.E.2d 623, 627 (Ind. Ct. App. 1999). The statutory hearing manifests the inherent power of trial courts to intercede at an early stage – to make a preliminary decision before what could thereafter be a lengthy judicial process. Before issuance of a preliminary decision, the defendant/tenant is given the express opportunity to dispute the landlord's claim for immediate possession. Moreover, this preliminary possession decision triggers the requirement that the plaintiff/landlord file "a surety . . . in an amount sufficient to assure the payment of any damages the defendant may suffer if the court wrongfully ordered" preliminary possession to the landlord. I.C. § 32-30-3-6. The preliminary possession decision is also subject to further proceedings to reach an ultimate determination – the "final judgment" that "supersedes" the "prejudgment order for possession." I.C. § 32-30-3-12.
>
> The Indiana statute merely allows the trial court to make a preliminary decision as to the right to immediate possession of the property. It preserves Bishop's right to a trial by jury on the ultimate issue as to whether she should be ejected from the property. We find that there is no constitutional right to a jury trial at the preliminary possession hearing in an ejectment proceeding. Therefore, Bishop has failed [*780] to persuade us that the ejectment statute violated her right to a jury trial pursuant to the Indiana constitution. *Wallace*, 905 N.E.2d at 378.

Even though the Court has entered this preliminary decision that Tenant is entitled to remain in possession of the Apartment, the jury is free to conclude that Tenant must give up possession of the Apartment when it makes the ultimate decision in this case.

5. On May 31, 2017, Tenant also filed her Response to Complaint and Counterclaim ("the First Answer and Counterclaim"). On June 1, 2017, by CCS entry the Court struck Tenant's First Answer and Counterclaim saying:

> (Tenant's) May 31, 2017, Response to Complaint and Counterclaim does not comply with the requirements that all pleadings be clear and concise. It is stricken from this case. (Tenant) is also granted until June 8, 2017, to file an

amended pleading that complies with the rules so that she might proceed on her counterclaim.

See also *Zavodnik v. Irene Harper*, 17 N.E.3d 259 (Ind. 2014).

At the June 8, 2017, preliminary hearing, the Court provided the parties with portions of T.R. 8, including the requirement that a pleading must contain, "(A) (1) a short and plain statement of the claim showing that the pleader is entitled to relief" and "(E)(1) (e)ach averment of a pleading shall be simple, concise, and direct".

Even though the First Answer and Counterclaim was stricken, the Court considers it to be a general denial of the allegations made by Landlord.

6. On June 2, 2017, Landlord filed its Amended Complaint for Possession of Real Property and Past Due Rent ("the Amended Complaint"). It differed from the Original Complaint by increasing the alleged violations of the lease to be:

> (A)llowing unauthorized occupants to live at apartment. Violation of Lease – paragraph 32, Automobiles and Parking Areas; and Resident Responsibilities.

7. On June 7, 2017, Tenant filed her Response to Amended Complaint.

8. The following are only preliminary findings. The jury may find otherwise.

   A. "The 'Section 42' Lease Agreement" ("the Lease") is between Tenant and her son, Kemuel Shem ("Mr. Shem"), and Landlord. It provides that Tenant may occupy the Apartment along with Mr. Shem and with Tenant's grandchildren, Chrisdeon Ogunbuyide, Victoria Goree and Christian Goree. Landlord did not prove that Tenant's adult daughter and Mr. Shem's wife, Jaycee Shem, were also occupying the Apartment in violation of the Lease. This is a 3 bedroom apartment, which may have no more than 6 people living in it. The Court finds that Landlord did not prove that other persons occupied the Apartment than were permitted by Paragraph 4 and 5 of the Lease.

   The Court notes that Mr. Shem has been living in Bloomington, where he works and is attending Indiana University off and on. It is now his home. His wife is from Bloomington and testified that so far this year she and Mr. Shem only spent about 3 or 4 overnights at the Apartment. Mr. Shem testified that someone from Section 8 told him that he only needed to stay overnight 10 nights per year at the Apartment to be considered an occupant of the apartment. The Court finds that this is not correct. Mr. Shem is not an occupant of the Apartment. If he were, he had a duty to report his Bloomington income, which he has not. The Court finds that Mr. Shem and/or Tenant had a duty to properly notify Landlord that Mr. Shem was not living in the Apartment, but neither did so. The Lease requires Tenant to recertify the financial information and occupancy at least annually. Landlord's Exhibit 11 shows this was last done on August 11, 2016, for the recertification due on November 23, 2016. Landlord has the right to require more frequent recertifications, but has not

done so in this case. Landlord's Exhibit 9 is the Rules and Regulations Handbook ("the Handbook"), which includes a provision requiring Tenant to "notify (Landlord) of any changes in the number of residents in the household or addition of pets. Failure to do so will be considered a lease violation." It is unclear how the provisions in the Handbook affect the annual recertification requirement of the Lease. The Court notes that Paragraph 6 of the Lease indicates that Mr. Shem will likely have his Lease with Landlord terminated on or about November 23, 2017, at the latest.

B. Tenant is a strong willed person. She keeps the Apartment clean and requires her family members and guests to follow her rules. Tenant is a black person and is very vocal when she is not treated as she believes she should be. When white people treat her differently than she believes is appropriate, she often attributes this to racism. The Court finds no evidence of racism directed toward Tenant by Landlord nor by Landlord's staff members, but does find evidence of racism by Tenant directed toward Landlord and Landlord's staff members. However, the Court notes the Tenant's and Mr. Shem's racist Facebook posts shown in Landlord's Exhibit 10 were made after Landlord filed suit against Tenant, which Tenant believed was racially motivated. She was responding, inappropriately, to Landlord's efforts to evict her.

C. Tenant placed a sign in one of her windows that was visible to others in Hunters Run that advertized Tenant's belief that her mother was being treated as a slave. On February 22, 2016, Landlord issued Landlord's Exhibit 4, which was a written, "potential lease violation" notice to Tenant directing her to remove the sign, which clearly violated Paragraph 20 of the Lease. It also did not comply with the directive in the Handbook, "to encourage a positive environment for (residents) and their neighbors". The sign wasn't removed until shortly after Landlord issued Landlord's Exhibit 4 on March 7, 2016.

Tenant acknowledged that she was aware that no signs could be posted, but did so anyway. What she posted is no different than someone displaying a sign advertising or in support of the Ku Klux Klan. Both are prohibited by Paragraph 20 of the Lease and by the Handbook.

Landlord could have taken steps to evict tenant when the sign was posted, but did not do so until the Amended Complaint was filed, more than a year after the violation was committed. The Court finds that the sign violation is too remote in time to be relevant in an action to evict Tenant now.

D. Landlord's property manager, Naomi Friedricksen ("the Property Manager"), has a Facebook account and testified that she uses it to post information multiple times a day about Hunters Run activities and vacancies. It is widely known that her personal Facebook account is used for business purposes. Beginning June 27, 2017, Tenant, using the pseudonym "Ezzrath Baht Shem", "tagged" the Property Manager's Facebook account and began posting hateful comments that violated the

Handbook's requirement to "encourage a positive environment for (residents) and their neighbors". The comments were posted after Landlord filed suit to evict Tenant. The comments shown in (4), below, were made by Mr. Shem:

(1). I just realized!!! When dealing with a ruthless evil woman who is ALSO racist her dumb ass automatically ASSUMES making one pay from a black person is going to be a criminal act.

Hell NO! I AM GOING TO SUE THE HOLY SHIT OUT OF YOUR ASS PERSONALLY! EVERYTHING YOU OWN IS ALREADY MINE!!!

WATCH!!!

YOU CAN'T LIE TO GET RID OF BLACKS UP OUT OF HUNTERS RUN AND YOU GOT THE RIGHT ONE NOW BABY GIRL.

(2). I was just cooking pancakes for my babies and that fools mind popped in mine . . .dam, she'll be calling the police that I am going to do a criminal act, LIKE ALL BLACKS.

But noway... her lies are going to UTTERLY DESTROY all she owns is already GONE in etheric reality.

MINE, by court order!

(3) I don't want her money or her assets. I'm going to make an example out of this evil wickednes she thinks she has white privilege, let"s find out just how FAR it's going to get her.

(4) The following was posted by Mr. Shem:

(a) In those lost hours dealing with upidy crackers.

(b) Tired of all the dam hunkys around here.

(5) this racist BITCH is evicting me LYING saying I got several people living in my house. DAM N I can't get several people to even come to meetings.

(6) This evil bitch that works here at Hunters Run been lying on me since this fall because she feels I am an upitty nigger for asking her to fix my air conditioning unit. I was suffering like hell most of the summer for two months. I have it in writing where I am telling her that I am suffering. She writes back that it's a SLIGHT inconvenience. But others are in are a priority as they have no air.

My unit didn't shut off so I had to MANUALLY shut off at the box. FREEZING THEN BOILING all summer for two months. So I ask her if I may go yo district after two months and she couldn't fix it. After that it was fixed the VERY NEXT DAY. She been lying on me every since.

> Even so bad that the guy from the air-conditioning vendor said that the office people are all against me because I am a trouble maker.

E. Landlord's Exhibit 2 is a letter dated November 30, 2015, claiming Tenant had an "aggressive breed" dog in the Apartment. Tenant was given 30 days to vacate the Apartment or remove the dog from the Apartment or provide proof that the dog was not an aggressive breed.

When Tenant first rented the Apartment, Landlord was aware that she had a dog that weighed more than 50 pounds. Since then Landlord has indicated that pets may not exceed 25 pounds. Since Landlord rented the Apartment to Tenant with knowledge of the size of the dog, Landlord may not use that as a basis to evict tenant. No evidence was offered to prove the dog was an aggressive breed.

F. Landlord's Exhibit 6 is a "FINAL WARNING" letter to Tenant, saying:

> It has been reported to us by surrounding neighbors that you are allowing your dog to relieve itself on the Hunter's Run sidewalk and landscaping areas and not cleaning up after it.

Landlord submitted this exhibit even though Tenant's Exhibit E is a copy of the same letter with the following handwritten note by Erika Holliday ("Assistant Property Manager"):

> please disregard. removed from file. Erika Holliday

Landlord's attorney did not offer any explanation as to why Landlord's Exhibit 2 was offered. Landlord's Exhibit 2 is misleading. The Court finds that Landlord's attorney was candid with the Court when he offered Landlord's Exhibit 2, because there is no evidence that he was aware of the handwritten note. It is entirely possible that he was not given a copy of Landlord's Exhibit 2 with the note from the Assistant Property Manager.

G. Landlord's Exhibit 8 is another written "Lease Violation–unauthorized occupants–30 day notice to vacate". As mentioned above, Landlord failed to prove that unauthorized permanent occupants were staying at the Apartment. The letter also claimed that the Property Manager saw a burgundy colored Camero driving recklessly in and out of the parking lot. Tenant was required to vacate the Apartment by May 20, 2017, at 4:00 p.m. Since Landlord did not enforce the 30 day notice and did not prove unauthorized permanent occupants were at the Apartment, the reckless driving complaint is too remote in time to be used in this preliminary eviction case.

H. Landlord's Exhibit 5 was dated May 26, 2016, and Landlord's Exhibit 7 was dated December 5, 2016. Both dealt with damaged blinds. Tenant acknowledged that her grandchildren or dog caused damage to the blinds and repaired or replaced them.

This is a common maintenance issue for this and other apartment complexes and is not a basis to evict Tenant.

I. During the summer of 2016 Tenant's air conditioning unit did not work properly and was not promptly repaired. The Handbook indicates it is Landlord's responsibility to maintain the Apartment's HVAC unit and encourages tenants to call the 24-hour maintenance emergency number if the A/C system fails during harsh seasons. Tenant reported that her A/C until wasn't working properly. Landlord reported that it is difficult to repair Hunters Run HVAC units, which are 16 years old. Tenant's system had a bad computer board and it took time to get one. When one arrived, it too was faulty. It took approximately 2 weeks to make the A/C system work, but the thermostat did not work and it took about 2 months to fix that. During this time the A/C system had to be manually turned on and off, so Tenant complained that the temperature was freezing or too hot.

Landlord was dealing with other malfunctioning units and performed triage. In the summer heat some apartments had no A/C. They were given priority over Tenant's apartment, which had a manually controlled A/C system. Tenant became more and more frustrated with this situation. The Parties' relationship soured considerably. Tenant went so far as to go to the office to personally serve the Assistant Property Manager with documents and have her grandson record the video and sound on a smartphone. The Assistant Property Manager felt threatened and said she would not permit herself to be recorded and locked herself in her office. Tenant remained outside the inner office and spoke loudly, firmly, but without any profanity to explain what she was delivering to Landlord.

J. Tenant is perceived by Landlord to be a problem tenant. Tenant can be difficult to work with, but we have the right to have different political beliefs and views. She may exercise her 1st Amendment rights to speak out against the injustices she perceives, including speaking out against the undersigned. So long as her conduct is not criminal or a material violation of the Lease, she is entitled to remain in her Apartment. The Court is unsure what might constitute a material violation, but suggests that Tenant would be wise not to post or have posts made like those shown in Paragraph 8.D. about Landlord and/or Landlord's employees.

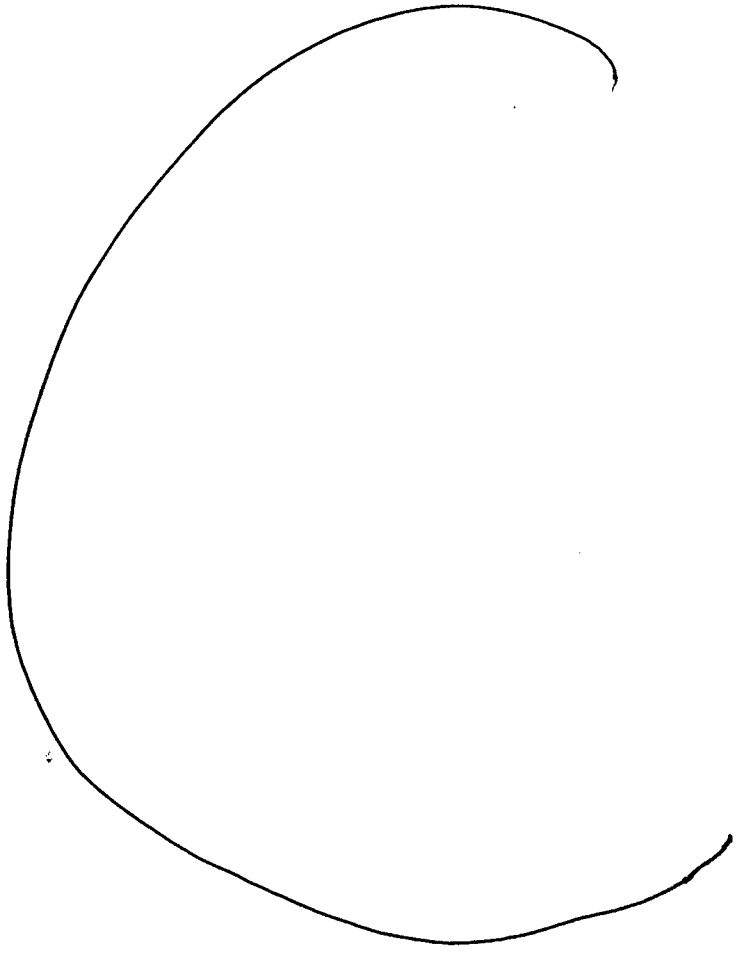
K. An unused truck was parked outside the Apartment. It was in violation of the Handbook. However, Landlord typically would "tag" the vehicle and have it towed, if the tenant did not do so. Landlord did neither and may not use this to evict Tenant.

The Court denies Landlord's request for a prejudgment order of possession. At this point, no proper counterclaim has been filed. If neither Party files a pleading requesting further Court action, this case may be dismissed on or after August 18, 2017, pursuant to T.R. 41(E).

Signed on June 14, 2017, by:

Warren Haas, Judge of Grant Superior Court 3

APPENDIX



Other Orders/Judgments
1:19-cv-00307-WCL-SLC Black
v. Friedrichsen et al

CASREF

U.S. District Court Northern District of Indiana [LIVE]

USDC Northern Indiana

Notice of Electronic Filing

The following transaction was entered on 7/23/2021 at 8:48 AM EST and filed on 7/23/2021
Case Name: Black v. Friedrichsen et al
Case Number: 1:19-cv-00307-WCL-SLC
Filer:
Document Number: 141(No document attached)

Docket Text:
ORDER for Magistrate Judge Susan Collins: [140] Defendants' Unopposed Motion for Continuance of 7/27/2021 Hearing is granted. The hearing set for 7/27/2021 at 11:30 am re ECFs [108], [114], [117], [120] and [121] is VACATED and RESET for 7/29/2021 at 3:00 pm in US District Court - Fort Wayne. Plaintiff is ORDERED to appear in person. Defendants may appear by counsel in person or telephonically. (copy mailed to pro se Plaintiff). Text entry order.(mr)

1:19-cv-00307-WCL-SLC Notice has been electronically mailed to:

Brittney B Rykovich brykovich@grsm.com, dpocica@grsm.com, jswick@grsm.com, tcronin@grsm.com

1:19-cv-00307-WCL-SLC Notice has been delivered by U.S. Mail or other means to:

Sandra Black
1408 South Maple Street
Apt. 102
Marion, IN 46953