

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

**ASSOCIATION OF COMMUNITY)
ORGANIZATIONS FOR REFORM)
NOW, et al.,)**

Plaintiffs,)

v.)

CATHY COX, et al.,)

Defendants.)

**CIVIL ACTION NO.
1:06-CV-1891-JTC**

**MOTION TO STRIKE IMPROPER VERIFICATIONS,
WITH SUPPORTING AUTHORITY**

COME NOW the Defendants in the above-referenced action and hereby move to strike the purported “verifications” Plaintiffs filed with the Court when Plaintiffs filed their original discovery responses on June 21, 2007.

The reasons for this motion are that (a) the purported verifications are undated and not properly sworn; (b) the purported verifications were never served on the Defendants or Defendants’ counsel; and (c) the purported verifications were not part of any “original discovery” as Plaintiffs’ filing implies since they are not part of any discovery response or amended response made by Plaintiffs.

In support of this motion Defendants show as follows:

1.

Before this Court is a motion to compel discovery filed by Defendants. The

motion relates to interrogatories as well as document requests. [Dkt. 66.]

2.

Defendants' counsel has previously certified to this Court, as well as arguing in Defendants' brief, that the interrogatory responses were not verified. *Id.* These assertions were correct.

3.

In preparing Defendants' Reply Brief in Support of Defendants' Motion to Compel, Defendants' counsel discovered that the "original" discovery Plaintiffs filed with the Court had attached to them supposed "verifications." [Certificate of Counsel filed herewith; *See* Dkt. 71.]

4.

Each and every one of the new "verifications" is undated and unnotarized. [See Dkt. 71.]

5.

None of the new "verifications" was ever served on Defendants' counsel at any time until the Plaintiffs' filing of original discovery was made on June 21, 2007. [Certificate of Counsel filed herewith.]

6.

Plaintiffs did not file at any time notice with the Court that it was serving (or filing) amended interrogatory responses to included the purported (and undated)

verifications. Specifically, the amended responses made by Plaintiffs on May 18, 2007, did not include these “verifications.” [Dkt. 64; Certificate of Counsel filed herewith.]

7.

None of the new “verifications” now filed as supposedly part of the original discovery was ever part of the original discovery responses made in this case. [Certificate of Counsel filed herewith.]

8.

Federal law expressly requires service of all pleadings, and filing of certificates of service of written discovery when made, showing, among other things, the date of service and that it was made. Fed. R. Civ. P. 4, 5, 33(c); *see* LR 5.4, NDGa. (filing of discovery and certificates of service).

9.

Defendants’ counsel in writing brought to Plaintiffs’ counsel’s attention the fact that the interrogatories were not verified when the Plaintiffs made their initial responses. Plaintiffs’ counsel indicated, in writing, that the interrogatories would be verified at a future date but that he thought that verifications were unnecessary anyway since Plaintiffs were objecting to all the interrogatories. [Certificate of Counsel filed herewith; *see also* dkt. 66 (brief in support of motion to compel discovery and certificate of counsel discussing this issue).]

10.

Plaintiffs did not respond to any of the issues raised by their failure to verify the interrogatories in their response to Defendants' motion to compel. [*See* dkt. 73.] They did not respond – or even mention the verifications – even though the absence of verifications was expressly part of the motion to compel and addressed by Defendants in their brief. [Dkt. 66.]

11.

In their response to Defendants' motion to extend discovery, Plaintiffs' acknowledge – as Defendants' counsel discovered in preparing a response for that motion – that Defendants had never before seen the interrogatory verification of Jessica Angus. [Dkt. 75 at p. 2.]

12.

The Rules of civil Procedure require that responses to interrogatories be given under oath separately signed by the party making the response. Fed. R. Civ. P. 33(b).

13.

Federal law expressly requires that documents that are to be made under oath be notarized or contain specific language regarding perjury (which Plaintiffs' verifications do not track), and, further, that they be dated. The law provides regarding unsworn (i.e. unnotarized) declarations as follows:

Wherever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated, in substantially the following form:

* * *

(2) If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date).

(Signature)".

28 USCS § 1746.

14.

The failure of Plaintiffs to comply with the law by not notarizing the verification or including the appropriate statutory language and dating it, makes the verifications invalid. *Cf. Hardison v. Balboa Ins. Co.*, 4 Fed. Appx. 663, 669 n.5, 2001 U.S. App. LEXIS 2409 (10th Cir. 2001) (implying that unnotorized verification was not valid); *Desert Orchid Partners, L.L.C. v. Transaction Sys. Architects, Inc.*, nos. 8:02CV553, 8:02CV561, 2006 U.S. Dist. LEXIS 34547 (D. Neb. 2006); *Roy v. Johnson*, 97 F. Supp. 2d 1102, 1106 (N.D. Ga. 2000) (unsworn affidavit did not satisfy rule for opposing summary judgment); *Walker v. Thames*, no. 97-01104-RV-

L, 2001 U.S. Dist. LEXIS 5334, *2 (N.D. Ga. 2001) (same); *Clark v. Johnson*, no. 97-00538-AH-L, 2000 U.S. Dist. LEXIS 15347 (N.D. Ga. 2001) (same);

15.

Plaintiffs' failure to properly verify the interrogatory responses and failure to serve their verifications, as well as their filing of the supposed verifications as part of the original discovery responses although, in fact, they were not part of the responses made, requires that they be stricken from the record.

16.

Moreover, Plaintiffs' failure to serve these verifications, to have them dated, or to provide notice that they were being filed, is a willful and deliberate attempt to mislead this Court. At the close of the discover issues before the Court, this court should issue appropriate sanctions against the Plaintiffs.

WHEREFORE Defendants respectfully move that this Court order the "verifications" that Plaintiffs filed as part of Dkt. 71 be stricken from the record, and that Plaintiffs be ordered to properly and immediately verify their interrogatory responses and any subsequent interrogatory responses.

Respectfully submitted,

THURBERT BAKER 033887
Attorney General

DENNIS DUNN 234098
Deputy Attorney General

/s/Stefan Ritter
STEFAN RITTER 606950
Senior Assistant Attorney General

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SIGNATURE CERTIFICATION

I certify that the originally executed document contains the signatures of all filers indicated herein and therefore represents consent for filing of this document.

/s/Stefan Ritter
STEFAN RITTER 606950
Senior Assistant Attorney General

CERTIFICATE OF COMPLIANCE

I certify that the foregoing document complies with the font and point size limitations of LR. 5.1B, ND Ga., and is prepared in Times New Roman 14 point type.

/s/Stefan Ritter
STEFAN RITTER 606950
Senior Assistant Attorney General

CERTIFICATE OF SERVICE

I do hereby certify that I have this day served the within and foregoing
MOTION TO STRIKE IMPROPER VERIFICATIONS, WITH
SUPPORTING AUTHORITY with the Clerk of Court using the CM/ECF system,
which will send notification of filing to the following CM/ECF participants:

Bradley Heard, Esq.
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This 9th day of July, 2007.

/s/Stefan Ritter
STEFAN RITTER
Georgia Bar No. 606950
Attorney for Defendants