

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

**LAWRENCE M. SMITH, and UNITED  
STATES OF AMERICA, *ex rel*  
Plaintiffs,**

**v.**

**DEION L. SANDERS, *Individually*,  
ET AL.,  
Defendants.**

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**Civil Action No. 3:12-CV-4377-M**

**Referred to U.S. Magistrate Judge**

**ORDER TO SHOW CAUSE**

Pursuant to the standing order of reference dated June 8, 2015 (doc. 126) this case was referred for full case management, including the determination of non-dispositive motions and issuance of findings of fact and recommendations on dispositive motions.

An oral argument concerning *Plaintiffs' Second Motion to Set Hearing on Motion to Compel Discovery from Defendant Deion L. Sanders, and Request for Attorney Fees*, filed July 20, 2017 (doc. 317), was conducted on August 11, 2017. Based on the prior failure to comply with two discovery orders, Defendant Deion L. Sanders was ordered to personally attend the oral argument. (*See* doc. 318.) The order setting the oral argument specifically provided that his failure to attend the oral argument would result in the imposition of sanctions. *Id.* Mr. Sanders failed to attend the argument as ordered. His attorneys verified on the record that they provided the order to appear to Mr. Sanders, and that he has not responded to their efforts to obtain the discovery. They have now been permitted to withdraw from their representation of him. (*See* doc. 348.)

Rule 37(b)(2)(A) provides that if a party fails to obey an order to provide discovery, the court may strike pleadings in whole or in part or render a default judgment against the disobedient party. Fed. R. Civ. P. 37(b)(2)(A)(iii), (vi). While Rule 37 allows for striking pleadings and rendering a default judgment as a discovery sanction, “[i]itigation-ending sanctions are, by their very nature, the

last resort.” *Fuqua v. Horizon/CMS Healthcare Corp.*, 199 F.R.D. 200, 204 (N.D. Tex. 2000) (citing *FDIC v. Conner*, 20 F.3d 1376, 1380 (5th Cir. 1994)). “Nevertheless, in certain circumstances, they are justified ‘not merely to penalize those whose conduct may be deemed to warrant such a sanction, but to deter those who might be tempted to such conduct in the absence of such a deterrent.’” *Id.* (citing *National Hockey League v. Metropolitan Hockey Club*, 427 U.S. 639, 643 (1976)). The Fifth Circuit has articulated several factors that must be present before litigation-ending sanctions are justified, including that (1) “the refusal to comply results from willfulness or bad faith and is accompanied by a clear record of delay or contumacious conduct”; (2) the violation is “attributable to the client instead of the attorney”; (3) the violation “substantially prejudice[s] the opposing party”; and (4) a lesser sanction would not “substantially achieve the desired deterrent effect.” *FDIC*, 20 F.3d at 1380-81.

Mr. Sanders is hereby **ORDERED** to Show Cause at an evidentiary hearing for why his pleadings should not be stricken, and default entered, as a discovery sanction under Rule 37(b)(2) for his failure to comply with the discovery orders dated May 8, 2017 (doc. 266) and July 7, 2017 (doc. 303), and with the order to appear at a discovery hearing dated July 21, 2017 (doc. 318). **An evidentiary hearing is set for Friday, September 1, 2017, at 10:00 A.M. before United States Magistrate Judge Irma Carrillo Ramirez, in Courtroom 1566, 1100 Commerce Street, Dallas, Texas. Failure to appear at the hearing will result in sanctions.**

**SO ORDERED** on this 11th day of August, 2017.

  
IRMA CARRILLO RAMIREZ  
UNITED STATES MAGISTRATE JUDGE