



followed up on discovery for months at a time until it was too late, and now Defendants complain that Plaintiffs are “hiding behind the discovery deadline,” when the discovery deadline was nowhere even close to expiring at the time they received the information they now complain that Sinn has not responded to due to being untimely under the rules. Defendants chose not to proceed with that discovery during the multiple discovery periods and three continued discovery periods. The discovery period is over and Defendants’ motion should be denied.

## II. BACKGROUND

The original discovery deadline in this case was August 21, 2015 when the case was set for trial September 21, 2015. The Court continued the case to April 18, 2016 with a March 18, 2016 discovery deadline. Defendants then moved for another continuance because they had another case set for the same time. Plaintiffs consented to the continuance but not to reopening deadlines. The Court then continued the case to October 2016 and expressly denied re-setting deadlines in the Order. (Exh. A). Nonetheless Plaintiffs agreed to extend the discovery period to end May 27, 2016 and Defendants filed a Rule 11 agreement on March 8, 2016. (Exh. B). Defendants have not acted to meet this extended discovery period.<sup>1</sup>

While the Court originally limited discovery in this case, the Court lifted all discovery restrictions by order dated July 24, 2015 (Exh. C). The documents and responses related to Defendants’ untimely third set of interrogatories were produced between December 31, 2014 and September 4, 2015, and Defendants simply did not bother to ask any further questions on them until nine (9) days before the discovery deadline *which was set for March 27, 2016 by agreement.*

---

<sup>1</sup> It should also be noted that as part of the Court’s granting of Defendant S. James Marshal’s motion to continue Eric Torres’ summary judgment hearing, the Court gave Defendants a limited 90 day continuance to do discovery before the motion could be re-set.

### III. ARGUMENTS AND AUTHORITIES

It is important to note that Defendants do not dispute the fact that their Third Set of Interrogatories were untimely. Instead, they simply accuse Plaintiff Sinn of “hiding behind the discovery deadline.” It is clear that the Third Set of Interrogatories and Third Set of Requests for Production were served on May 18, 2016. (*Def’s.’ Mot. Compel Discov. Resp. from Sinn Exh. J; Exh. C*). It is also undisputed that the third extended discovery deadline was May 27, 2016 *by agreement between the parties*, which Defendants themselves filed in this case. (*Exh. A*). Clearly then, the discovery requests were served with only nine (9) days left in the discovery period. Texas Rule of Civil Procedure 197 is clear that “[a] party may serve on another party –no later than 30 days before the end of the discovery period—written interrogatories. . . . The Defendants served the requests with less than 30 days before the discovery period would end, and as such, the Interrogatories were untimely.

Defendants’ main complaint appears to be that there may be a few telephone numbers that they don’t know the owners of. However, it is clear that Sinn responded to the questions with what information he had to the questions asked. Defendants’ true complaint rests with the questions they asked, but that would not justify their position. As will be shown, not once did Defendants ask in formal discovery (other than their untimely 3<sup>rd</sup> Interrogatories) for Plaintiff to identify the phone number of Dave Acevedo or Sean Kelly.

Defendants’ initial Interrogatory No. 2 simply asks that Sinn “Identify all persons to whom you sent the photograph attached as Exhibit A to Defendants’ Original Counterclaim. (*Def’s.’ Exh. G*). On September 22, 2104, and then again on December 31, 2014, after discovery restrictions were lifted by the Court in the case and certain objections were removed, Sinn complied, stating the names of every person to whom he sent the photograph, including his attorney. (*Def’s.’ Exh. G*). Nothing in

this Interrogatory asks him to identify the phone numbers of Sean Kelly or Dave Acevedo because neither of them are in the photograph.

Defendants' initial Interrogatory No. 3 then asks Sinn to "Identify the method by which you sent the photograph attached as Exhibit A to Defendants' Original Counterclaim to each person identified in the preceding Interrogatory, including but not limited to the phone number, email address, instant message handle, social media handle, or mailing address of each recipient." (*Defs. ' Exh. G*). Again, on December 31, 2104, Sinn complied with exactly what was requested, listing out the time, phone number, and method that he sent the photograph to each person identified in Interrogatory No. 2. (*Defs. ' Exh. G*). Nothing in the Interrogatory requests that Sinn match up names and numbers.

After production by Sinn of text messages between the dates of December 15, 2013 to January 15, 2013, on November 24, 2014, pursuant to this Court's order, Defendants then served their Second Set of Interrogatories to Sinn on December 16, 2014. (*Exh. E*). In that Second Set, Defendants actually did ask Sinn to "Identify by name and phone number and/or email address the sender and the recipient(s)." (*Defs. ' Exh. H*). However, they requested this information relative to the text messages produced in documents Bates numbered SINN 000224 (*Defs. ' Exh. H No. 1*) and Bates numbered SINN 000225-229 (*Defs. ' Exh. H No. 2*). Again Sinn complied and identified the names with the numbers of the individuals appearing on SINN 000224-229. (*Defs. ' Ex. H*). Dave Acevedo and Sean Kelly, the two individuals who were identified as having been sent the picture that Defendants complain they don't know the number for, were not participants in the text messages in SINN 000224-000229. As such, they were not identified in Sinn's responses to Defendants' Second Set of Interrogatories.

Later, counsel for Plaintiff's realized that the number of numbers in Interrogatory No. 3 did

not match the number of names identified in original Interrogatory No. 2, and so upon discovering that discrepancy, Sinn amended his response to Interrogatory No. 3 on May 27, 2016 to add an additional line to his response. (*Defs. ' Exh. K*). Until that time, Plaintiff and Plaintiff's counsel believed that the response to Interrogatory No. 3 was complete, and only came across the erroneous omission when reviewing discovery responses to determine if any last supplementation would be needed pursuant to the discovery deadline. Regardless, every single person to whom the photograph was sent had been identified in Interrogatory No. 2 since at least December 31, 2014. Again, nothing in this Interrogatory No. 3 asks that Sinn match up the names and phone numbers, and for nearly two years Defendants never requested that of Sinn until May 18, 2016 when they served their Third Set of Interrogatories, a mere **9 days before the discovery deadline that they agreed to** of May 27, 2016. (*Exh. F; Exh. B*). Instead, realizing that they had never actually asked in discovery for Sinn to match the names to the numbers, counsel for Defendants sent an email to counsel for Plaintiffs asking for that information informally. (*Defs. ' Exh. I*). Given that providing such information outside of the formal discovery process would be improper for Plaintiff's counsel, Plaintiff's counsel did not do so.

Furthermore, it seems very strange that Defendants would not know the cellular phone number of Dave Acevedo ***seeing as Acevedo was an employee of Atlas until October 28, 2013***, a mere two months before the now infamous Christmas Party picture, and two months after the settlement agreement between the parties at issue in this case. (*Exh. G- submitted in camera*). Defendants have not complained about Plaintiff's not identifying Eric Torres' mobile phone number, very likely because they already have it seeing as Torres was also an employee and former shareholder. Given that all of the names disclosed in original Interrogatory No. 2 were matched up with phone numbers in Second Set Interrogatory No. 2 except for Craig Taylor, Eric Torres, Dave Acevedo, and Sean Kelly, and given that Taylor knows his own number, and Torres and Acevedo

were both employees for whom they would have their cellular phone numbers, it does not take advanced logic to determine which number identified in original Interrogatory No. 3 is Sean Kelly's. Furthermore, all of the information from which to make this conclusion was available to Defendants since January 9, 2015, *a year and five months* before Defendants' untimely third interrogatories, when Sinn served responses to the Second Set of Interrogatories.

Further still, Third Set Interrogatory No. 2 requests that Sinn identify the names and numbers of those in the communications in documents labelled SINN 000244-245. This is the first ever request by Defendants to identify the participants of these communications, and the documents SINN000244-245 were produced on September 4, 2015, *eight months before* Defendants' untimely third interrogatories. Thus, Defendants have had these documents for almost an entire year and never thought to request this information until 9 days before the discovery deadline. The rules are the rules, and it is not "hiding behind" them to decline to respond to untimely discovery requests. Again, it is quite ironic that Defendants accuse Plaintiffs of being the ones causing delay in this case.

WHEREFORE, Adam Sinn respectfully requests that the Court deny Defendants' Motion to Compel Discovery Responses from Plaintiff Adam Sinn.

Respectfully submitted,  
**RAPP & KROCK, PC**



---

Kenneth M. Krock  
State Bar No. 00796908  
Megan N. Brown  
State Bar No. 24078269  
Matthew M. Buschi  
State Bar No. 24064982  
3050 Post Oak Boulevard, Suite 1425  
Houston, Texas 77056  
(713) 759-9977 telephone  
(713) 759-9967 facsimile  
kkrock@rk-lawfirm.com  
mbuschi@rk-lawfirm.com  
mbrown@rk-lawfirm.com  
**ATTORNEYS FOR PLAINTIFFS**

**CERTIFICATE OF SERVICE**

I hereby certify that, on this 20 day of July, 2016, a true and correct copy of this document was served on counsel of record in accordance with the Texas Rules of Civil Procedure.

Geoffrey A. Berg  
gberg@bfjblaw.com  
Kathryn E. Nelson  
knelson@bfjblaw.com  
Berg Feldman Johnson Bell, LLP  
4203 Montrose Boulevard, Suite 150  
Houston, Texas 77006

*via Eserve*



---

Matthew M. Buschi