

**UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA**

United States v. Peters

Peters · No. 2:24-cv-00287-WBS-CKD · Decided May 22, 2025

OPINION

United States v. Peters

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10

11 UNITED STATES OF AMERICA, No. 2:24-cv-00287-WBS-CKD

12 Plaintiff,

13 v. ORDER ON PLAINTIFF'S MOTION TO

COMPEL AND FOR SANCTIONS

14 MATTHEW H. PETERS, et al., 15 Defendant. (ECF Nos. 80, 81, 82) 16 17 18 Plaintiff United
States of America moves to compel defendants Matthew Peters and his 19 affiliates¹ to respond to
plaintiff's requests for production.² (ECF Nos. 80, 81, 82.) Pursuant to 20 Local Rule 251(d),
plaintiff's motion was excepted from the requirement for Joint Statements re 21 Discovery
Disagreement and was set for hearing on May 19, 2025. See E.D. Cal. L.R. 251(d); 22 ECF Nos.
80, 81, 82. Defendants filed an opposition on May 14, 2025. (ECF No. 83.) Plaintiff 23 24 1 These
entities are Bayview Specialty Services LLC, Coastline Specialty Services LLC, Strand View
Enterprises LLC, Innovative Specialty Services LLC, Paragon Partners LLC, Cardea 25
Consulting LLC, Praxis Marketing Services LLC, Portland Professional Pharmacy LLC, Sunrise
Pharmacy LLC, Professional 205 Pharmacy LLC, Prestige Professional Pharmacy, JMSP LLC, 26
Optimum Care Pharmacy Inc., Glendale Pharmacy LLC, and Lake Forest Pharmacy LLC. 27 2
This matter proceeds before the undersigned pursuant to 28 U.S.C. § 636, Fed. R. Civ. P. 72, 28
and Local Rule 302(c)(1). 1 filed a reply on May 19, 2025. (ECF No. 85.) On May 21, 2025, the
Court held a hearing via 2 Zoom. Attorneys Steven Tennyson and David Thiess appeared for
plaintiff. Attorney Connor 3 Nash appeared for defendants Matthew Peters, and the following
entities: JMSP, LLC; Paragon 4 Partners, LLC; Innovative Specialty Services, LLC; Cardea
Consulting, LLC; Coastline Specialty 5 Services, LLC; Portland Professional Pharmacy, LLC;
Sunrise Pharmacy, LLC; Professional 205 6 Pharmacy, LLC; Lake Forest Pharmacy, LLC;
Bayview Specialty Services, LLC; Praxis 7 Marketing Services, LLC; Prestige Professional
Pharmacy, LLC; Optimum Core Pharmacy, Inc.; 8 Glendale Pharmacy, LLC.³ For the reasons that

follow and as discussed at the hearing, the Court 9 GRANTS IN PART plaintiff's motion to compel.

10 I. BACKGROUND

11 Plaintiff initiated this action by filing a complaint on January 22, 2024. (ECF No. 1.) On
12 July 30, 2024, plaintiff filed its second amended complaint against Peters, multiple pharmacies,
13 management service organizations, and corporate entities. (ECF No. 50.) Plaintiff brings the 14
following claims: presentation of false claims under the False Claims Act against defendant 15
Peters and the defendant pharmacies; causing to be presented false claims under the False Claims
16 Act against all defendants; conspiracy under the False Claims Act against defendant Peters and
17 the defendant pharmacies; unjust enrichment against defendant Peters; and payment by mistake
18 against defendant Peters and the defendant pharmacies. (Id.) 19 A pretrial scheduling order
issued on September 18, 2024. (ECF No. 57.) Initial 20 disclosures were due by November 1,
2024. Expert disclosures and reports in accordance with 21 Federal Rule of Civil Procedure 26(a)
(2) are due by September 5, 2025. Disclosure of rebuttal 22 experts and reports is due by October
3, 2025. All discovery is to be completed by October 31, 23 2025. 24 On December 10 and 11,
2025, plaintiff served its first set of requests for production 25 3 The list of entity defendants is
taken from the docket and defendant James Bell's notice of appearance. (ECF No. 9.) However,
Attorney Nash stated his appearance for Professional Rx 26 Pharmacy, LLC and Strand View
Corporation on the record. Based on the Docket and the Notice 27 of Appearance filed on
4/25/2024 it does not appear that any attorney has previously entered an appearance on behalf of
these entities. Pursuant to Local Rule 182(a)(2), Attorney Nash must sign 28 and file a
confirmation of appearance within seven (7) days. 1 ("RFP") on defendant Peters. (ECF No. 81-1
¶ 2.) On November 19, 2024, Plaintiff served its 2 first set of RFPs on defendant Bayview
Specialty Services, LLC. (Id. ¶ 3.) On February 5, 2025, 3 the parties met and conferred regarding
discovery and agreed that defendants' search for 4 documents responsive to plaintiff's first set of
RFPs would fit four parameters: 5 First, the responses would be "based on a diligent search of
materials 6 within defendants' custody and control, using a defensible method to identify
responsive information." (ECF No. 66-2 at 1). Second, 7 Defendants agreed that custody and
control "includes searching information held by the entities' employees, financial institutions, 8
former/current accountants, and former/current attorneys." (Id.). Third, Defendants agreed the
"responses will identify the custodians 9 and organizations identified as having responsive
documents, after an 10 appropriate review you will conduct." (Id.). Fourth, Defendants agreed to
provide those responses by February 21, 2025. (Id.). 11 (ECF No. 82-1 at 2.) 12 On February 18,
2025, plaintiff filed its first motion to compel discovery responses from 13 defendant Peters
because Peters did not respond to any of the discovery requests. (See ECF No. 14 66.) The Court
granted this motion in part, ordering that Plaintiff's first set of Requests for 15 Admission be
deemed admitted and that defendant Peters serve his complete and full responses to 16 all RFPs
without objection and produce responsive documents. (ECF No. 71 at 6-8.) Defendant 17 Peters

was warned that if he failed to comply with court orders or participate in discovery, he 18 could face serious sanctions. (Id. at 6.) On April 3, 2025, defendant Peters served responses to the 19 RFPs. (ECF 82-1 at 3; see ECF No. 71.) On April 25, 2025, the parties met and conferred 20 regarding perceived deficiencies in defendant's responses. (ECF No. 82-1 at 3-4.) Defense 21 counsel made clear that they were relying on defendant Peters to conduct the searches for 22 information. (Id. at 4.) Plaintiff insisted that the defense perform a reasonable search consistent 23 with the February agreement. (Id.) Defense counsel requested to continue the discussion until 24 25 4 On May 7, 2025, plaintiff filed its statement and memorandum on discovery disagreement 26 (ECF No. 81), but informed the Court on May 8, 2025, that this filing did not include a signature 27 block for counsel for the United States at the conclusion of the document. (ECF No. 82 at 1.) Plaintiff filed a notice of erratum and the amended statement that included the signature block. 28 (ECF No. 82-1.) The Court will cite to the document filed on May 8, 2025, at ECF No. 82.

1 April 28, 2025. (Id.) On April 28, 2025, defense counsel did not appear at the agreed upon time.⁵

2 (Id.) 3 Plaintiff filed a motion to compel discovery responses and for sanctions from defendant 4 Peters and the affiliate defendants under Local Rule 251(a). (ECF Nos. 80, 81, 82.) Plaintiff 5 attempted to work with defense counsel to file joint statement as required under this Court's 6 Local Rules. (ECF No. 81-3 at ¶ 11.) Defense counsel provided general comments on the joint 7 statement, but did not provide edits or identify specific statements counsel believed inaccurate, or 8 provide his clients' portion of the joint statement. (Id.) Plaintiff filed its statement in support of its 9 motion on May 7, 2025, pursuant to Local Rule 251(d). Defendants filed an opposition on May 10 14, 2025. (ECF No. 83.) Plaintiff filed a reply on May 19, 2025. (ECF No. 85.)

11 II. LEGAL STANDARDS

12 "Parties may obtain discovery regarding any nonprivileged matter that is relevant to any 13 party's claim or defense and proportional to the needs of the case[.]" Fed. R. Civ. P. 26(b)(1). 14 "[B]road discretion is vested in the trial court to permit or deny discovery." *Hallett v. Morgan*, 15 296 F.3d 732, 751 (9th Cir. 2002). 16 A party may serve requests to produce documents in the responding party's possession, 17 custody, or control, including designated documents, electronically stored information, or other 18 writings. Fed. R. Civ. P. 34(a)(1). A requesting party is entitled to production of documents 19 within a responding party's possession, custody, or control, regardless of whether the requesting 20 party possesses the same documents. Fed. R. Civ. P. 34(a). The responding party must respond in 21 writing within thirty (30) days, unless otherwise agreed upon or ordered, after being served. Fed. 22 R. Civ. P. 34(b)(2). If a responding party objects, the objection "must state whether any 23 responsive materials are being withheld on the basis of that objection[, and] an objection to part 24 of a request must specify the part and permit inspection of the rest." Fed. R. Civ. P. 34(b)(2)(C). 25 A party may move to compel discovery if the movant has in good faith conferred with the 26 party opposing discovery to obtain the requested discovery without the court's intervention. See 27 5 At the May 21 hearing Attorney

Nash explained he had been in a settlement conference for a 28 different matter. 1 Fed. R. Civ. P. 37(a)(1). The moving party bears the burden to “inform the Court which discovery 2 requests are the subject of the motion to compel, and, for each disputed response, why the 3 information sought is relevant and why the responding party’s objections are not meritorious.” 4 *Adams v. Yates*, 2013 WL 5924983, at *1 (E.D. Cal. Nov. 1, 2013). Local Rule 251 governs 5 motions to compel and requires the parties to confer and attempt to resolve their discovery 6 differences. If counsel for any party has been unable after a good faith effort to secure the 7 cooperation of counsel for the opposing party in arrainging the required conference, or in 8 preparing and executing the required joint statement, counsel may file and serve an affidavit so 9 stating and setting forth the circumstances for the Court. E.D. Cal. L.R. 251(d). “Refusal of any 10 counsel to participate in a discovery conference, or refusal without good cause to execute the 11 required joint statement, shall be grounds, in the discretion of the Court, for entry of an order 12 adverse to the party represented by counsel so refusing or adverse to counsel.” *Id.*

13 III. DISCUSSION

14 “The discovery process in theory should be cooperative and largely unsupervised by the 15 district court. But when required disclosures aren’t made or cooperation breaks down, Federal 16 Rule of Civil Procedure 37 allows a party to move for an order compelling disclosures or 17 discovery.” *Sali v. Corona Reg’l Med. Ctr.*, 884 F.3d 1218, 1219 (9th Cir. 2018). Here, defendant 18 Peters has completely failed to uphold his discovery obligations and participate in discovery. 19 A. Joint Statement re Discovery Disagreement 20 Local Rule 251 requires that prior to filing a motion related to discovery, the parties meet 21 and confer to discuss the dispute and requires the parties to file a joint statement re discovery 22 dispute. E.D. Cal. L.R. 251. On April 16, 2025, plaintiff filed its notice of this motion and 23 indicated that it would be submitting a joint statement before the hearing. (ECF No. 80.) On May 24 7, 2025, plaintiff filed a statement and memorandum on discovery disagreement (ECF Nos. 81, 25 82) informing the Court that it was unable to secure the cooperation of defense counsel in 26 preparing and executing a joint statement. (ECF No. 82-1 at 1-2.) On May 5, 2025, plaintiff sent 27 defense counsel a draft joint statement. (ECF No. 81-1 ¶ 11.) Defense counsel provided general 28 comments on the joint statement via emails on May 5, 2025, and May 7, 2025, but did not 1 provide edits or provide his clients’ portion of the joint statement. (*Id.*; see ECF No. 81-7.) 2 Under Local Rule 251(d), refusal without good cause to execute the required joint 3 statement is grounds, in the Court’s discretion, for entry of an order adverse to the party 4 represented by counsel refusing to participate or adverse to counsel. When asked about his lack of 5 participation in drafting the joint statement at the May 21, 2025, hearing, defense counsel 6 explained that defendants’ position was drastically different from plaintiff’s position on the issues 7 and that he did not think a joint statement was appropriate. Defense counsel was reminded that all 8 parties must comply with the Court’s Local Rules and that he must do so in the future. 9 B. Requests for Production 10 Plaintiff brings this motion in response to alleged deficient responses to the First Set of 11 RFPs issued to defendant

Peters and the entity defendants. (ECF No. 82-1 at 4-5.) The Court 12 previously ordered defendant Peters to serve his complete and full responses to all RFPs without 13 objection and produce responsive documents. (ECF No. 71 at 7.) Plaintiff alleges that defendant 14 Peters has not complied with the Court's order by "conducting a search so superficial as to be 15 meaningless." (ECF No. 82-1 at 5.) Plaintiff also alleges that the "search and production for the 16 affiliates has been similarly scant and self-selected." (Id.) 17 1. Limits of Production 18 First, plaintiff argues that defendants' search was unreasonably selective and there was no 19 basis to limit discovery production to Peters as the sole custodian. (ECF No. 82-1 at 7.) 20 According to plaintiff, defendants have stated that "the only person that undertook business 21 dealings (save the pharmacy employees) related to the entities was Mr. Peters." (Id.) However, 22 plaintiff also argues that this does not mean that registered officers of the other entities are 23 irrelevant to discovery in this case. Plaintiff states that the documents defendant Peters has 24 produced indicate that several of the entities had paid employees. Plaintiff also argues that it is 25 indefensible to limit the search to Peters' files when he asserts those files have been lost or 26 destroyed and when Peters previously pleaded guilty to healthcare fraud, and unjustifiable for 27 defense counsel to rely on Peters to conduct his own searches, especially when the searches 28 involve electronic searches. (Id. at 7-8.) In response, defendants state that an order against 1 defendant Peters individually cannot be used against the entity defendants. (ECF No. 83 at 3-4.) 2 Defendants also argue that Peters and the entity defendants have produced responsive documents 3 that are in their possession, custody, and control. (ECF No. 83 at 4-5.) 4 The Court is not persuaded by defendants' argument that the Court's March 20, 2025, 5 order was limited to defendant Peters in his individual capacity. Plaintiffs have alleged that Peters 6 "founded, controlled and/or operated" the entity defendants. (ECF No. 50 at 5.) Further, in the 7 May 21, 2025, hearing, defense counsel agreed that Peters operated the defendant entities. It is 8 reasonable to believe that defendant Peters would have possession, custody, and control over 9 documents related to the entity defendants. 10 Further, the Court previously ordered Peters to respond without objection to the RFPs and 11 serve his complete and full responses and produce responsive documents. Many of the RFPs 12 request information about the other defendants. For example, RFP 9 requests "Any financial 13 statements of a DEFENDANT, including but not limited to balance sheets, income statements, 14 statements of cash flows, statements of owners' equity, retained earnings reports, quarterly 15 reports, annual reports, journals, and ledgers prepared by or for that DEFENDANT." (ECF No. 16 81-2 at 7.) Defendant Peters was required to produce any documents he has related to the other 17 defendants in the case. Defendant Peters has not adequately shown that he conducted a diligent 18 search for these documents. Peters has not provided a declaration outlining his search efforts, but 19 merely states that the documents no longer exist, or the entities are no longer operating. Further, 20 relying on defendant Peters to search his own files is improper. *D.M. V. Cty. of Merced*, 2021 WL 21 3269245, at *6 (E.D. Cal. July 30, 2021). As plaintiff notes, defendant Peters is likely not familiar 22 with e-discovery and

defense counsel has an obligation to facilitate discovery. 23 In an April 7, 2025, letter to plaintiff's counsel, defense counsel states that Peters erased 24 emails before being indicted on criminal charges, did not preserve a DropBox account that 25 contained business dealings, but that Peters has attempted to recover the data. (ECF No. 81-5 at 26 1.) Further, defense counsel has stated that "there likely is no data sources for responsive 27 electronically stored information." (Id. at 2.) While a party cannot produce what it does not have, 28 *Howard v. Hedgpeth*, 2010 WL 5422580, at *3 (E.D. Cal. Dec. 21, 2010), the party must 1 demonstrate that it conducted a diligent search, which defendant Peters has not done here. To the 2 extent defendant Peters did not produce documents in response to the RFPs related to the entity 3 defendants because he thought it was not required, this was improper. 4 Also, in the April 7, 2025, letter, defense counsel admitted that defendant Peters has 5 approximately 20,000 pages of "investor documents from previous counsel" that he is scanning 6 into electronic form. (ECF No. 81-5 at 2.) At the May 21 hearing, defense counsel admitted that 7 Peters still has these documents in his garage and has not produced them, asserting that Peters 8 was in the process of copying them for production. The Court is unsatisfied with this explanation 9 for Peters' failure to comply with his obligations and produce the materials already ordered by 10 this Court. 11 2. Parties' Agreement 12 Second, plaintiff argues that defendants breached the parties' discovery agreement, which 13 was memorialized in an email from plaintiff to defendant dated February 6, 2025. (ECF No. 66- 14 1.) Plaintiff argues that defendants breached the agreement by agreeing to conduct a diligent 15 search of materials within their custody and control, but either not producing any information or 16 producing very few documents. (ECF No. 82-1 at 8-9.) Defendants also promised to search 17 information held by defendant Peters' entities' employees, financial institutions, accountants, and 18 attorneys, but later restricted the search to Peters. (Id.) Defendants argue that they have not 19 violated an agreement between the parties but rather engaged in meet and confer efforts. (ECF 20 No. 83 at 5-6.) Defendants argue they performed a search using the only custodian reasonably 21 known to possess relevant information—Peters. (Id. at 5.) Defendants also stated at the May 21, 22 2025 hearing that they did not agree to certain items listed in the February 6, 2025, email. 23 When parties agree to specific discovery protocols, courts enforce these commitments as 24 binding. See, e.g., *Greene v. Cal. Dep't of Corr. & Rehab.*, 2025 WL 790498, at *4 (E.D. 25 Cal. Mar. 12, 2025). The Court finds that plaintiff has demonstrated that defendants violated the 26 parties' discovery commitments. As stated above, defendants are ordered to fully comply with the 27 Court's March 20, 2025 order, and conduct the comprehensive search they previously agreed to 28 perform. (See ECF No. 66-2; ECF No. 81 at 9.) 1 3. Improper Withholding 2 Third, plaintiff avers that defendant Peters improperly withheld documents that have been 3 produced in other contexts but were not produced in this case. (ECF No. 82-1 at 10-13.) As an 4 example, plaintiff states that defendants failed to produce any executed physician investment 5 contracts in response to plaintiff's RFPs but referenced these contracts in prior correspondence. 6 (ECF No. 82 at 10.) Plaintiff also states defendant Peters produced certain documents in the 7 criminal case

against him but has not produced the same documents here. (Id. at 10-12 (citing an 8 email from November 1, 2019 and a text message conversation)). Further, plaintiff states that 9 Peters previously produced financial documents to criminal investigators that are responsive to 10 numerous RFPs in this litigation but has not produced the documents in this case. (Id. at 12.) 11 Plaintiff also alleges that Peters has not produced any of his own financial documents. Although 12 Peters has stated that many of the relevant documents were destroyed before he was indicted in 13 the criminal case on December 19, 2019, (See ECF No. 81-5), his assertion is not supported by 14 the fact that the November 1, 2019 email was produced in the criminal case in July 2020. (ECF 15 No. 82 at 11.)

16 C. Sanctions 17 As defendant Peters has already been warned, if a defendant fails to comply with court 18 orders, or participate in discovery, that defendant may face serious sanctions. See Connecticut 19 Gen. Life Ins. Co. v. New Images of Beverly Hills, 482 F.3d 1091, 1095-96 (9th Cir. 2007) 20 (affirming district court's imposition of a terminating sanction of judgment by default against 21 defendants for discovery violations). 22 If a party fails to obey a discovery order, the court "may issue further just orders," 23 including: 24 (i) directing that the matters embraced in the order or other designated 25 facts be taken as established for purposes of the action, as the prevailing party claims; 26 (ii) prohibiting the disobedient party from supporting or opposing 27 designated claims or defenses, or from introducing designated matters in evidence; 28 1 (iii) striking pleadings in whole or in part; 2 (iv) staying further proceedings until the order is obeyed; 3 (v) dismissing the action or proceeding in whole or in part; 4 (vi) rendering a default judgment against the disobedient party; or 5 (vii) treating as contempt of court the failure to obey any order except an 6 order to submit to a physical or mental examination. 7 Fed. R. Civ. P. 37(b) (2)(A); see Leon v. IDX Sys. Corp., 464 F.3d 951, 958 (9th Cir. 2006). The 8 choice of sanction is within the discretion of the court. Olivia v. Sullivan, 958 F.2d 272, 273 (9th 9 Cir. 1992) (citations omitted); see also E.D. Cal. L.R. 110 (noting the failure of a party to comply 10 with any local rule or order of the court may result in the imposition of "any and all sanctions 11 authorized by statute or Rule or within the inherent power of the Court"). 12 At this time, the Court orders defendants to produce documents in response to the First Set 13 of RFPs and fully comply with the Court's March 20, 2025, order. Defendant Peters is ordered to 14 submit a declaration signed under the penalty of perjury describing the steps he took to search for 15 responsive documents. To the extent Peters alleges no responsive documents exist, Peters is 16 required to state that in a declaration too. The Court also orders defendants to comply with the 17 parties' discovery agreement. 18 To more fully address Peters' apparent disregard of his discovery obligations and this 19 Court's orders, an in-person order to show cause hearing is scheduled for June 30, 2025, for Court 20 to consider whether defendant Peters should be held in civil contempt. 21 Plaintiff also requests that the Court designate the follow facts as established in this case 22 pursuant to Federal Rule of Civil Procedure 37(b)(2)(A)(i): 23

1. Peters created Coastline Specialty Services, LLC and Bayview Specialty Services,

24 LLC for no purpose other than to pay physician investors to increase the volume of 25 their prescriptions to the pharmacies operated or controlled by Peters, including 26 prescriptions billed to federal health care programs. 27

2. Absent investment return payments, the physician investors would not have sent 28] prescriptions to these pharmacies. 2 | (ECF No. 82-1 at 15.) Before considering this request, plaintiff is ordered to provide further 3 || briefing on this issue and explain how, precisely, these facts are tied to the failure to respond to 4 | the RFPs.

5 ORDER

6 As discussed above, the Court GRANTS IN PART plaintiff's motion to compel and for 7 || sanctions (ECF No. 80, 81, 82), and ORDERS: 8 1. Within fourteen (14) days, defendants shall fully comply with the parties' discovery 9 agreement memorialized at ECF No. 66-2; 10 2. Within fourteen (14) days, defendants shall produce any documents improperly 1] withheld; 12 3. Within fourteen (14) days, defendant Peters shall file a declaration outlining what he 13 has done to participate in discovery and explain the steps he has taken to search for 14 responsive documents; and 15 4. Defendants shall fully comply with the Court's March 20, 2025, order (ECF No. 71). 16 5. Within fourteen (14) days, plaintiff shall provide supplemental briefing on how the 17 two facts cited above are related to the failure to respond to the RFPs; defendants may 18 file an opposition within seven (7) days thereafter; plaintiff may file a reply within 19 seven (7) days thereafter. 20 6. An in-person hearing on the forthcoming Order to Show Cause is scheduled for June 21 30, 2025, at 10:00 am before the undersigned. Defendant Peters is ordered to appear. 22 Dated: May 22, 2025 / ae I / dip Ze

8 CAROLYNK. DELANEY

24 UNITED STATES MAGISTRATE JUDGE

25 26 27 38 5, pete.0287.24 1]