

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

KELVIN LEON JONES et al.,

Plaintiffs,

v.

CONSOLIDATED

CASE NO. 4:19cv300-RH/MJF

RON DeSANTIS et al.,

Defendants.

**ORDER COMPELLING DISCOVERY FROM
THE PLAINTIFFS JONES AND MENDEZ
AND AWARDING ATTORNEY'S FEES**

The defendant Secretary of State propounded interrogatories and production requests to the plaintiffs Kelvin Leon Jones and Luis Mendez on August 23, 2019. The plaintiffs did not respond. The Secretary's repeated attempts to obtain responses fell on deaf ears. Finally, on January 15, 2020, the Secretary moved to compel. The order of January 17 directed the plaintiffs to respond to the motion by January 21, 2020. The plaintiffs did not respond.

The interrogatories and production requests are proper. And by failing to respond, the plaintiffs waived any objections. The plaintiffs long ago should have

answered the interrogatories and produced any requested documents within their possession or control. This order compels them to do so.

Under Federal Rule of Civil Procedure 37(a)(5)(A), the party or attorney whose conduct necessitated a discovery motion “must” be ordered to pay the reasonable expenses incurred in making the motion, including attorney’s fees, unless the moving party filed the motion before attempting in good faith to obtain the discovery without court action, or the opposing party’s position was “substantially justified,” or “other circumstances make an award of expenses unjust.” Unless one of these conditions is met, an award of expenses is “mandatory.” *Devaney v. Cont’l Am. Ins. Co.*, 989 F.2d 1154, 1162 (11th Cir. 1993) (citing *Merritt v. Int’l Bhd. of Boilermakers*, 649 F.2d 1013, 1019 (5th Cir. Unit A June 1981)). A position is “substantially justified” if it results from a “genuine dispute, or if reasonable people could differ as to the appropriateness of the contested action.” *Pierce v. Underwood*, 487 U.S. 552, 565 (1988) (citations, quotation marks, and brackets omitted); *Devaney*, 989 F.2d at 1163.

Under the circumstances of this case, an award is “mandatory,” and I would make an award as a matter of discretion even if an award was not mandatory. To avoid unnecessary expense in determining the amount of the fee award, this order sets an amount, subject to redetermination.

Finally, a note to the plaintiffs' attorney. Compliance with the governing rules and court orders is mandatory, not optional. If this order is ignored, it will not end well. The time to pay attention is now.

For these reasons,

IT IS ORDERED:

1. The Secretary's motion to compel, ECF No. 252, is granted.
2. By February 11, 2020, Mr. Jones and Mr. Mendez must each answer the interrogatories and produce all requested documents within his possession or control to the Secretary's attorneys.
3. Mr. Jones, Mr. Mendez, and their attorney Michael A. Steinberg, jointly and severally, must pay the Secretary \$500 as attorney's fees. If a party asserts that this is not the amount of fees reasonably incurred by the Secretary on the motion to compel, the party may move within 14 days to redetermine the amount, and the matter will be reconsidered de novo. Attorney's fees may be assessed against the party who loses any such motion to redetermine. The fees assessed under this order or based on it must be paid by February 18, 2020 (if no motion to redetermine is filed) or within 14 days after entry of an order on any motion to redetermine.

SO ORDERED on January 28, 2020.

s/Robert L. Hinkle
United States District Judge