

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2017-011347

01/31/2018

HONORABLE DANIEL J. KILEY

CLERK OF THE COURT
C. Mai
Deputy

MARK D GOLDMAN

DENNIS I WILENCHIK

v.

MARK KRISTOPHER SAHL, et al.

JOHN R CUNNINGHAM

JEFFERSON T COLLINS
MICHAEL A ROSSI

MINUTE ENTRY

The Court has reviewed the Motion to Compel Deposition Testimony of Scott Carpenter and Jonathan Ebertshauser (“Motion to Compel”) filed by Plaintiff Mark D. Goldman and the Response to Motion to Compel (“Response”) filed by Defendants Mark Kristopher Sahl, Kayla L. Sahl, and Carpenter, Hazlewood, Delgado & Bolen, LLP. No reply has been filed.

Rule 37(a)(1) of the Arizona Rules of Civil Procedure provides in part that a party moving to compel discovery “must attach a good faith consultation certificate complying with Rule 7.1(h).” Rule 7.1(h), in turn, reads as follows:

(h) Good Faith Consultation Certificate. When these rules require that a “good faith consultation certificate” accompany a motion or that the parties otherwise consult in good faith, the movant must attach to the motion a separate statement certifying and demonstrating that the movant has tried in good faith to resolve the issue by conferring with--or attempting to confer with--the party or person against whom the motion is

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2017-011347

01/31/2018

directed. *The consultation required by this rule must be in person or by telephone, and not merely by letter or email.*

Ariz.R.Civ.P. 7.1(h) (emphasis added).

As the Defendants correctly note, the Good Faith Consultation Certificate attached to the Plaintiffs' Motion to Compel does not indicate that any consultation occurred among counsel "in person or by telephone," and instead refers only to the receipt of correspondence. *See* Response at p. 8. The Good Faith Consultation Certificate attached to the Motion to Compel thus does not satisfy Rule 7.1(h). On that basis, the Court will deny the Motion to Compel.

The Court will, however, schedule a telephonic hearing to address the parties' discovery dispute, but only after the attorneys have engaged in direct communication in person or by phone in a good faith effort to resolve the dispute. Accordingly,

IT IS ORDERED denying the Motion to Compel Deposition Testimony of Scott Carpenter and Jonathan Ebertshauser without prejudice.

IT IS FURTHER ORDERED that if, after engaging in direct communication in person or by phone in a good faith effort to resolve their discovery dispute, counsel are unable to resolve the dispute, they shall contact this Division at (602) 372-3839 to set up a telephonic hearing to address the dispute.