

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

STATE OF NEW MEXICO, *ex rel.*,)
MARCO WHITE, MARK MITCHELL,)
and LESLIE LAKIND,)
Plaintiffs,) Case No. 22-cv-284-WJ-JFR
v.)
COUY GRIFFIN,)
Defendant.)

**GRIFFIN’S REPLY TO PLAINTIFFS’ RESPONSE REGARDING NOTICE OF
COMPLETION OF BRIEFING ON MOTION TO REMAND**

Plaintiffs and Defendant Griffin had an agreement whereby Griffin would not oppose Plaintiffs’ request for additional pages for a reply brief in support of their Motion to Remand and, in return, Plaintiffs would not oppose Griffin using the same number of pages in a reply brief in support of his Motion to Transfer Venue to address any remand-related argument made in Plaintiffs’ oversized reply brief. After securing Griffin’s agreement, Plaintiffs filed a notice representing that briefing was closed on their Motion to Remand. Griffin objected and indicated he would use three pages of his Motion to Transfer reply brief to address Plaintiffs’ new remand arguments, consistent with the parties’ agreement. ECF No. 26.

Plaintiffs have filed a response to Griffin’s objection. ECF No. 27. Plaintiffs say they had no agreement with Griffin regarding “the contents of Defendant’s transfer reply.” *Id.* at 2. They attach an email from Griffin’s counsel, which, Plaintiffs say, Griffin “omitted.” *Id.*, Exh. 1. It is not clear why Plaintiffs apparently believe that this exchange redounds to their benefit. It shows that Griffin’s counsel made this counteroffer to Plaintiffs’ request for an oversized brief:

Griffin would not oppose Plaintiffs' request for an oversized brief, "provided that Plaintiffs do not object to Griffin using an equal number of pages in his reply in support of the motion to transfer *to address any remand-related issues*." *Id.* (emphasis added).

Plaintiffs' counsel then replied: "[W]e agree not to oppose a three-page extension of the page limit for Defendant's transfer reply in exchange for your agreement not to oppose our motion for a three-page extension for Plaintiffs' remand reply." ECF No. 27, Exh. 1.

Plaintiffs now contend that by not explicitly citing part of the language from Griffin's counteroffer—an equal number of pages "to address any *remand-related issues*"—the parties had a meeting of the minds that the agreement they reached only concerned the number of pages in Griffin's reply in support of his Motion to Transfer—and not the content of the pages or their purpose. That is disingenuous. Had Plaintiffs earnestly wished to change the terms of Griffin's counteroffer with his consent, they would have indicated that they did not agree that Griffin may use three additional pages in his Motion to Transfer "to address any remand-related issues." Instead, they omitted parts of the language of Griffin's counteroffer such that he would assume the parties had reached agreement on that counteroffer but so that Plaintiffs could later claim there was only agreement about a number of extra pages. Plaintiffs' position lacks sense: the emails attached to their response make clear that the only reason Griffin asked for an equal number of extra pages for his reply brief was so that he could respond to "any remand-related issues" raised in Plaintiffs' reply brief.

Three pages is not especially significant. But Plaintiffs' gamesmanship is.

Dated: May 11, 2022

Respectfully submitted,

/s/ Nicholas D. Smith
Nicholas D. Smith (Va. Bar No. 79745)
7 East 20th Street
New York, NY 10003

Phone: (917) 902-3869

Certificate of Service

I hereby certify that on the 11th day of May, 2022, I filed the foregoing filing with the Clerk of Court using the CM/ECF system, and counsel of record were served by electronic means.

/s/ Nicholas D. Smith

Nicholas D. Smith (Va. Bar No. 79745)

7 East 20th Street

New York, NY 10003

Phone: (917) 902-3869