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AF Holdings, L.L.C.

6
7 **IN THE UNITED STATES DISTRICT COURT**
8 **FOR THE DISTRICT OF ARIZONA**

9
10 AF HOLDINGS, L.L.C., a St. Kitts and Nevis
limited liability company,

11 Plaintiff,
12 v.

13 DAVID HARRIS,
14 Defendant.

CASE NO.: 2:12-CV-02144-PHX-GMS

**PLAINTIFF’S MOTION TO COMPEL
PRODUCTION OF INITIAL
DISCLOSURES AND FOR
SANCTIONS**

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16 Plaintiff AF Holdings, L.L.C. (“Plaintiff”), through its undersigned counsel, pursuant to Rule
17 F.R.C.P. Rule 37(a)(3)(A) hereby moves this Court for an Order compelling Defendant David Harris
18 to produce his Rule 26(a) Initial Disclosures and for Sanctions, and as grounds therefore, states as
19 follows:

20 **CERTIFICATION**

21 The undersigned counsel hereby certifies that he has made a good faith effort to confer or
22 attempt to confer with Defendant in an attempt to obtain Defendant’s Rule 26(a) Initial Disclosures
23 without Court action.
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1 In the Order issued by the Court in the wake of Defendant's Objection (ECF No. 37), the
2 Court asserted that, if Defendant follows through on his plan to "'not participate in any further
3 litigation' in this matter...he risks having sanctions entered against him up to and including a default
4 judgment." (ECF No. 38.) Unfortunately, it appears that Defendant has not heeded the Court's
5 warning.

6 On January 11, 2013, Plaintiff's counsel sent a letter to Defendant, via email, to offer
7 potential dates to meet regarding the in-person good faith settlement talks which were mandated by
8 the Court's Case Management Order of January 9, 2013 (ECF No. 32). A true and correct copy of
9 the January 11, 2013 letter is attached hereto as **Exhibit A**. As of the date of this Motion, Defendant
10 still has not responded to this emailed letter.

11 On January 31, 2013, Plaintiff's counsel sent a letter to Defendant, via email, to remind him
12 that, pursuant to the Court's January 9, 2013 Case Management Order (ECF No. 32), he was
13 required to submit his Rule 26(a) Initial Disclosures on or before January 25, 2013. A true and
14 correct copy of the January 31, 2013 letter is attached hereto as **Exhibit B**. Plaintiff's counsel
15 further informed Defendant that, if the Rule 26(a) Initial Disclosures were not received by February
16 4, 2013, Plaintiff's counsel would have no choice but to file a motion to compel. (*See id*). As of the
17 date of this Motion, a month after Rule 26(a) Initial Disclosures were due, Defendant has not only
18 failed to provide the Initial Disclosures, but has also failed to respond to either communication
19 which Plaintiff's counsel sent to him.

20 Plaintiff's counsel thus contends that the time is ripe for not only compelling Defendant to
21 make his Initial Disclosures, but also to sanction Defendant for his conduct. Defendant was put on
22 notice by the Court's February 5, 2013 Order that, if he failed to participate in further litigation, he
23 would risk having sanctions entered against him, up to and including a default judgment. (ECF No.
24

1 38 at 3). Plaintiff submits that a default judgment would be the appropriate sanction for Defendant's
2 conduct.

3 Defendant's bellicose and uncooperative behavior throughout the course of this litigation is
4 well documented. Defendant declared to this Court that he would not participate in the litigation,
5 and he has, apparently, decided to follow through on that threat. Plaintiff should not be forced to
6 bear the costs of Defendant's continued insolence. Indeed, Plaintiff has already borne significant
7 costs in responding to Defendant's conduct and meritless pleadings. (*See, e.g.,* Motion for Order to
8 Show Cause (ECF No. 21); Response to Motion to Post Bond (ECF No. 23); and Response to
9 Motion to Stay Discovery and Motion to Strike (ECF No. 30); each of which involved hostile
10 diatribes and unwarranted threats, that constituted an affront to the dignity of the Court, and each of
11 which required a response from Plaintiff). Furthermore, Plaintiff was forced to bring a Motion for
12 Sanctions (ECF No. 29), and is now forced to bring the instant Motion to Compel the Production of
13 Initial Disclosures and for Sanctions. While Defendant is welcome to decline to participate in this
14 litigation; however, Plaintiff should continue to bear the costs of his declination.

15 The Ninth Circuit has addressed the conditions under which a "case-dispositive" sanction is
16 appropriate, pointing to a situation where: (1) a party's conduct interferes with the resolution of
17 litigation; and (2) a party's repeated flouting of discovery rules and orders demonstrates that less
18 drastic sanctions would not deter further violations. *See* US v. Hempfling, No. 08-16190 (9th Cir.
19 July 1, 2010). In the instant action, Defendant has repeatedly and unjustifiably interfered with the
20 resolution of this litigation; at first, he did so through his lack of decorum and refusal to cooperate
21 and participate; whereas now, he appears to have abandoned the litigation altogether. Defendant
22 has, thus far, flouted this Court's Orders, and at least two discovery rules (in-person good faith
23 settlement meeting and initial disclosures), and it is a virtual certainty that he will continue to so
24 flout.

1 Clearly, Plaintiff is entitled to an Order of this Court directing Defendant to produce his Rule
2 26(a) Initial disclosures. Moreover, Plaintiff is entitled to an award of attorney's fees and costs in
3 bringing this Motion. However, in light of the history of the Defendant's conduct in ignoring this
4 Court's Orders, the Federal Rules of Civil Procedure, and the District of Arizona Local Rules of this
5 Court, along with a disregard of the rules of decorum incumbent upon litigants in Federal Court.
6 Accordingly, more severe sanctions are appropriate pursuant to Rule 37(c)(1). Those sanctions
7 include the striking of pleadings and the entry of default judgment. *See* Rule 37(c)(1)(C) referring to
8 Rule 37(b)(2)(A)(i)-(vi).

9 As such, in addition to considering simply granting this Motion, and awarding attorney's fees
10 and costs in bringing the Motion, Plaintiff would submit that the Court should consider alternative
11 relief. In addition to bringing the instant Motion, Plaintiff has had to file numerous pleadings, as
12 mentioned above, and has been forced to repeatedly communicate with Defendant to attempt to
13 convince him to comply with Orders and Rules of the Court, which has ultimately been
14 unsuccessful. Plaintiff's counsel estimates that he has incurred approximately 21.85 hours, in
15 attempting to achieve Defendant's participation in this litigation and compliance with the Orders and
16 Rules of this Court. The Declaration of Plaintiff's Counsel is attached hereto as **Exhibit C**. In light
17 of this history, Plaintiff is entitled to its attorney's fees and costs incurred as a result of Defendant's
18 recurring conduct in an amount set forth in **Exhibit C**.

19 Alternatively, Plaintiff would submit to the Court that in light of the recurring conduct of
20 Defendant, that the complete defiance of this Orders and Rules of the Court, including the February
21 5, 2013 Order which encouraged Defendant to participate in this litigation, Plaintiff is entitled to
22 having Defendant's Answer stricken, and for the entry of default judgment. *See* Rule
23 37(b)(2)(A)(iii) and (vi).

24

1 CONCLUSION

2 Though it is true that Defendant is *pro se*, the Court aptly noted in its Order that Defendant’s
3 *pro se* status “does not mean he is not bound by the laws and applicable legal procedures of this
4 Court.” (ECF No. 38 at 2.) Defendant has failed to learn his lesson, despite being given every
5 opportunity to do so, including being told that his failure would risk having sanctions entered against
6 him, including a default judgment. It would seem clear that Defendant has no intention of alter his
7 behavior, and complying with Orders of this Court.

8 Wherefore, Plaintiff respectfully requests an Order of this Court: (1) granting Plaintiff’s
9 Motion to Compel the Production of Initial Disclosures and for Sanctions; (2) for and award of
10 attorney’s fees and costs incurred by Plaintiff in bringing this Motion; and (3) for such other and
11 further relief as the Court deems just in the premises.

12 In the alternative, Plaintiff respectfully requests an Order of this Court: (1) granting
13 Plaintiff’s Motion to Compel the Production of Initial Disclosures and for Sanctions; (2) for and
14 award of attorney’s fees and costs as set forth in **Exhibit C**, incurred by Plaintiff as a result of
15 Defendant’s conduct as described herein; and (3) for such other and further relief as the Court deems
16 just in the premises.

17 In the alternative, Plaintiff respectfully requests an Order of this Court (1) Striking
18 Defendant’s Answer; (2) for an Entry of Default against Defendant; (3) for the Entry of Default
19 Judgment against Defendant following the filing of a Motion for Default Judgment by Plaintiff; and
20 (4) for such other relief as the Court deems just in the premises.

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22 Dated this 25th day of February, 2013
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Law Offices of Steven James Goodhue

By: /s/ Steven James Goodhue
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Attorney for Plaintiff
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I hereby certify that on February 25, 2013, I electronically filed the foregoing with the Clerk of the Court for filing and uploading to the CM-ECF system which will send notifications of such filing to all parties of record.

A COPY of the foregoing was mailed (or served via electronic notification if indicated by an “*”) on February 25, 2013, to:

Honorable G. Murray Snow *(snow_chambers@azd.uscourts.gov)
U.S. District Court
Sandra Day O’Connor Courthouse Suite 324
401 West Washington Street, SPC 82
Phoenix, Arizona 85003-7550

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/s/ Steven James Goodhue