

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA**

AF HOLDINGS, LLC	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No.
	:	2:12-cv-00262-WCO
RAJESH PATEL,	:	
	:	
Defendant.	:	

**Defendant’s Motion to Compel a Response to Defendant’s First Request for
Production and for Sanctions**

COMES NOW, Rajesh Patel, by and through counsel, filing this **Defendant’s Motion to Compel a Response to Defendant’s First Request for Production and for Sanctions**, requesting the following relief:

- (a) An order compelling Plaintiff to answer Defendant’s Production Request; and
- (b) An order awarding attorneys’ fees and expenses incurred in connection with this motion.

Respectfully Submitted September 5, 2013:

/s/ Blair Chintella
Blair Chintella
GA Bar No. 510109
2483 Shoals Ter.

Decatur, GA 30034
(404) 579-9668
No fax.
bchintell@gmail.com

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	:	Civil Action No.
v.	:	2:12-cv-00262-WCO
	:	
RAJESH PATEL,	:	
	:	
Defendant.	:	

Memorandum of Law

On July 17, 2013, Defendant served Defendant’s First Request for Production (“Production Request”) to Plaintiff, ECF # 42, a true and correct copy of which are located at ECF # 60-3. A response was due on August 19, 2013 but Plaintiff has yet to respond. Declaration of Blair Chintella ¶ 1. On August 13, 2013, Plaintiff filed “Plaintiff’s Second Motion for Protective Order with Motion to Quash and Motion to Seal” that *inter alia* moved to “strik[e] Defendant’s 2nd and 3rd discovery requests,” but did not refer to the Production Request. ECF # 60. Defendant attempted to contact Plaintiff to resolve this and other discovery issues via e-mail on August 28, 2013, August 30, 2013, and September 4, 2013 (twice) but no response was received. Declaration of Blair Chintella ¶ 2.

Argument and Citation to Authority

Pursuant to Fed. R. Civ. P. Rule 37(a)(3)(B)(vi), a party seeking discovery may move for an order compelling a response to a request under Rule 34 when a party fails to respond. If a Court finds that an order to compel is appropriate, it must award expenses and reasonable attorneys' fees to the party bringing the motion against the non-compliant "party or attorney . . . or both." Rule 37(a)(5).

Pursuant to Rule 37(d), a court may, upon motion, order sanctions if a party fails to respond after being served with a request under Rule 34. The type of sanctions awarded may include those listed in Rule 37(b)(2)(A)(i) to (vi). Instead of or in addition to these sanctions, the Court must require the "party failing to act, the attorney advising that party, or both to pay the reasonable expenses, including attorney's fees, caused by the failure." *Id.* Rule 37(d)(3). A failure to respond is not excused on the grounds that the discovery sought was objectionable. Rule 37(d)(2). Before utilizing Rule 37(d), the moving party must make a good faith attempt to confer with the party failing to produce the discovery. Rule 37(d)(1)(B). Moreover, ND LR 37.1A requires that before filing any motion to compel a party must make a good faith attempt to meet and confer.

Here, Defendant served Plaintiff with the Production Request on July 17, 2013 but has yet to receive a response. Defendant sent plaintiff e-mails attempting to meet and confer on August 28th, 30th, and September 4th but did not even receive

a response. Therefore, an order compelling Plaintiff to respond pursuant to Rule 37(a)(3)(B)(iii) would be appropriate as well as an award of expenses and reasonable attorneys' fees. Reasonable attorneys' fees and sanctions are also warranted pursuant to Rule 37(d)(1)(ii) and (3).

Conclusion

Plaintiff has failed to respond altogether to Defendant's Production Request and should be required to respond as well as pay for expenses and attorneys' fees incurred with respect to this motion.

Respectfully Submitted September 5, 2013:

 /s/ Blair Chintella
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	:	
Defendant.	:	

Local Rule 7.1(D) Certification

I hereby certify that **Defendant's Motion to Compel a Response to Defendant's First Request for Production and for Sanctions** and the accompanying **Memorandum of Law** comply with LR 5.1B.

Dated September 5, 2013:

Respectfully Submitted:

/s/ Blair Chintella

Blair Chintella
GA Bar No. 510109
2483 Shoals Ter.
Decatur, GA 30034
(404) 579-9668
bhintell@gmail.com

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	:	
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FRCP 37(a)(1) and LR 37.1 Certification

I hereby certify that on the following dates I tried to e-mail counsel for Plaintiff to discuss or schedule a time to discuss a lack of response to Defendant's Production Request but never received a response.

Dated September 5, 2013:

Respectfully Submitted:

/s/ Blair Chintella

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Certificate of Service

I hereby certify that on September 5, 2013, I served **Defendant's Motion to Compel a Response to Defendant's First Request for Production and for Sanctions** on Plaintiff by filing it through the CM/ECF, which will notify Jacques Nazaire, attorney for Plaintiff.

Dated September 5, 2013:

Respectfully Submitted:

/s/ Blair Chintella
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