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8 UNITED STATES DISTRICT COURT
 9 DISTRICT OF ARIZONA

10 JENNA MASSOLI p/k/a JENNA)
 11 JAMESON,)
 12) Plaintiff,)
 13 vs.)
 14 "REGAN MEDIA," and JUDITH)
 15 REGAN, an individual,)
 16) Defendants.)

No. CV 05-0854 PHX EHC

**REGAN MEDIA'S REPLY IN
 SUPPORT OF ITS SECOND
 MOTION TO COMPEL AND
 REQUEST FOR SANCTIONS**

17 REGAN MEDIA, INC., a New York)
 18 corporation, and JUDITH REGAN, an)
 individual,)
 19) Defendants/Counterclaimants,)
 20 vs.)
 21 JENNA MASSOLI p/k/a JENNA)
 22 JAMESON, an individual,)
 23) Plaintiff/Counterdefendant,)
 24 and)
 25 JAY GRDINA, an individual, and)
 DOLCE AMORE, INC., a Colorado)
 26 corporation,)
 27) Counterdefendants.)

(Oral Argument Requested)
 [Assigned to the Honorable
 Earl H. Carroll]

1 **Introduction**

2 The Response filed by Counterdefendants Jenna Massoli p/k/a Jenna
3 Jameson (“Jameson”), Jay Grdina (“Grdina”) and Dolce Amore, Inc. (“Dolce Amore”) is
4 essentially a delinquent response to Regan Media’s First Request for Production of
5 Documents that should have been served over three months ago. Although ostensibly filed
6 in response to Regan Media’s Second Motion to Compel, the Response ignores the
7 substance of the Second Motion to Compel. Instead of explaining Counterdefendants’
8 complete failure to participate in discovery this year, Counterdefendants list a few
9 categories of documents they now intend to produce, criticize their predecessor’s
10 “inartfully” crafted responses and voice objections that were due in early December 2005.
11 They ignore numerous points raised in the Second Motion to Compel, but argue that it
12 should be denied because Counterdefendants are now ready to proceed with discovery.
13 Counterdefendants ignore the fact that their conduct has undermined the Court’s
14 Scheduling Order and required Regan Media to file two Motions to Compel.
15 Counterdefendants offer no excuse for their discovery abuses, and as this Reply will show,
16 should be sanctioned.

17 **I. COUNTERDEFENDANTS SHOULD BE SANCTIONED.**

18 Counterdefendants admit Regan Media’s recitation of the factual
19 background: (1) Regan Media served its Request for Production in early November 2005;
20 (2) Counterdefendants failed to respond at all when their responses were due in December
21 2005; (3) Regan Media filed a motion to compel in January 2006; (4) Counterdefendants
22 represented to the Court that responsive documents would be produced on February 7; (5)

1 on February 9, after much prodding by Regan Media's counsel, Counterdefendants
2 produced an obviously incomplete set of documents; and (6) as a result, Regan Media was
3 obliged to file a Second Motion to Compel, postpone the depositions of Jameson and
4 Grdina and request modification of the Scheduling Order. Counterdefendants do not
5 challenge this account, effectively conceding the obvious – that they ignored this litigation
6 for several months.¹

8
9 Furthermore, since Regan Media filed the Second Motion to Compel,
10 Counterdefendants' lawyers moved to withdraw from the case as a result of
11 Counterdefendants' failure to comply with their discovery obligations. The withdrawal
12 papers demonstrate that Counterdefendants ignored repeated requests, not just from Regan
13 Media, but from their own attorneys to provide information and additional documentation
14 in response to Regan Media's Request for Production and Motions to Compel. [See
15 March 7, 2006 Application to Withdraw as Counsel Filed by Renaud Cook Drury
16 Mesaros, PA and Attorney's Certificate of Compliance with LRCiv 83.3(b)(2)(A).]
17 Although Counterdefendants represent in their Response that certain documents will be
18 forthcoming, they made and broke similar promises in response to Regan Media's first
19 Motion to Compel. [See January 23, 2006 Response to Defendant/Counterclaimant Regan
20 Media's Motion to Compel at 4.]

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¹ Counterdefendants also fail to respond to Regan Media's request that they sign their Interrogatory responses under Fed.R.Civ.P. 33(b)(2). [See Memorandum in Support of Regan Media's Second Motion to Compel at 3, n. 1.] Regan Media again requests that Counterdefendants be ordered to verify those responses.

1 The Response suggests that the Second Motion to Compel should be denied
2 because Counterdefendants are now ready to cooperate and wish to proceed with limited
3 discovery. However, Counterdefendants should not be permitted a “do-over,” an
4 opportunity to voice new objections and negotiate the documents that they will produce
5 after spurning Regan Media, the Court and their own counsel for several months. Regan
6 Media requests that the Court enter monetary sanctions -- in addition to the fees
7 Counterdefendants have already agree to pay in connection with Regan Media’s First
8 Motion to Compel -- and order Counterdefendants to show cause why judgment should
9 not be entered in Regan Media’s favor on all counts of the Complaint and Counterclaim.
10 If Counterdefendants cannot offer an explanation for their refusal to cooperate in
11 discovery, then the only issue in this case going forward should be the amount of damages
12 for which Counterdefendants are liable.²

16 **II. COUNTERDEFENDANTS SHOULD BE REQUIRED TO**
17 **DEMONSTRATE THAT THEY HAVE TAKEN ADEQUATE**
18 **STEPS TO IDENTIFY AND PRODUCE ALL RELEVANT**
19 **DOCUMENTS.**

20 Counterdefendants argue that Regan Media’s Second Motion to Compel is
21 “based on semantics,” and that Counterdefendants have already indicated that for Request
22 Nos. 2-3, 5-6, 10, 14-15 and 17-21, additional responsive documents do not exist. [See
23 Response at 2.] Although some of Counterdefendants’ initial responses to Regan Media’s
24 requests state that “As of this date, Counterdefendants have been unable to locate any

25 ² Counterdefendants have admitted their duty to pay the reasonable attorneys’ fees
26 incurred by Regan Media’s attorneys in endeavoring to secure their compliance with
27 discovery obligations. [See January 23, 2006 Response to Defendant/Counterclaimant
28 Regan Media’s Motion to Compel at 4.]

1 documents that are responsive,” Counterdefendants never represented that responsive
2 documents do not exist. Moreover, Counterdefendants made the same representation in
3 response to Request Nos. 12-13 and 16, but now represent that responsive documents exist
4 and will be produced. [See Response at 4-5.]
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6 By arguing that the Second Motion to Compel is based on “semantics,”
7 Counterdefendants attempt to trivialize the Second Motion to Compel or suggest that it
8 was not justified. It is clear, however, that Counterdefendants disregarded Regan Media’s
9 document requests completely for several months, such that their previous counsel felt
10 obligated to withdraw. It is also clear that no effort was made to produce the financial
11 documents that plainly exist but only now -- after two Motions to Compel -- are being
12 offered for production (subject to a confidentiality agreement). Although
13 Counterdefendants now represent that no “Exclusive Acting Services Agreement” exists
14 between Jameson and Dolce Amore, this is a flat contradiction of Counterdefendants’
15 earlier statements. [See February 17, 2006 Rule 37.1 Statement in Support of Regan
16 Media’s Second Motion to Compel and Request for Sanctions at 4, response to Request
17 for Production No. 6.] Regan Media’s counsel contacted Counterdefendants’ previous
18 counsel before filing the Second Motion to Compel, and were given the distinct
19 impression that no effort was made to gather responsive documents – an impression which
20 proved to be accurate.
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25 It may well be true that additional documents do not exist, but
26 Counterdefendants should demonstrate that a reasonable search was conducted to identify
27 responsive documents, especially in light of their delinquent attitude toward discovery thus
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1 far in this litigation. For instance, Counterdefendants have produced a limited set of
2 correspondence, which includes approximately 30-35 potentially relevant e-mail messages
3 from a number of e-mail accounts belonging to Jameson and Grdina. Regan Media's
4 Request for Production specifically seeks the production of electronic data wherever
5 located, and Counterdefendants have not objected to this request. The mere production of
6 a small set of e-mail messages does not demonstrate that Counterdefendants took adequate
7 steps to identify all locations where relevant e-mail or other electronic documents could be
8 stored. Counterdefendants should be ordered to appear and explain their efforts to gather
9 responsive documents.
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12 **III. COUNTERDEFENDANTS' OBJECTIONS HAVE BEEN**
13 **WAIVED AND ARE MISPLACED.**

14 Counterdefendants object to several of Regan Media's requests as
15 overbroad, irrelevant or burdensome. [See Response at 3-4.] For instance,
16 Counterdefendants state that Dolce Amore's financial records prior to 2003 "are beyond
17 the scope of discovery in this litigation and will not be produced." [See Response at 4.]
18 However, any objections as to the breadth or scope of documents requested by Regan
19 Media were waived when Counterdefendants failed to raise them in December. See
20 *Richmark Corp. v. Timber Falling Consultants*, 959 F.2d 1468, 1473 (9th Cir. 1992) ("It is
21 well established that a failure to object to discovery requests within the time required
22 constitutes a waiver of any objection"). Counterdefendants should be ordered to produce
23 all of the documents identified in Regan Media's Request for Production without
24 reservation.
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1 Even if Counterdefendants had timely raised these objections, they should be
2 rejected on the merits. Regan Media and Judith Regan have alleged that Dolce Amore is a
3 sham corporation that exists solely as a financial tool of Jameson and Grdina. [See
4 Amended Counterclaim ¶¶ 91-96.] Accordingly, Regan Media seeks documents and
5 information that would show how Grdina and Jameson have controlled and operated Dolce
6 Amore since its inception. Under Arizona law, relevant factors include the intermingling
7 of corporate and personal assets, observance of corporate formalities and diversion of
8 corporate assets to personal needs. See *Keams v. Tempe Technical Institute, Inc.*, 993
9 F.Supp. 714, 723 (D. Ariz. 1997). Therefore, Dolce Amore's corporate and financial
10 dealings are relevant and discoverable. A key factor under an alter ego analysis is the
11 corporation's capitalization, a factor measured at the time of the corporation's
12 organization. See *id.*, 993 F.Supp. at 724. Accordingly, Regan Media is entitled to
13 discover financial information dating back to Dolce Amore's incorporation in 1999 to
14 examine the historical operation and use of Dolce Amore by Jameson and Grdina.
15 Counterdefendants should be compelled to produce all responsive documents.

20 **Conclusion**

21 Counterdefendants should be sanctioned for their discovery abuses. They
22 offer no explanation for ignoring Regan Media's Request for Production or for their late
23 decision to produce responsive documents. Regan Media should be awarded its fees
24 incurred in bringing this Second Motion to Compel, and, as an additional sanction,
25 judgment in its favor on the Counterclaim and the underlying Complaint that Jenna
26 Jameson brought but has not seen fit to prosecute.

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Respectfully submitted this 3rd day of April, 2006.

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CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of April, 2006, I caused the attached document to be electronically transmitted to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electric Filing to the following CM/ECF

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