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8 Attorneys for Plaintiffs

9 **IN THE UNITED STATES DISTRICT COURT**
 10 **FOR THE DISTRICT OF ARIZONA**

11 SHIMKO & PISCITELLI, et al.,)	CASE NO. CV-04-78-PHX-FJM
)	
12 Plaintiffs,)	
)	
13 v.)	<u>PLAINTIFF'S REPLY TO</u>
)	<u>DEFENDANT WOODCOCK'S</u>
)	<u>MOTIONS TO COMPEL AND FOR</u>
)	<u>SANCTIONS</u>
14 PAUL WOODCOCK, et al.,)	
)	
15 Defendants.)	
_____)	

16 NOW COME Plaintiffs and in response to Defendant Woodcocks' Motions to Compel and
 17 for Sanctions, respectfully requests that the Court deny their motions. Plaintiff has fully complied
 18 with the requests that Defendants Woodcocks cited in their brief to which they claim Plaintiff has
 19 failed to respond.

20 In the Woodcocks' brief, they claim that Plaintiff did not respond to the following
 21 interrogatory served on Plaintiff on February 15, 2008.

- 22
- 23 1. Itemize in detail all payments received from any Defendants or CORF related entities,
 24 including date, amount, and manner of payment (check, wire, etc.)

25 Defendants corresponding request for production of documents asked for:
 26

- 1 1. Copies of all checks, wire transaction records, or other documents showing all
2 payments, retainers, deposits, or other monies received from any of the
3 Defendants or CORF related entities.
- 4 2. Copies of all internal accounting and bookkeeping records regarding all payments
5 received in #1 above.
- 6 3. Copies of all bank account statement for the relevant periods showing any
7 payments or wire transfers or other monies received from Defendants or CORF
8 related entities.

9 In response to the interrogatory and these requests, Plaintiff provided **Exhibit B** to the
10 Defendants, which is attached hereto for the Court's convenience. Exhibit B is a record of all
11 payments received by the Plaintiffs, whether the checks were for the repayment of the Loan the
12 Defendants now find so objectionable, or payments on account. Exhibit B reflects that Defendants
13 wired funds or wrote checks to the Plaintiff totaling \$603,816.80. (Of the checks deposited, checks
14 totaling over \$200,000 were returned for non-sufficient funds.) Exhibit B provided to the Woodcocks
15 in February of this year sets forth whether the payment was by wire or by check, and it sets forth the
16 date of the transaction with the bank, and the amount of each payment.

17 As support for that information, Plaintiff also provided copies of the firm's bank statements
18 that Plaintiff had in its possession responsive to the interrogatory and the request. **Exhibit E**,
19 attached hereto provided the statements from the Firm's bank recording all of the payments received
20 by the Plaintiff that were deposited into that account. At the end of Exhibit E are copies of the only
21 checks that plaintiff received from Defendants and retained. Taken, together, Exhibit B and Exhibit
22 E fully answer the Woodcocks' interrogatories and requests that they cited in their brief, as not
23 having been answered.

24 Additionally, the Woodcocks made no effort to work this dispute out with Plaintiff on an
25 informal basis. Counsel made a demand for Plaintiff to supplement its interrogatories and requests,
26 but did so without any specificity as to what he wanted supplemented. (See, Exhibit 1) Plaintiff

1 could not locate interrogatories or requests that had previously requested the information or records
2 that the Woodcocks requested in their counsel's July 2, 2008 letter, relating to records of returned
3 checks or payments. However, in his original production to Defendants in February, Plaintiff had
4 already attached copies of five checks totaling \$197,500.00 that were returned for non-sufficient
5 funds to the end of Exhibit E.

6
7 Therefore, Plaintiff, believing that he had fully complied with all of the Defendants' previous
8 requests, asked the Woodcocks to identify the interrogatories and requests they thought were
9 unanswered. (See, Exhibit 2) Instead of attempting to work out whatever imaginary dispute he
10 thought he was having with Plaintiff, Counsel for the Woodcocks responded by filing his motion to
11 compel and his motion for sanctions. However, it is clear that the information and the documents
12 that the Woodcocks requested in February of this year was timely and fully provided. The
13 information Defendants had requested in response to the requests cited in their brief in support of
14 this motion had been in Defendants' possession since February of this year.

15
16 Unless the Woodcocks can demonstrate how Plaintiff has failed to respond to their previous
17 discovery requests, there is no basis for their motion to compel nor for their motion for sanctions. In
18 fact, it is the Woodcocks' motion that violate Rule 11. There was never any basis for the
19 Woodcocks' motions. Had their Counsel made any reasonable effort to work out whatever imaginary
20 concerns he was having with Plaintiffs' previous production, this motion might never have been
21 filed and Plaintiff would not have had to expend time responding to the motion, and the Court would
22 not have to waste its resources and time on such a non-issue.
23
24
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26

1 Plaintiff requests that the Court order sanctions against the Woodcocks and their Counsel for
2 filing such a frivolous motion and requiring the Plaintiff and the Court to have to spend time and
3 money to resolve what should never have been an issue.

4 RESPECTFULLY SUBMITTED ON this 13th day of August, 2008.

5 **TIMOTHY A. SHIMKO & ASSOCIATES**

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Counsel for Plaintiffs

1 **Certificate of Service**

2 COPY of the foregoing electronically filed and served this 13th day of August, 2008 upon:

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13 *Served via regular U.S. Mail upon the following:*

14 Mr. and Mrs. David Goldfarb
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21 *Defendants in pro per*

22 /s/ Mildred Pacheco
23
24
25
26