Seychelles Organics Incorporated v. Rose Doc. 44

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Seychelles Organics, Inc., Plaintiff, vs. John R. Rose, Defendant.	No. CV-11-01746-PHX-FJM **ORDER**

Before the court is plaintiff Seychelles Organics, Inc.'s motion for contempt against defendant John Rose for failing to produce documents and appear for deposition testimony under subpoena (doc. 31), Rose's response (doc. 41), and Seychelles' reply (doc. 43). On August 31, 2012, Seychelles initiated discovery related to enforcement of its judgment against Rose by noticing depositions of Rose and his employer/affiliated entity AnuMed International, LLC, and requesting the production of documents by way of subpoenas duces tecum (docs. 18, 19). We denied Rose's and AnuMed's motion for protective order (doc. 30), yet Rose continues to refuse to appear for a judgment debtor's examination or to produce any documents.

Under Rule 45(e), Fed. R. Civ. P., an "issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena." In his response to the motion to compel, Rose gives various reasons for his failure to comply with

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the subpoenas, including that he was out of town, his lawyer told him he did not need to comply, and that he had already given a deposition in a related action in 2010. These reasons fall far short of establishing an adequate excuse to ignore the subpoenas. Accordingly, we find defendant John Rose in contempt for failing to comply with subpoenas. A hearing is hereby set before this court on **Wednesday, December 11, 2013 at 2:00 p.m. before Judge Frederick J. Martone, in Courtroom 506**, at which we will levy appropriate sanctions for the contempt, which may include incarceration. Rose must personally appear at the hearing.

Rose may purge himself of this contempt by producing the requested documents and appearing for a judgment debtor's examination no later than December 2, 2013. Rose must produce the requested documents at least 7 days before the scheduled examination. Upon an adequate showing that Rose has complied with the subpoenas, we will enter an order purging the finding of contempt at the December 11, 2013 hearing.

IT IS ORDERED GRANTING the motion for a finding of contempt against defendant John Rose (doc. 31).

DATED this 4th day of November, 2013.

Frederick J. Martone

Frederick J. Martone
Senior United States District Judge