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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

JLG ENTERPRISES, INC., a California corporation,

Plaintiff,

v.

EXCALIBUR SIRES, INC., a Minnesota corporation, and DOES 1 through 25, inclusive,

Defendants.

CASE NO. 1:10-cv-02138-AWI-SKO

ORDER TO SHOW CAUSE WHY SANCTIONS SHOULD NOT BE IMPOSED FOR FAILURE TO COMPLY WITH THE COURT'S ORDER

EXCALIBUR SIRES, INC.,

Counterclaimant,

v.

JLG ENTERPRISES, INC.,

Counterdefendant.

I. INTRODUCTION

On June 1, 2011, Plaintiff JLG Enterprises, Inc., ("JLG") filed a motion to compel based on Defendant Excalibur Sires, Inc.'s ("Excalibur") complete failure to provide responses to JLG's outstanding discovery requests consisting of Interrogatories, Requests for Admission, and Requests for Production of Documents. (Doc. 60.) Excalibur filed a statement of non-opposition to the motion and a declaration from counsel in opposition to JLG's request for sanctions. (Docs. 63, 63-1.)

1 On June 27, 2011, the Court issued an order requiring Excalibur to provide responses to
2 JLG's Interrogatories and Requests for Production of Documents within 30 days from the date of the
3 order. JLG requested that it be awarded reasonable expenses for the motion as well as additional
4 monetary sanctions for Excalibur's failure to respond to the discovery requests. The Court held in
5 abeyance its decision as to an award of sanctions and apportionment of any reasonable attorney's fees
6 until Excalibur provided responses to the outstanding discovery.

7 On August 2, 2011, JLG filed a status report indicating that Excalibur did not comply with
8 the Court's June 27, 2011, order and that no responses to the outstanding discovery requests were
9 served. In its status report, JLG renewed its request that it be awarded the reasonable attorney's fees
10 associated with the motion. (Doc. 69, 2:5.) Further, JLG requests that the Court impose a case-
11 terminating sanction and enter default judgment against Excalibur. (Doc. 69, 2:6-12.)

12 For the reasons set forth below, the Court ORDERS Excalibur to SHOW CAUSE why
13 sanctions should not be imposed for its failure to comply with the Court's June 27, 2011, order.

14 II. DISCUSSION

15 Pursuant to Federal Rule of Civil Procedure 37(b)(1), a party's failure to comply with a
16 court's discovery order may be treated as contempt of court, and the court may order the imposition
17 of sanctions. Fed. R. Civ. P. 37(b)(1). Sanctions that may be imposed include the following:
18 (1) directing that the matters embraced in the order or other designated facts be taken as established
19 for purposes of the action, as the prevailing party claims; (2) prohibiting the disobedient party from
20 supporting or opposing designated claims or defenses, or from introducing designated matters into
21 evidence; (3) striking pleadings in whole or in part; (4) staying further proceedings until the order
22 is obeyed; (5) dismissing the action or proceeding in whole or in part; or (6) rendering a default
23 judgment against the disobedient party. Fed. R. Civ. P. 37(b)(2)(A)(i)-(vi).

24 "Instead of or in addition to the orders above, the court must order the disobedient party, the
25 attorney advising that party, or both to pay the reasonable expenses, including attorneys' fees, caused
26 by the failure, unless the failure was substantially justified or other circumstances make an award
27 of expenses unjust." Fed. R. Civ. P. 37(b)(2)(C).

1 JLG has requested that the Court impose a case-terminating sanction for Excalibur's non-
2 compliance with the Court's June 27, 2011, order. Excalibur's complete refusal to participate in
3 discovery has hampered the progress of discovery and the litigation in general. **Excalibur is**
4 **cautioned that, beyond any monetary sanctions imposed, the Court will be inclined to**
5 **recommend the imposition of a case terminating sanction if Excalibur fails to respond to this**
6 **order to show cause.**

7 **III. CONCLUSION**

8 Accordingly, IT IS HEREBY ORDERED that:

- 9 1. **Within 10 days after service of this order**, Excalibur is ORDERED to SHOW
10 CAUSE in writing why monetary sanctions or default judgment should not be
11 imposed for its failure to comply with the Court's June 27, 2011, discovery order;
- 12 2. Excalibur's counsel is DIRECTED to take all reasonable actions to effect service of
13 this order upon Excalibur;
- 14 3. **Within 5 days after service of this order**, JLG shall submit a statement of its
15 reasonable expenses, including attorney's fees, incurred as a result of Excalibur's
16 failure to comply with the Court's June 27, 2011, order; and
- 17 4. **Excalibur is cautioned that the case terminating sanction of default judgment**
18 **may be recommended to the District Judge, particularly if Excalibur fails to**
19 **comply with this order.**

20
21 IT IS SO ORDERED.

22 **Dated: August 12, 2011**

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE