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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

NICOLE LYON,

Plaintiff,

v.

BERGSTROM LAW, LTD.,

Defendant.

Case No. 1:16-cv-00401-DAD-SKO

**ORDER ON PLAINTIFF’S “MOTION
REGARDING DISCOVERY”**

(Doc. 25)

I. INTRODUCTION

On October 14, 2016, Plaintiff Nicole Lyon filed a “Motion Regarding Discovery” based on Defendant Bergstrom Law, Ltd.’s complete failure to provide responses to Plaintiff’s outstanding discovery requests consisting of Interrogatories and Requests for Production of Documents. (Doc. 25.) Defendant has not filed an opposition to the Motion.

After having reviewed the motion and supporting documents, the matter was deemed suitable for decision without oral argument pursuant to Local Rule 230(g), and the Court vacated the hearing set for November 2, 2016. (Doc. 26.) For the reasons set forth below, Plaintiff’s motion is GRANTED.

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1 That same day Plaintiff’s counsel emailed Jeremy Bergstrom, Esq., another attorney at
2 Defendant’s office, informing Mr. Bergstrom that Plaintiff’s counsel was now aware that Ms.
3 Heidbrink was no longer with Defendant, and requesting confirmation of the date Defendant
4 intended to provide responses to Plaintiff’s discovery requests. (Doc. 25-2, Crosby Decl. at ¶ 15;
5 Doc. 25-7.) This request went unanswered. (Doc. 25-2, Crosby Decl. at ¶ 16.) On September 12,
6 2016, Plaintiff’s counsel again emailed Mr. Bergstrom as to the status of Defendant’s responses to
7 Plaintiff’s discovery requests. (Doc. 25-2, Crosby Decl. at ¶ 17; Doc. 25-8.) This request also
8 went unanswered. (Doc. 25-2, Crosby Decl. at ¶ 18.)

9 On September 21, 2016, having received no response from defense counsel concerning
10 Plaintiff’s discovery requests, Plaintiff’s counsel emailed, faxed, and mailed Defendant a meet and
11 confer letter regarding Defendant’s failure to provide responses to Plaintiff’s discovery requests.
12 (Doc. 25-2, Crosby Decl. at ¶ 19; Doc. 25-9.) Plaintiff’s counsel received no response to his meet
13 and confer letter, despite numerous email and voicemails requesting a response. (Doc. 25-2,
14 Crosby Decl. at ¶¶ 20-31; Docs. 25-10 – 25-13.)

15 III. DISCUSSION

16 A. Plaintiff’s Interrogatories

17 Federal Rule of Civil Procedure 33(b)(1)(B)(2) requires that, unless otherwise agreed
18 upon, the responding party must serve its answers and any objections to interrogatories within
19 thirty (30) days after being served. Additionally, Rule 33(b)(1)(B)(3) and (5) require that each
20 interrogatory, “to the extent it is not objected to, be answered separately and fully in writing and
21 under oath” and signed by the answering party. Pursuant to Rule 33(b)(1)(B)(4), any untimely
22 objection to the interrogatory is waived, unless the court excuses the failure for good cause.

23 Plaintiff’s Interrogatories were served on Defendant on June 10, 2016, and no responses
24 were served within the agreed-upon deadline. (Doc. 25-2, Crosby Decl. at ¶ 8; Doc. 25-4.) As of
25 October 13, 2016, despite numerous correspondence sent and voicemail left by Plaintiff’s counsel
26 to Defendant, no responses had been received and the discovery requests remain outstanding.
27 (Doc. 25-2, Crosby Decl. at ¶¶ 15-33; Docs. 25-5 – 25-13.) As such, the Court GRANTS
28 Plaintiff’s “Motion Regarding Discovery” to compel Interrogatory responses and orders Defendant

1 to serve written responses to Plaintiff’s Interrogatories on or before **November 9, 2016**. All
2 objections to the Interrogatories have been waived.

3 **B. Plaintiff’s Request for Production of Documents**

4 Pursuant to Federal Rule of Civil Procedure 34(a), a party may request production of
5 documents. Rule 34(b)(2)(B) requires parties answering RFPs to “either state that inspection and
6 related activities will be permitted as requested or state an objection to the request, including the
7 reasons” in each response. If the party to whom the request was directed fails to appropriately
8 respond, Rule 37(a)(1) allows the requesting party to “move for an order compelling disclosure or
9 discovery.”

10 Plaintiff’s RFPs were served on June 10, 2016, and no responses were received by the
11 agreed-upon deadline; further, Defendant has failed to respond to Plaintiff’s counsel’s inquiries
12 requesting responses. (Doc. 25-2, Crosby Decl. at ¶¶ 15-33; Docs. 25-5 – 25-13.) As Defendant
13 has failed to provide responses, the Court GRANTS Plaintiff’s “Motion Regarding Discovery” to
14 compel RFP responses and orders Defendant to serve responses to Plaintiff’s RFPs on or before
15 **November 9, 2016**. All objections to the RFPs have been waived. If Defendant determines that
16 there are no documents responsive to any given RFP, it shall so state in a written answer to the
17 RFPs.

18 **C. Attorney’s Fees and Costs**

19 Pursuant to Rule 37(a)(5)(A), if a motion to compel discovery responses is granted, and if
20 the Court gives the non-responsive party an opportunity to be heard, then the court “must . . .
21 require the party . . . whose conduct necessitated the motion, the party or attorney advising that
22 conduct, or both to pay the movant’s reasonable expenses incurred in making the motion,
23 including attorney’s fees.” Plaintiff request attorney’s fees for 8.5 hours at a rate of \$295.00 per
24 hour, totaling \$2507.50 to prepare this motion. (Doc. 25-2, Crosby Decl. at ¶¶ 15-33.)

25 Local Rule 251(e) provides that a party responding to a motion to compel discovery “shall
26 file a response . . . not later than seven (7) days before the hearing date.” Defendant was afforded
27 an opportunity to be heard in opposition to Plaintiff’s “Motion Regarding Discovery” to compel
28 discovery responses and failed to file any response whatsoever. (*See also* Rule 37 advisory

1 committee's note, 1993 amendments (an opportunity to be heard includes both written
2 submissions and oral hearings).) Plaintiff's Motion has been granted, and the Court must require
3 Defendant to pay Plaintiff's reasonable attorney's fees. Rule 37(a)(5)(A).

4 The Court finds, however, that the 8.5 hours requested by Plaintiff is excessive,
5 considering the straight-forward nature of this motion and the lack of opposition, and determines
6 instead that five (5) hours is a more reasonable amount of time. Accordingly, the Court ORDERS
7 Defendant to pay Plaintiff's reasonable attorney's fees in the amount of \$1475.00 (5 hours at
8 \$295.00 per hour).

9 **IV. CONCLUSION**

10 Accordingly, IT IS HEREBY ORDERED THAT:

- 11 1. Plaintiff's "Motion Regarding Discovery" to compel responses to Interrogatories
12 and Requests for Production of Documents (Doc. 25) is GRANTED;
- 13 2. Defendant is ORDERED to serve written responses to Plaintiff's Interrogatories
14 and Requests for Production of Documents by **November 9, 2016**; and
- 15 3. Defendant is ORDERED to pay Plaintiff's attorney, Crosby S. Connolly, Esq., of
16 Hyde & Swigart, reasonable attorney's fees in the amount of \$1475.00 within thirty
17 (30) days of the date of this order.

18
19 IT IS SO ORDERED.

20 Dated: November 2, 2016

/s/ Sheila K. Oberto
21 UNITED STATES MAGISTRATE JUDGE