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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

Lisa Petras,

Plaintiff,

vs.

A1 Moving and Storage,

Defendant.

CASE NO. 2:09-mc-0010

The Hon. Edmund F. Brennan.

**ORDER ON MOTION TO COMPEL
FURTHER RESPONSES FROM
DAVID AND PAUL SWAIM**

On May 19, 2010, at 10:00 a.m., the court heard Judgment Creditor Lisa Petras's motion to compel the production of documents from Respondents David Swaim and Paul Swaim. Neither David Swaim nor Paul Swaim filed a written opposition to the motion. At the hearing on the motion, Darrel Menthe of McGuireWoods LLP appeared on behalf of Judgment Creditor Petras; David Swaim and Paul Swaim each appeared *pro se*.

On February 23, 2010, plaintiff served via overnight delivery a set of document requests on David Swaim and Paul Swaim under Section 708.030 of the California Code of Civil Procedure ("Cal. Civ. Proc. Code"). Neither David Swaim nor Paul Swaim provided any responses or produced any documents in response thereto. Additionally, neither David Swaim nor Paul Swaim responded to the

1 efforts by counsel for Judgment Creditor Petras to meet and confer about the failure
2 to respond.

3 At the outset of the hearing on the motion to compel the production of the
4 requested documents, Mr. Menthe informed the court that he had met with David
5 Swaim shortly before the hearing and had reached an agreement with David Swaim
6 for full compliance within thirty days, in exchange for which Judgment Creditor
7 Petras would withdraw the request for sanctions against David Swaim that would
8 otherwise be required under Cal. Civ. Proc. Code § 2031.300(c).

9 The terms of that agreement were stated in open court and entered on the
10 record, and David Swaim assented to these terms in open court and on the record.

11 Accordingly, and with good cause appearing, this court orders the following:

12 1. The motion by Judgment Creditor Petras, Dckt. No. 63, is granted.

13 2. David Swaim and Paul Swaim shall each provide to Judgment Creditor
14 Petras full and complete verified written responses to each of the requests for
15 production of documents ("RFP") on or before June 21, 2010.

16 3. If either David Swaim or Paul Swaim is unable to comply with any
17 particular RFP, the response thereto shall comply with all the requirements of Cal.
18 Civ. Proc. Code § 2031.230.

19 4. If David Swaim or Paul Swaim is unable to produce responsive
20 documents to an RFP because these documents are no longer in his possession or
21 control, but are controlled by a third party or are in a warehouse to which he has no
22 automatic right of access, David Swaim or Paul Swaim shall use his best efforts to
23 obtain access to the documents. In the event that he still cannot obtain the
24 documents, the response to the RFP shall contain a full and complete statement of:

- 25 • The nature and anticipated number of the subject documents.
- 26 • The reasons why David Swaim or Paul Swaim cannot access the
- 27 documents.
- 28 • A full and complete statement of the efforts made by David Swaim

1 or Paul Swaim to obtain the documents.

- 2 • The identity of any persons who control access to the documents.
- 3 • The best information that David Swaim or Paul Swaim has as to the
- 4 location of the documents, including the address, telephone number,
- 5 fax number, and e-mail, if applicable, of the persons who control
- 6 access to the documents.

7 5. David Swaim or Paul Swaim shall also, after making such a
8 representation of inability to comply as set forth above, fully cooperate with
9 Judgment Creditor Petras and her counsel in their efforts to obtain responsive
10 documents from the third party or parties in control of such documents.

11 6. David Swaim and Paul Swaim shall each verify his responses under
12 penalty of perjury as required by Cal. Civ. Proc. Code § 2031.250(a).

13 7. David Swaim shall produce for inspection and copying all responsive
14 documents to the offices of Barkley Court Reporters at 770 L Street, Suite 950, in
15 the City and County of Sacramento on or before June 21, 2010. David Swaim shall
16 contact Judgment Creditor Petras's counsel to inform counsel as to when the
17 documents are being produced, so that Judgment Creditor Petras's counsel can
18 arrange for the documents to be photocopied and later returned to David Swaim.
19 Judgment Creditor Petras has agreed to bear the cost of photocopying the documents
20 and returning them to David Swaim.

21 8. On or before June 21, 2010, Paul Swaim shall transmit by federal
22 express or other overnight mail delivery service photocopies of all responsive
23 documents to counsel for Judgment Creditor Petras at the following address:
24 McGuireWoods LLP, 1800 Century Park East, 8th Floor, Los Angeles, California,
25 90067, c/o Patricia Victory, Esq. Paul Swaim will bear the expense for the
26 photocopying and transmission of the documents.

27 9. All federal and state tax returns required to be produced by this Order
28 shall be produced "for attorneys' eyes only." All tax returns that are produced shall

1 be restricted to counsel for Judgment Creditor Petras (McGuireWoods LLP) and
2 shall not be filed with this court or made part of the public record except under seal,
3 pursuant to Federal Rule of Civil Procedure 39 and Eastern District of California
4 Local Rule 141. This order shall serve as a protective order under Federal Rule of
5 Civil Procedure 26(c).

6 10. Upon the request of Judgment Creditor Petras in consideration for
7 David Swaim's agreement to comply, no monetary sanctions are imposed against
8 David Swaim in connection with this Order at this time. Additionally, because the
9 court finds that Paul Swaim's failure to respond to the RFPs was substantially
10 justified based on his misinterpretation of the court's February 19, 2010 order
11 denying an earlier request by Judgment Creditor Petras for production of the
12 documents at issue, no monetary sanctions are imposed against Paul Swaim in
13 connection with this Order at this time.

14 11. The judgment debtor examinations of David Swaim and Paul Swaim
15 are hereby continued until June 30, 2010 at 9:30 a.m. in Courtroom 24 of the above-
16 captioned court. This Order continuing the date of the examination will be
17 enforceable in the same manner as the original order setting the examination as set
18 forth under Cal. Civ. Proc. Code § 708.110(e).

19 IT IS SO ORDERED.

20 Dated: May 26, 2010

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22 EDMUND F. BRENNAN
23 UNITED STATES MAGISTRATE JUDGE
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