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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CSPC DOPHEN CORPORATION,
Plaintiff,
v.
ZHIXIANG HU,
Defendant.

No. 2:17-cv-1895 MCE DB PS

ORDER

Defendant is proceeding in this action pro se. Accordingly, this action has been referred to the undersigned pursuant to Local Rule 302(c)(21). (ECF No. 68.) On June 15, 2018 the matter came before the undersigned for hearing of plaintiff’s motion to compel. (ECF No. 75.) On June 18, 2018, the undersigned issued an order granting plaintiff’s motion to compel, and ordering defendant to provide plaintiff with complete and non-evasive responses within fourteen days. (ECF No. 77.)

On October 15, 2018, plaintiff filed a motion to enforce the June 18, 2018 order. (ECF No. 107.) According to plaintiff’s motion, although defendant provided supplemental responses on July 9, 2018, those responses “remain evasive and incomplete.”¹ (Id. at 4.) It appears from

¹ This matter was briefed by way of motion, opposition, and reply pursuant to Local Rule 230. Because the parties’ dispute concerns incomplete discovery responses the matter should have been briefed pursuant to Local Rule 251(a) and the undersigned’s standard information, which requires the parties to meet and confer, and produce a joint statement.

1 defendant's supplemental responses that defendant may not understand what is required to
2 comply with the June 18, 2018 order.² Plaintiff's motion will, therefore be granted, and
3 defendant ordered to provide a further supplemental response as explained below.

4 **1. Plaintiff's Request For Production No. 1 & Interrogatory No. 1.**

5 These discovery requests seek the identification and production of all:

6 . . . documents and things that are still in [defendant's] possession
7 that [defendant] received from CSPC Dophen or accessed, copied, or
8 removed from CSPC Dophen computers or networks, including but
not limited to all documents and things relating to CSPC Dophen's
drug DP303.

9 (ECF No. 107-10 at 4; ECF No. 107-11 at 4.) Defendant's supplemental response states that
10 defendant "did not possess any documents or things that belong to Plaintiff." (Id.) Defendant
11 acknowledges that he "might have used USB drivers to facilitate data backup" but that any such
12 drivers "were left in [defendant's] former office, to which [defendant] has no access since July 5,
13 2017." (Id.)

14 However, plaintiff believes that defendant may still have access to: (1) a "OneDrive
15 account" containing thousands of plaintiff's documents; (2) USB drivers used on defendant's
16 work computers in the months following his termination; and (3) a complete back-up of his wife's
17 laptop which contains plaintiff's documents. (Pl.'s Mot. (ECF No. 107 at 10-11.) Within twenty-
18 one days of the date of this order, defendant shall make a further supplemental response to
19 plaintiff's discovery requests that either produces each of these three items to plaintiff or explains
20 defendant's failure to produce.

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24 ² Plaintiff's motion also seeks "costs and fees under Rule 37 of the Federal Rules of Civil
25 Procedure." (Pl.'s Mot. (ECF No. 107) at 12.) "A reading of the Rule leads to the inescapable
26 conclusion that the award of expenses is mandatory against a party whose conduct necessitated a
27 motion to compel discovery unless the court finds the opposition to the motion was substantially
28 justified." Brown v. State of Iowa, 152 F.R.D. 168, 173 (S.D. Iowa 1993) (quotation omitted).
Here, in light of defendant's pro se status and supplemental responses, the undersigned finds that
defendant was substantially justified in opposing plaintiff's motion. Therefore, costs and fees
will not be awarded.

1 **2. Plaintiff's Interrogatory No. 5 and Request For Production No. 6**


2 These discovery requests seek to identify and obtain documents referring or relating to
3 any bank account maintained by defendant that contains money belonging to plaintiff, including
4 an accounting of the quantity and source of all funds contained therein. (ECF No. 107-10; ECF
5 No. 107-11 at 4.) Defendant's July 9, 2018 supplemental response essentially refers plaintiff to
6 plaintiff's employee Ashley Smith. (ECF No. 107-10 at 6; ECF No. 107-11 at 5.) Defendant
7 asserts that Ashley Smith handled all "accounts, accounting, deposit and withdrawals as well as
8 connected payrolls" by plaintiff's employees. (ECF No. 107-11 at 5.)

9 Defendant's response, however, misunderstands what plaintiff is seeking. Plaintiff is not
10 seeking the identity of persons who may have relevant financial information, but the information
11 pertaining to any bank account defendant has access to which contains any money belonging to
12 plaintiff. Thus, within twenty-one days of the date of this order, defendant shall provide plaintiff
13 with the identity of, and any and all documents or communications referring or relating to, any
14 bank account that plaintiff has access to which contains money belonging to the plaintiff.

15 Accordingly, upon consideration of the arguments on file and for the reasons set forth
16 above, IT IS HEREBY ORDERED that:

- 17 1. Plaintiff's October 15, 2018 motion to enforce (ECF No. 107) is granted in part and
18 denied in part;
- 19 2. Within twenty-one days of the date of this order defendant shall make a further
20 supplemental response to plaintiff's discovery requests as explained above; and
- 21 3. The November 16, 2018 hearing of plaintiff's motion is vacated.

22 Dated: November 13, 2018

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26 DEBORAH BARNES
27 UNITED STATES MAGISTRATE JUDGE

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