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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

JENNIFER LYNN NEMEC,)
)
Plaintiff,)
v.)
)
FINANCIAL RECOVERY CENTER,)
INC., ET AL.,)
Defendants.)
_____)

Case No.: C 09-06101 JW (PVT)

**ORDER GRANTING AS UNOPPOSED
PLAINTIFF NEMEC’S MOTION TO
COMPEL INITIAL DISCLOSURES,
DISCOVERY RESPONSES AND
SANCTIONS**

[Docket Nos. 40, 41 and 42]

Plaintiff Jennifer Lynn Nemec moves to compel defendants McMillian & Andrews, LLC, David F. Garlock and Justin J. Tata to provide initial disclosures, written discovery responses, and to produce documents. (collectively “defendants”). Additionally, plaintiff Nemec moves for sanctions. Plaintiff Nemec noticed a hearing on the above-specified motions for August 24, 2010 at 10AM. Pursuant to Civ. L.R. 7-3, oppositions were due no later than August 3, 2010. To date, no oppositions have been filed. Pursuant to Civ. L.R. 7-1(b), the motions are taken under submission and the hearing scheduled to be held on August 24, 2010 is vacated. Accordingly,

IT IS HEREBY ORDERED that plaintiff Nemec’s motion to compel initial disclosures is granted as unopposed.¹

¹ The holding of this court is limited to the facts and particular circumstances underlying the present motions.

1 Defendants filed their answer on March 22, 2010. Answer filed on March 22, 2010. (Docket
2 No. 26). Pursuant to Rule 26(a)(1)(C) and the Order Setting Initial Case Management Conference
3 and ADR Deadline dated December 31, 2009, the parties were to have completed their initial
4 disclosures no later than March 30, 2010. (“December 31, 2009 Order”). (Docket No. 9). On April
5 5, 2010, the parties stipulated to serve their initial disclosures no later than April 7, 2010. Joint
6 Motion to Continue Case Management Conference and Proposed Order dated April 5, 2010.
7 (Docket No. 28). Defendants never served their initial disclosures and have never objected to
8 serving initial disclosures in the action. Accordingly, defendants shall serve their initial disclosures
9 no later than August 16, 2010.

10 IT IS FURTHER ORDERED that plaintiff Nemeč’s motion for written discovery and
11 documents is granted as unopposed.

12 On May 3, 2010, plaintiff Nemeč served defendants with written discovery, including
13 interrogatories pursuant to Rule 33, requests for production of documents pursuant to Rule 34, and
14 requests for admissions pursuant to Rule 36. Schwinn Decl., ¶¶ 3-5, Exhs. A-C.

15 Pursuant to Rule 33(b)(2), defendants responses and objections were due within 30 days after
16 being served with the interrogatories. Pursuant to Rule 34(b)(2)(A), “[t]he party to whom the
17 request is directed must respond in writing within 30 days after being served.” Pursuant to Rule
18 36(a)(3), “[a] matter is admitted unless, within 30 days after being served, the party to whom the
19 request is directed serves on the requesting party a written answer or objection addressed to the
20 matter and signed by the party or its attorney.”

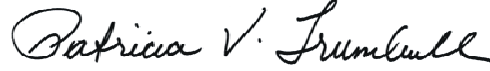
21 To date, defendants have neither responded nor objected to any of the above-specified
22 written discovery. Schwinn Decl., ¶ 6. Pursuant to Rule 33(b)(4), all objections to the
23 interrogatories previously served are waived. Pursuant to Rule 36(a)(3), plaintiff Nemeč’s requests
24 for admission are deemed admitted. Accordingly, defendants shall serve their written responses to
25 interrogatories and requests for production of documents no later than August 16, 2010.

26 IT IS FURTHER ORDERED that plaintiff Nemeč’s motion for sanctions is granted as
27 unopposed. Plaintiff Nemeč is represented by Fred Schwinn of Consumer Law Center, Inc.
28 Schwinn Decl., ¶ 1. His hourly billing rate is \$350. Schwinn Decl., ¶ 15. Defendants shall remit

1 payment totaling \$1,750.00 no later than August 13, 2010. Fred Schwinn's hourly billing rate of
2 \$350 is multiplied by the five hours he spent drafting the motions and preparing the related
3 documents.

4 IT IS SO ORDERED.

5 Dated: August 6, 2010



6 PATRICIA V. TRUMBULL
United States Magistrate Judge

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