

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

VULCAN GOLF, LLC, JOHN B.	§	
SANFILIPPO & SONS, INC.,	§	
BLITZ REALTY GROUP, INC.,	§	
and VINCENT E. "BO" JACKSON,	§	
Individually and on Behalf of All	§	
Others Similarly Situated,	§	Civil Action No. 07 CV 3371
	§	
Lead Plaintiffs,	§	
	§	Honorable Blanche M. Manning
v.	§	
	§	Magistrate Judge Geraldine Soat Brown
GOOGLE INC., OVERSEE.NET,	§	
SEDO LLC, DOTSTER, INC., AKA	§	
REVENUEDIRECT.COM,	§	
INTERNET REIT, INC. d/b/a IREIT, INC.,	§	
and JOHN DOES I-X,	§	
	§	
	§	
Defendants.	§	

MOTION TO COMPEL RULE 26 DISCLOSURES

1. On September 20, 2007, Judge Manning ordered all parties to make Rule 26(a) disclosures on or before November 5, 2007.

2. On November 5, 2007, Defendants failed to comply in good faith with Judge Manning's order and filed blatantly deficient Rule 26 Disclosures. *See Exhibit "A"*.

3. Each Defendant failed to adequately identify witnesses and documents. In fact, Defendants' disclosures were so deficient that they failed to include a single document or electronic data.

4. Defendants are all represented by counsel that should be aware of their obligations under Rule 26(a)(1)(A) of the Federal Rules of Civil Procedure, which provides that

a party must disclose: “the name ... of each individual likely to have discoverable information *that the disclosing party may use to support its claims or defenses*, unless solely for impeachment, *identifying the subjects of the information.*” See Fed.R.Civ.P. 26(a)(1)(A). Rule 26(a)(1) requires initial disclosures based upon information then reasonably available to the disclosing party.

5. Rule 26(g) states that the attorney or party making disclosures pursuant to Rule 26(a)(1) must sign those disclosures, thereby certifying that *to the best of the signer's knowledge, information, and belief, formed after a reasonable inquiry, the disclosure is complete.*

6. In the instant action, the deficient Defendant disclosures speak for themselves. None of the Defense Counsel could stand before this Court and in good faith certify that they made complete and accurate disclosures that comply with Rule 26. Even a cursory review of Defendants’ disclosures demonstrate their facial inadequacies and the fact that either Defendants failed to meet their duty to make “reasonable inquiry,” or simply disregarded their duty by withholding relevant information that was readily available with even minimal inquiry. See *Sender v. Mann*, 225 F.R.D. 645 (D.Colo. 2004); citing *In re Independent Service Organizations Antitrust Litigation*, 168 F.R.D. 651, 653 (D.Kan. 1996) (noting that a party cannot meet its discovery obligations, including obligations under Rules 26(a)(1) and 26(e)(1), “by sticking its head in the sand and refusing to look for the answers and then saying it does not know the answer”) and *Gucci America, Inc. v. Costco Wholesale Corp.*, 2003 WL 21018832, *2 (S.D.N.Y. 2003) (holding that Rule 26(g) imposes an obligation to make a reasonable inquiry to ensure that the party's disclosures are complete *and* accurate).

7. The purpose of the Rule 26(a)(1) disclosures are to: “help focus the discovery that is needed, and facilitate preparation for trial or settlement.” *See* Advisory Committee Notes to 1993 Amendments to Fed.R.Civ.P. 26(a). Initial disclosures should provide the parties “with information essential to the proper litigation of all relevant facts, to eliminat[e] surprise, and to promot[e] settlement.” *Windom v. FM Industries, Inc.*, 2003 WL 21939033 (D.Neb. 2003) (quoting *Rolscreen Co. v. Pella Prods. of St. Louis, Inc.*, 145 F.R.D. 92, 94 (S.D.Iowa 1992)). *See also City and County of San Francisco v. Tutor-Saliba Corp.*, 218 F.R.D. 219, 221 (N.D.Cal. 2003) (noting that Rule 26(a) seeks to “ ‘accelerate the exchange of basic information’ that is ‘needed in most cases to prepare for trial or make an informed decision about settlement’ ”).

8. Initial Rule 26(a)(1) should be “complete and detailed,” and should “give the opposing party information as to the identification and location of persons with knowledge so that they can be contacted in connection with the litigation.” *Crouse Cartage Co. v. National Warehouse Investment Co.*, 2003 WL 23142182 (S.D.Ind. 2003) (quoting *Biltrite Corp. v. World Road Markings, Inc.*, 202 F.R.D. 359, 362 (D.Mass. 2001)).

9. Although Defendants filed partial motions to dismiss, there are numerous claims that are not subject to motions to dismiss. Regardless of Defendants’ sentiments about this litigation, they are subject to the orders of this Court. They, like all other parties, must comply in good faith with all Court orders.

10. Defendants utterly failed to meet their obligations under Rule 26, and therefore should be ordered to supplement said disclosures in a timely fashion.

FOOTE, MEYERS, MIELKE & FLOWERS, LLC

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One of Their Attorneys

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CERTIFICATE OF SERVICE

I hereby certify that on January 2, 2008, I electronically filed the foregoing document with the clerk of court for the U. S. District Court, Northern District of Illinois, using the electronic case filing system of the court. The electronic case filing system sent a "Notice of Electronic Filing" to the following attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means:

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