

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

CREATIVE SOURCE GROUP, INC.,

Plaintiff,

vs.

AGRIPROCESSORS, INC.,

Defendant.

No. C08-1016

**ORDER COMPELLING
DISCOVERY**

This matter comes before the Court on the Motion to Compel Discovery Response (docket number 24) filed by the Plaintiff on October 3, 2008, and the Resistance (docket number 27) filed by the Defendant on October 13, 2008. Pursuant to Local Rule 7.c, the motion will be decided without oral argument.

I. RELEVANT FACTS

On August 26, 2008, Plaintiff Creative Source Group, Inc. (“CSG”) served Defendant Agriprocessors, Inc. with a First Set of Requests for Production of Documents (docket number 24-4 at 3-5) and a First Set of Interrogatories (docket number 24-4 at 6-22). Agriprocessors was required to respond or object to the discovery requests not later than Monday, September 29, 2008. *See* FED. R. CIV. P. 33(b)(2), 34(b)(2)(A), and 6(a)(3) and (d).

When Agriprocessors failed to respond in the time permitted under the Federal Rules of Civil Procedure, on Tuesday, September 30 2008, counsel for CSG wrote a letter (docket number 24-4 at 23) to Chaim Abraham at Agriprocessors,¹ advising him that if a

¹ On September 22, 2008, the Court entered an Order (docket number 23) permitting the Nyemaster firm to withdraw as counsel for Agriprocessors.

response was not provided immediately, a motion to compel would be filed on Friday, October 3, 2008. In response, CSG's attorney received an email from Mr. Abraham, indicating that counsel at the Belin firm in Des Moines "were appointed to represented [sic] us."²

On October 3, Jeffrey Stone, representing CSG, called Christopher McDonald at the Belin firm. According to Mr. Stone's declaration, "Mr. McDonald represented that discovery would be forthcoming and Mr. Eaton [of the Nyemaster firm] had only sent the file to Mr. McDonald on October 2, 2008."³ However, Mr. McDonald's request for an extension of time to respond was denied by Mr. Stone. The instant motion to compel discovery responses was then filed.

II. DISCUSSION

Agriprocessors concedes that it failed to timely respond to CSG's discovery requests. Agriprocessors argues, however, that CSG failed to confer in good faith prior to filing its motion to compel, as required by FEDERAL RULE OF CIVIL PROCEDURE 37(a)(1) and Local Rule 37.a.⁴ Agriprocessors apparently argues that "good faith" in these circumstances required CSG to agree to an extension.

It is the Court's experience that Iowa attorneys will generally try to accommodate one another regarding discovery if their clients' interests are not adversely affected. This is particularly true when counsel are new to the action. The Court cannot find any authority, however, which *requires* counsel to grant an extension of time to respond to discovery requests. The cases cited by Agriprocessors in its resistance confirm a movant's

² Declaration of Counsel (docket number 24-3), ¶ 3 at 1.

³ Declaration of Counsel (docket number 24-3), ¶ 3 at 1-2.

⁴ Agriprocessors' resistance refers to Local Rule 37.1. Counsel are reminded that the Local Rules were amended and renumbered, effective January 1, 2008. The Rule formerly enumerated 37.1 is now identified as Rule 37.


obligation to confer in good faith, as required by Rule 37, but do not address a party's refusal to extend the time to respond.

Agriprocessors was served with the discovery requests on August 26, 2008. Its obligation to timely respond to those discovery requests is established in the Rules, notwithstanding the fact that it was necessary to obtain substitute counsel as a consequence of its original counsel being permitted to withdraw for nonpayment of fees. While professional courtesy may have moved CSG to agree to a short extension under these circumstances, the Court concludes that it was not required to do so under the FEDERAL RULES OF CIVIL PROCEDURE. Accordingly, the Court finds that the motion should be granted.⁵

ORDER

IT IS THEREFORE ORDERED that the Motion to Compel Discovery Response (docket number 24) filed by the Plaintiff is hereby **GRANTED**. Defendant shall respond to the requested discovery not later than October 24, 2008, or be subject to appropriate sanctions upon further application by Plaintiff.

DATED this 20th day of October, 2008.



JON STUART SCOLES
United States Magistrate Judge
NORTHERN DISTRICT OF IOWA

⁵ The Court also notes that the discovery responses are now 21 days overdue and the Belin firm has been involved for more than two weeks.