

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

MICHAEL FIGUEROA,
Plaintiff,

v.

CIVIL ACTION NO. 15-14113-MLW

CROWN EQUIPMENT CORPORATION,
Defendant.

REPORT AND RECOMMENDATION
ON CROWN EQUIPMENT CORPORATION'S
RULE 37 MOTION FOR DISMISSAL OF THE CASE (#25).

KELLEY, U.S.M.J.

On April 19, 2017, the court granted Crown Equipment Corporation's Motion to Compel (#23) and ordered that Michael Figueroa serve his initial disclosures, answer interrogatories and produce documents within ten days. (#24.) To date, plaintiff has failed comply with the court's order in that he has not filed the initial disclosures or responded to the discovery requests. At this juncture, defendant seeks dismissal of this action pursuant to Fed. R. Civ. P. 37.

In pertinent part, the rule provides as follows:

(b) Failure to Comply with a Court Order

(2) Sanctions Sought in the District Where the Action Is Pending.

(A) For Not Obeying a Discovery Order. If a party or a party's officer, director, or managing agent--or a witness designated under Rule 30(b)(6) or 31(a)(4)--fails to obey an order to provide or permit discovery, including an order under Rule 26(f), 35, or 37(a), the court where the action is pending may issue further just orders. They may include the following:

(v) dismissing the action or proceeding in whole or in part.

Fed. R. Civ. P. 37(b)(2)(A)(v). The time for filing an opposition to the motion to dismiss has passed, and plaintiff's counsel has informed the clerk that, in fact, no opposition to the dispositive motion will be filed.

In these circumstances, I RECOMMEND that Crown Equipment Corporation's Rule 37 Motion for Dismissal of the Case (#25) be GRANTED and that the case be dismissed pursuant to Fed. R. Civ. P. 37(b)(2)(A)(v) for failure to comply with the court's discovery order.

The parties are hereby advised that any party who objects to this recommendation must file specific written objections with the Clerk of this Court within 14 days of the party's receipt of this Report and Recommendation. The objections must specifically identify the portion of the recommendation to which objections are made and state the basis for such objections. The parties are further advised that the United States Court of Appeals for this Circuit has repeatedly indicated that failure to comply with Rule 72(b), Fed. R. Civ. P., shall preclude further appellate review. *See Keating v. Secretary of Health & Human Servs.*, 848 F.2d 271 (1st Cir. 1988); *United States v. Emiliano Valencia-Copete*, 792 F.2d 4 (1st Cir. 1986); *Scott v. Schweiker*, 702 F.2d 13, 14 (1st Cir. 1983); *United States v. Vega*, 678 F.2d 376, 378-379 (1st Cir. 1982); *Park Motor Mart, Inc. v. Ford Motor Co.*, 616 F.2d 603 (1st Cir. 1980); *see also Thomas v. Arn*, 474 U.S. 140 (1985).

June 19, 2017

/s/ M. Page Kelley
M. Page Kelley
United States Magistrate Judge