

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

JOHN G. BROWN,

Plaintiff,

vs.

EARTH SOUND, INC., a Nebraska  
Corporation; KENNY ENERGY, L.L.C., a  
Nebraska Limited Liability Company; and  
JAMES KENNY,

Defendants.

**4:12CV3001**

**MEMORANDUM AND ORDER**

The plaintiff has not responded to the defendants' motion to compel (filing no. 52), and the deadline for responding has passed. The motion to compel is deemed unopposed. The plaintiff's failure to comply with discovery or respond to the defendants' motion to compel is not substantially justified.

Accordingly,

IT IS ORDERED:

- 1) That portion of the defendants' motion, (Filing No. 52), which moves to compel production of documents is granted, and on or before February 21, 2013, Plaintiff shall fully respond to the Defendants' First Set of Requests for Production of Documents.
- 2) That portion of the defendants' motion, (Filing No. 52), which requests an award of attorney fees and costs remains pending and,
  - a. On or before February 14, 2013, the defendants shall serve Plaintiff's counsel with an itemized listing of the costs and attorney fees the defendants incurred in filing the motion to compel.
  - b. On or before February 21, 2013, the parties shall confer in good faith to resolve the issue of awarding costs and attorney fees in favor of the defendants.

- i. If the parties reach an agreement regarding the award of costs and fees, on or before February 22, 2013, they shall file a stipulation outlining the material terms of their agreement.
  
- ii. If the parties do not reach an agreement regarding the award of costs and fees, the defendants shall file their itemized listing of costs and attorney fees as evidence in support of their motion for sanctions. The plaintiff's response shall be filed within ten days thereafter, in the absence of which the court will award the defendants' costs and fees in the amount requested.

February 6, 2013

BY THE COURT:

s/ Cheryl R. Zwart  
United States Magistrate Judge