



1 Counter-Motion is not premature, so the Court turns to the particular discovery in dispute.

2 **A. Request For Production No. 2**

3 This request for production seeks documents evidencing Plaintiff’s income for the years  
4 2002 through 2005. Defendant indicates that Plaintiff has produced documents related to some of  
5 these years, but not all of them. *See* Counter-Motion at 35. Plaintiff’s Response notes difficulty in  
6 obtaining some of the documents. *See* Response at 2. In the event that such documents are  
7 unobtainable, the request for production provides instructions so that Defendant can obtain the  
8 information sought through other means. Defendant contends that Plaintiff has failed to produce  
9 responsive documents and failed to comply with the instructions regarding those documents she is  
10 unable to provide.

11 Concurrently with the filing of her Response to the Counter-Motion, Plaintiff provided a  
12 supplemental production with respect to Request for Production No. 2. *See* Reply at 5 (indicating  
13 that Plaintiff served copies of bank statements). Defendant “does not concede the sufficiency of  
14 Plaintiff’s response,” but the Reply also fails to identify any deficiency that remains with respect to  
15 the document production. *See id.* Accordingly with respect to producing documents responsive to  
16 Request for Production No. 2, the Counter-Motion is **DENIED** as moot.

17 The Counter-Motion also sought an order requiring Plaintiff to comply with the instructions  
18 regarding those documents that she is unable to obtain. There is no indication that this aspect of the  
19 Counter-Motion has been mooted. Plaintiff’s Response does not address this issue, so the Court  
20 deems this aspect of the Counter-Motion to be unopposed. *See* Local Rule 7-2(d). The Court has  
21 also reviewed Defendant’s arguments on this issue and finds them meritorious. Accordingly, with  
22 respect to the instructions in Request for Production No. 2 for documents that Plaintiff is unable to  
23 obtain, the Counter-Motion is **GRANTED**. Plaintiff shall comply with this order within 10 days.

24 **B. Request for Production No. 4**

25 This request for production seeks documents supporting Plaintiff’s statement in an affidavit  
26 that she has invested “approximately over one million dollars over the years.” Defendant argues that  
27 Plaintiff has indicated that all responsive documents were provided, but failed to provide a list of  
28 documents with sufficient information allowing Defendant to identify the responsive documents.

1 Counter-Motion at 35. Plaintiff provided a supplemental discovery response for Request for  
2 Production No. 4 after the Counter-Motion was filed. *See* Reply at 5. Defendant “does not concede  
3 the sufficiency of Plaintiff’s response,” but the Reply also fails to identify any deficiency that  
4 remain. Accordingly with respect to Request for Production No. 4, the Counter-Motion is **DENIED**  
5 as moot.

6 **C. Request for Production No. 6**

7 This request for production seeks documents exchanged between Plaintiff and the bank,  
8 lender or other entity while seeking financing as stated in the Complaint and affidavit. Defendant  
9 argues that Plaintiff’s counsel indicated that additional responsive documents had been produced to  
10 Defendant, but refused to supplement the discovery response to identify those documents. *See*  
11 Counter-Motion at 36. Plaintiff’s Response does not address this issue, so the Court deems this  
12 aspect of the Counter-Motion to be unopposed. *See* Local Rule 7-2(d). The Court has also reviewed  
13 Defendant’s arguments and finds them meritorious. Accordingly, with respect to Request for  
14 Production No. 6, the Counter-Motion is **GRANTED**. Plaintiff shall comply with this order within  
15 10 days.

16 **III. IMPOSITION OF RULE 37(b)(2) SANCTIONS**

17 Defendant moves for the imposition of “severe sanctions” pursuant to Federal Rule of Civil  
18 Procedure 37(b)(2), including striking Plaintiff’s Complaint. *See* Counter-Motion at 36. Defendant  
19 cites to previous orders regarding Plaintiff’s failure to properly respond to discovery, but provides  
20 only cursory discussion regarding the imposition of these sanctions. *See id.* at 36-37. The Court  
21 declines to impose sanctions under Rule 37(b)(2) based on the limited discussion provided.  
22 Accordingly, Defendant’s request for Rule 37(b)(2) sanctions is **DENIED**.

23 **IV. AWARD OF ATTORNEY’S FEES AND COSTS PURSUANT TO RULE 37(a)(5)**

24 Defendant also seeks attorney’s fees and costs for filing the Counter-Motion pursuant to  
25 Federal Rule of Civil Procedure 37(a)(5). *See* Counter-Motion at 37. Where a movant succeeds in  
26 bringing a motion to compel, the Court awards attorney’s fees and costs unless (1) the movant failed  
27 to properly meet and confer, (2) the non-movant was substantially justified in its actions, or (3) other  
28 circumstances make an award or expenses are unjust. *See* Rule 37(a)(5). Here, Defendant has

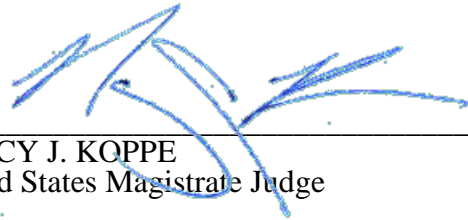
1 prevailed on its motion and none of the outlined reasons for denying attorney's fees and costs exist.  
2 Moreover, the Response to the Counter-Motion fails to include any discussion regarding the request  
3 for attorney's fees and costs. Accordingly, the Court finds the award of attorney's fees and costs  
4 proper.<sup>1</sup> No later than March 18, 2013, Defendant shall submit a declaration outlining its attorney's  
5 fees and costs in making the motion. Any response is due no later than March 25, 2013.

6 **V. CONCLUSION**

7 For the reasons discussed above, Defendant's Counter-Motion is **GRANTED** in part and  
8 **DENIED** in part. The Court further **ORDERS** Plaintiff to pay attorney's fees and costs to be  
9 determined by the Court at a later date. No later than March 18, 2013, Defendant shall submit a  
10 declaration outlining its attorney's fees and costs in making the motion. Any response is due no  
11 later than March 25, 2013.

12 **IT IS SO ORDERED.**

13 DATED: March 11, 2013

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16 NANCY J. KOPPE  
17 United States Magistrate Judge

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28 <sup>1</sup> The fees and costs associated with the aspects of the Counter-Motion that are denied as moot  
are recoverable, as are the aspects that the Court granted. See Rule 37(a)(5)(A).