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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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TRUSTEES OF THE OPERATING
ENGINEERS PENSION TRUST, *et al.*,

Plaintiffs,

v.

WESTERN EXPLOSIVES SYSTEMS
COMPANY,

Defendant.

Case No. 2:18-cv-00805-JCM-GWF

ORDER

This matter is before the Court on Plaintiff's Motion to Compel (ECF No. 10), filed August 13, 2018. To date, no response has been filed and the time for which has passed.

Plaintiffs request an order compelling Defendant to respond to Plaintiff's first set of written discovery including interrogatories and request for production of documents. The certificates of service indicate that Plaintiffs mailed their first set of requests for written discovery on June 22, 2018. Plaintiffs' counsel represents that three days after the deadline for Defendant to submit its response passed, he sent a letter to Defendant's counsel reminding him of the missed deadline and to schedule a time to meet and confer. Plaintiffs' counsel indicates that on August 2, 2018, counsel for both parties met and conferred and reached an agreement that Defendant would respond to requested discovery no later than August 9, 2018. Plaintiffs' counsel further represents Plaintiffs are still without response.

To date, no party has responded to this motion and the time for opposition has now passed. LR 7-2(d) reads in pertinent part, that "[t]he failure of an opposing party to file points and authorities in response to any motion shall constitute a consent to the granting of the motion." As a result, the Court will grant the present motion.

1 Additionally, Plaintiffs' argue they be entitled to recover attorney's fees incurred as a
2 result of this motion, pursuant to Rule 37(a)(5)(A). Federal Rule of Civil Procedure
3 37(d)(1)(A)(ii) permits the court to grant sanctions when a party, after being properly served
4 with interrogatories or request for inspection, fails to file its answers or written response. The
5 Court will therefore grant Plaintiffs' request for attorney's fees. Accordingly,

6 **IT IS HEREBY ORDERED** that Plaintiff's Motion to Compel (ECF No. 10) is
7 **granted.**

8 **IT FURTHER ORDERED** that Defendant shall serve its answers to Plaintiffs First Set
9 of Interrogatories and responses to Requests for Production no later than **fourteen (14) days**
10 after the entry of this order.

11 **IT FURTHER ORDERED** as follows:

12 1. Plaintiffs are entitled to an award of reasonable attorney's fees and costs incurred in
13 filing the instant motion. Counsel for the Plaintiffs shall, no later than fourteen (14) days from
14 the entry of this order, up to and including **September 24, 2018**, serve and file a memorandum,
15 supported by affidavit of counsel, establishing the amount of attorney's fees and costs incurred.
16 The memorandum shall provide a reasonable itemization and description of work performed,
17 identify the attorney(s) or staff member(s) performing the work, the customary fee of the
18 attorney(s) or staff member(s) for such work, and the experience, reputation and ability of the
19 attorney performing the work. The attorney's affidavit shall authenticate the information
20 contained in the memorandum, provide a statement that the bill has been reviewed and edited,
21 and a statement that the fees and costs charged are reasonable.

22 2. Counsel for Defendant shall have fourteen (14) days from service of the memorandum
23 of costs and attorney's fees, up to and including **October 8, 2018**, in which to file a responsive
24 memorandum addressing the reasonableness of the costs and fees sought, and any equitable
25 considerations deemed appropriate for the court to consider in determining the amount of costs
26 and fees which should be awarded

27 3. Counsel for Plaintiff shall have seven (7) days from service of the responsive
28 memorandum, up to and including **October 15, 2018**, in which to file a reply.

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IT FURTHER ORDERED that the hearing currently scheduled for Thursday,
September 13, 2018 at 9:30 AM shall be vacated.

Dated this 10th day of September, 2018.



GEORGE FOLEY, JR.
UNITED STATES MAGISTRATE JUDGE