

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
EASTERN DIVISION
Civil Action No. 4:11-cv-00059-BO

Sirsi Corporation d/b/a SirsiDynix,

Plaintiff,

v.

**Craven-Pamlico-Carteret Regional
Library System,**

Defendant.

**Memorandum in Support of SirsiDynix's
Motion to Compel Responses to its First Set
of Requests for Production of Documents**

Plaintiff Sirsi Corporation d/b/a SirsiDynix (“SirsiDynix”) states the following grounds in support of its motion for an order compelling Defendant Craven-Pamlico-Carteret Regional Library System (“CPC Regional”) to respond in full to SirsiDynix’s First Set of Requests for Production of Documents and awarding SirsiDynix its attorneys fees in connection with this motion:

STATEMENT OF THE CASE AND FACTS

On September 6, 2011, Magistrate Judge David W. Daniel entered a Scheduling Order which required all discovery to be completed by January 31, 2010.

On September 6, 2011, SirsiDynix served its First Set of Requests for Production of Documents on CPC Regional via e-mail and United States Mail. *See* Exhibit A. Pursuant to Rules 6 and 34 of the Federal Rules of Civil Procedure, CPC Regional’s responses to SirsiDynix’s First Set of Requests for Production of Documents were due on October 10, 2011.

On October 13, 2011, having not received responses to SirsiDynix’s First Set of Requests for Production of Documents, an order from the court allowing a longer time to respond to the

documents, or a request from opposing counsel to extend the time to respond, counsel for SirsiDynix sent a letter to CPC Regional requesting that they respond to the First Set of Requests for Production of Documents by Friday, October 14, 2011. *See* Exhibit B.

As of the time of this filing SirsiDynix has not received responses to its First Set of Requests for Production of Documents.

ARGUMENT

I. CPC REGIONAL’S FAILURE TO RESPOND TO SIRSIDYNIX’S DISCOVERY REQUESTS ENTITLES SIRSIDYNIX TO AN ORDER DEEMING ANY OBJECTIONS CPC REGIONAL MAY HAVE HAD TO THE DISCOVERY REQUESTS TO BE WAIVED AND COMPELLING CPC REGIONAL TO RESPOND TO THE REQUESTS IN A TIMELY MANNER

SirsiDynix brings this Motion to Compel CPC Regional to respond to its First Set of Requests for Production of Documents. A party may seek an order compelling discovery in the event that a party who has been served with Requests for Production of Documents pursuant to Rule 34 fails to respond in a timely manner. Fed. R. Civ. P. 37(a)(3)(B)(iv).

Under Rule 34(b)(2)(A) of the Federal Rules of Civil Procedure “[t]he party to whom the request is directed must respond in writing within 30 days after being served. A shorter or longer time may be stipulated to [by the parties] or be ordered by the court.” Fed. R. Civ. P. 34(b)(A). This rule is read in conjunction with Rule 6(d) of the Federal Rules which provides that “[w]hen a party may or must act within a specified time after service ... 3 days are added after the period would otherwise expire....” Fed. R. Civ. P. 6(d). The failure to respond to discovery requests in a timely manner without good cause also operates as a waiver of any objections a party had to the discovery requests. *Thompson v. Navistar, Inc.*, 5:10-cv-127, 2001 WL 2198848, *2 (E.D.N.C. June 6, 2011) (citing cases) (attached as Exhibit C).

In this case, SirsiDynix served its First Set of Requests for Production of Documents on CPC Regional via e-mail and United States Mail on September 6, 2011. *See* Exhibit A. Pursuant to Rules 6 and 34 of the Federal Rules of Civil Procedure, CPC Regional's responses to SirsiDynix's First Set of Requests for Production of Documents were due on October 10, 2011. As of the time of this filing, CPC Regional failed to respond to the Requests for Production of Documents, CPC Regional has not requested additional time to respond from SirsiDynix, and the court has not entered an order allowing CPC Regional additional time to respond to the discovery requests. Therefore, SirsiDynix is entitled to an order (1) deeming any objections that CPC Regional may have had to the discovery requests to have been waived and (2) requiring CPC Regional to respond to the discovery requests within 7 days of the court's order.

II. CPC REGIONAL'S FAILURE TO RESPOND ENTITLES SIRSIDYNIX TO AN AWARD OF ITS EXPENSES INCURRED IN BRINGING THIS MOTION

Pursuant to Rule 37(a)(5) of the Federal Rules of Civil Procedure provides for an award of expenses where a Motion to Compel is granted. The relevant portion of the rule states:

If the motion is granted—or if the disclosure or requested discovery is provided after the motion was filed—the court must, after giving an opportunity to be heard, require the party or deponent whose conduct necessitated the motion, the party or attorney advising the conduct, or both to pay the movant's reasonable expenses incurred in making the motion.

Fed. R. Civ. P. 37(a)(5)(A). Here, without explanation, CPC Regional failed to respond to SirsiDynix's Requests for Production of Documents in a timely manner, failed to seek an extension of time from SirsiDynix to respond to the request, and failed to seek an extension of time to respond from the court. Therefore, SirsiDynix is entitled to recover its expenses incurred in connection with this motion.

CONCLUSION

Based upon the foregoing arguments and authorities SirsiDynix's Motion to Compel should be granted.

Dated: October 17, 2011.

WOMBLE CARLYLE SANDRIDGE & RICE
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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing was filed electronically with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following:

Lee W. Bettis , Jr.
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Dated: October 17, 2011.

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