

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

ACE OILFIELD RENTALS, LLC,)

Plaintiff,)

v.)

Case No. CIV-15-672-D

WESTERN DAKOTA WELDING)

AND FABRICATION, LLC,)

DOUG KERKVLiet,)

TUCKER PANKOWSKI, and)

WESDAK WELDING AND)

DIESEL, LLC,)

Defendants.)

ORDER

Before the Court is Plaintiff ACE Oilfield Rentals, LLC’s Motion to Compel [Doc. No. 102] and Plaintiff ACE Oilfield Rentals, LLC’s Renewed Motion to Compel [Doc. No. 107]. The motions seek to compel complete discovery responses and deposition attendance from Defendant Kerkvliet. Defendant Kerkvliet has failed to respond to either motion, and they are therefore deemed confessed. *See* LCvR7.1(g) (“Any motion that is not opposed within 21 days may, in the discretion of the court, be deemed confessed.”).

Further, after reviewing the motions, the Court finds that Plaintiff has demonstrated good cause for an order compelling Defendant Kerkvliet to respond to Plaintiff’s discovery requests and request for a deposition. In short, Plaintiff noticed Defendant Kerkvliet for a deposition and submitted interrogatories and requests for production prior to the close of discovery. Defendant Kerkvliet failed to attend the deposition and failed to provide discovery responses by the response deadline. This complete failure to participate in

discovery resulted in the filing of Plaintiff's Motion to Compel on January 5, 2021. Defendant Kerkvliet then filed his Responses to Plaintiff's First Set of Interrogatories [Doc. No. 111] and his Responses to Plaintiff's First Set of Requests for Production [Doc. No. 112]. *See also* Pl.'s Renewed Mot. to Compel, Ex. 1. The responses were deficient in several ways, which necessitated the filing of Plaintiff's Renewed Motion to Compel.

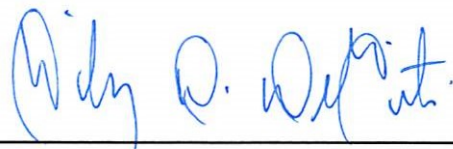
The Court agrees with Plaintiff that supplementation of the discovery responses is necessary. Certain responses are inconsistent with other evidence – suggesting that the response is either untrue or incomplete – while others simply fail to respond to the question asked. Additionally, Defendant Kerkvliet has responded to several requests for production with factual statements rather than providing either an objection or a responsive document. *See* FED R. CIV. P. 34(b)(2)(B) (requiring response to “state that inspection and related activities will be permitted as requested or state with specificity the grounds for objecting to the request.”). He also avoids responding to numerous requests by asserting that the documents are in the control of another entity, but given his relationship with the entity at issue, it is doubtful that the documents are outside of his control. *See* FED R. CIV. P. 34(a) (requiring production of documents “in the responding party’s possession, custody, or control”); *Ice Corp. v. Hamilton Sundstrand Corp.*, 245 F.R.D. 513, 517 (D. Kan. 2007) (“Production of documents not in a party’s possession is required if a party has the practical ability to obtain the documents from another, irrespective of legal entitlements to the documents.”).

Plaintiff also requests attorney's fees and costs incurred in the preparation of both its Motion to Compel and its Renewed Motion to Compel. Courts must award reasonable

attorney's fees and costs if a motion to compel is granted or if the requested discovery is provided after the motion was filed, unless other circumstances make an award unjust. FED.R.CIV.P. 37(a)(5)(A). As set forth above, Defendant Kerkvliet failed to attend a scheduled deposition and initially failed to provide any discovery responses at all. When he finally did provide responses, they were deficient. Given Defendant Kerkvliet's refusal to participate in discovery in a meaningful way, the Court finds that awarding reasonable attorney's fees and costs in this circumstance would not be unjust.

Accordingly, Plaintiff ACE Oilfield Rentals, LLC's Motion to Compel [Doc. No. 102] and Plaintiff ACE Oilfield Rentals, LLC's Renewed Motion to Compel [Doc. No. 107] are GRANTED. Plaintiff is directed to submit evidence of its reasonable attorney's fees and costs within fourteen (14) days of the date of this Order. Defendant Kerkvliet is directed to 1) attend a properly noticed deposition at a date and time that is mutually convenient to the parties and 2) provide full and complete responses to Interrogatory Nos. 2, 6, 14, and 15 and Request for Production Nos. 3-37 within fourteen (14) days from the date of this Order. Discovery responses are not to be filed with this Court but are to be sent to Plaintiff's counsel. Defendant Kerkvliet is further advised that failure to comply with this order may result in sanctions, including the entry of a default judgment. *See* FED. R. CIV. P. 37(B)(2).

IT IS SO ORDERED this 18th day of August, 2021.



TIMOTHY D. DeGIUSTI
Chief United States District Judge