

1997 WL 122588

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United States District Court, D. Kansas.

Saul ZAPATA, et al., Plaintiffs,

v.

IBP, INC., Defendant.

Civil Action No. 93-2366-EEO.

March 13, 1997.

#### Attorneys and Law Firms

David W. Hauber, Boddington & Brown, Chtd., Kansas City, KS, P. John Brady, R. Lawrence Ward, James C. Sullivan, Shughart, Thomson & Kilroy, P.C., Kansas City, MO, John L. Hampton, Hampton Law Office, Lawrence, KS, Glenn B. Brown, Kendall Law Office, Indianapolis, IN, for Saul Zapata, Gustavo Adolpho Vasquez, Francisco Ponce, Antonio Martinez, Manuel Sigala, Graciela Garcia, Antonio Ponce, Enrique Molina, Jr., Baltazar Betran, Pedro Lira, Marco Interrial, Jose Luis Velasquez, Olga Cabral.

David W. Hauber, Boddington & Brown, Chtd., Kansas City, KS, P. John Brady, R. Lawrence Ward, James C. Sullivan, Shughart, Thomson & Kilroy, P.C., Kansas City, MO, John L. Hampton, Hampton Law Office, Lawrence, KS, for Juan Rucker.

Jack L. Whitacre, Spencer, Fane, Britt & Browne, Shelly L. Freeman, John R. Phillips, Blackwell, Sanders, Matheny, Weary & Lombardi, Kansas City, MO, Paula S. Greathouse, Kansas Insurance Department, Pamela L. Falk, Midwest Health Services, Topeka, KS, Russell P. Wright, IBP, Inc., Dakota City, NE, J. Nick Badgerow, Michael M. Warden, Jeannie M. DeVeney, Spencer, Fane, Britt & Browne, Overland Park, KS, Sarah R. Saldana, Michele Baird, Karen B. Peck, Baker & Botts, L.L.P., Dallas, TX, for Defendant.

#### MEMORANDUM AND ORDER

RUSHFELT, United States Magistrate Judge.

\*1 Before the court is a Motion To Compel and For Sanctions of Plaintiff Juan Rucker (doc. 372).<sup>1</sup> Pursuant to Fed.R.Civ.P. 37(a), plaintiff Rucker seeks to compel defendant IBP, Inc. to fully answer his First Interrogatories. He also seeks sanctions. Defendant opposes the motion.

On July 3, 1996 plaintiff served his First Interrogatories upon defendant. He moved to compel answers on November 14, 1996. On that same day, defendant served its answers. It thus characterizes the motion as moot. Plaintiff disputes that characterization. He suggests that the answers to Interrogatories 2 and 3 are insufficient. He also suggests that objections to Interrogatories 8 through 18 are improper. He claims that defendant waived its objections by not timely responding to the interrogatories. He has no apparent quarrel with the answers to Interrogatories 1 and 4 through 7. Those answers, furthermore, appear sufficient. The motion is thus moot to the extent it seeks further answers to Interrogatories 1 and 4 through 7.

Interrogatory 2 asks defendant to “[s]tate the factual basis for each and every affirmative defense alleged by defendant. In answering this interrogatory, state the name of all individuals who have knowledge of the facts supporting such affirmative defenses and identify any and all documents that relate to such affirmative defenses.” As its answer, defendant refers plaintiff to an answer to an interrogatory in *Zapata*. Interrogatory 3 asks for information regarding positions held by plaintiff at IBP, Inc. As its answer, defendant invokes Fed.R.Civ.P. 33(d) and refers plaintiff to documents produced in *Zapata*. These answers do not suffice. Interrogatories 2 and 3 clearly relate to issues specific to this plaintiff, not to others in a closely related case. Defendant shall fully answer Interrogatory 2, without reference to discovery in *Zapata*. If the answer is similar to that given in *Zapata*, defendant should have little difficulty in articulating it. Defendant shall also fully answer Interrogatory 3. It may rely upon Fed.R.Civ.P. 33(d) only if it can comply with its requirements, including specifically designating what business records answer the interrogatory. *See Pulsecard, Inc. v. Discover Card Servs., Inc.*, 168 F.R.D. 295, 305 (D.Kan.1996).

Defendant shall also fully answer Interrogatories 8 through 18 without objection. It failed to timely object to them. The court thus deems the objections waived.

Fed.R.Civ.P. 37(d) applies if a party fails to timely respond to interrogatories or requests for production. *See Oklahoma Federated Gold & Numismatics, Inc. v. Blodgett*, 24 F.3d 136, 139 (10th Cir.1994); *Case v.*

*Unified School Dist. No. 233*, 162 F.R.D. 147, 148 (D.Kan.1995). No hearing is necessary for the assessment of sanctions under Fed.R.Civ.P. 37(d). With reference to expenses and attorney's fees, the Rule provides in pertinent part:

In lieu of any order or in addition thereto, the court shall require the party failing to act or the attorney advising that party or both to pay the reasonable expenses, including attorney's fees, caused by the failure unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

\*2 In this instance imposition of sanctions appears unjust. Plaintiff served the discovery at issue in July, 1996. The court subsequently consolidated his case with *Zapata*.

(Mem. & Order of Aug. 23, 1996, doc. 313.) Counsel for defendant believed discovery in *Zapata* was the same as that sought by Rucker. Counsel also apparently thought that the responses of defendant to discovery in *Zapata* fulfilled its duty to respond to the discovery here at issue. Under the circumstances of this consolidated action, an award of expenses is unjust.

For the foregoing reasons, the court sustains in part and deems moot in part the Motion To Compel and For Sanctions of Plaintiff Juan Rucker (doc. 372). Within twenty days of the date of this order, defendant shall fully answer Interrogatories 2, 3, and 8 through 18, as directed herein.

IT IS SO ORDERED.

#### All Citations

Not Reported in F.Supp., 1997 WL 122588

#### Footnotes

<sup>1</sup> Plaintiff filed his motion in a case captioned, *Rucker v. IBP, Inc.*, No. 96-2242-EEO. The court has consolidated that case with *Zapata v. IBP, Inc.*, 93-2366-EEO. It thus utilizes the *Zapata* caption, rather than one for *Rucker*.