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United States District Court, D. Kansas.

Saul ZAPATA, et al., Plaintiffs,
v.
IBP, INC., Defendant.

No. CIV.A. 93-2366-EEO.
|
Feb. 4, 1997.

Attorneys and Law Firms

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MEMORANDUM AND ORDER

RUSHFELT, United States Magistrate Judge.

*1 Before the court is Plaintiffs' Motion to Compel (doc. 373) and Plaintiffs' Motion To Strike (doc. 404). Pursuant to Fed.R.Civ.P. 37, plaintiffs Saul Zapata; Graciela Garcia; Manuel Sigala; Enrique Molina, Jr.; Pedro Lira; Antonio Martinez; Baltazar Beltran; Olga Cabral; Jose Luis Velasquez; Marco Interrial; Francisco Ponce; and Antonio Ponce seek to compel full answers to interrogatories propounded upon defendant IBP, Inc. By the second motion plaintiffs seek to strike the response of defendant to their motion to compel.

The court finds the opposition to the motion to compel untimely. A response to such a motion is due within ten days of service of the motion. *See* D.Kan. Rule 7.1(b). Defendant filed its response seven days late. It sought no leave of court to file a response out of time. It has failed to show excusable neglect. The court orders the response stricken from the record.

The court grants the motion under D.Kan. Rule 7.4. When a respondent fails to file a timely response, the court will consider and decide the motion as uncontested and ordinarily grant it without further notice. D.Kan. Rule 7.4. The court considers the motion uncontested. Each plaintiff propounded identical interrogatories upon defendant. Defendant provided identical responses to each plaintiff. The court finds its objections unsupported or without merit. Defendant shall fully answer the interrogatories for each plaintiff, differentiating between individual plaintiffs when necessary.

Were the court to rule on the merits of the motion, its ruling would be no different. Defendant objects that certain interrogatories are compound and contain subparts in violation of Fed.R.Civ.P. 33 and the local rules of this court. An interrogatory is not necessarily objectionable, however, simply because it is compound or contains subparts. Neither the Federal Rules of Civil Procedure nor the Rules of Practice of the United States District Court for the District of Kansas prohibit compound interrogatories or subparts to interrogatories.

In some instances defendant answers the interrogatories simply by referring plaintiffs to documents. The court generally finds such practice unacceptable. An answering party may affirmatively elect to produce its business records in accordance with Fed.R.Civ.P. 33(d) as its response. It may also refer to documents attached to its answers to the interrogatories. In this instance defendant has not exercised an option under Fed.R.Civ.P. 33(d). Nor has it referred to documents attached to its answers. Absent compliance with Rule 33(d) or attachment of appropriate documents, defendant may not direct plaintiffs to find answers from previously produced documents or identified witness lists.

Defendant objects to certain interrogatories on the basis of attorney-client privilege or work product. It has provided insufficient information, however, to determine the validity of such objections. It has the burden to demonstrate work product or privilege. It has not done so. It has not complied with Fed.R.Civ.P. 26(b)(5). It has not timely responded to the motion. It has simply not shown the attorney-client privilege or the work-product doctrine applicable. Neither the attorney-client privilege nor the

work-product doctrine, furthermore, protect the identification of persons or documents. They also do not protect from discovery the facts learned from interviewees.

***2** Interrogatory 1 asks defendant to state the factual basis for its affirmative defenses. With regards to its fourth affirmative defense, defendant states that its “answer varies, depending on the particular plaintiff and the circumstances involved. Basically, the facts are that the defendant acted with good cause in any action or treatment of the plaintiff, and did not discriminate in any way.” This response exemplifies when defendant must differentiate between the various plaintiffs. When an answer necessarily depends on the particular plaintiff and surrounding circumstances, defendant shall state the factual basis for each plaintiff.

Sustaining the motion requires consideration of sanctions. Fed.R.Civ.P. 37(a)(4)(A) provides:

If the motion is granted or if the disclosure or requested discovery is provided after the motion was filed, the court shall, after affording the opportunity to be heard, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay the moving party the reasonable expenses incurred in making the motion, including attorney’s fees, unless the court finds that the motion was filed without the movant’s first making a good faith effort to obtain

the disclosure or discovery without court action, or that the opposing party’s nondisclosure, response, or objection was substantially justified, or that other circumstances make an award of expenses unjust.

In accordance with this rule, defendant and its counsel shall, within 25 days of the date of this order, show cause why the court should not require either or both of them to pay the reasonable expenses incurred in obtaining this order on the motion to compel. Within 15 days of the date of this order, plaintiffs shall file an affidavit of time and expense expended on the motion.

For the foregoing reasons, the court sustains Plaintiffs’ Motion To Compel (doc. 373) and Plaintiffs’ Motion To Strike (doc. 404). The court hereby orders the Response To Plaintiffs’ Motion To Compel Additional Responses To Interrogatories (doc. 401) stricken from the record. Within twenty days of the date of this order, defendant IBP, Inc. shall fully answer Interrogatories 1 through 10. The court defers ruling on the issue of sanctions, until defendant and its counsel have had their opportunity to be heard in accordance with Fed.R.Civ.P. 37(a)(4)(A).

IT IS SO ORDERED.

All Citations

Not Reported in F.Supp., 1997 WL 50474