

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 17-7044 SJO(JCx)	Date	July 3, 2018
Title	Federal Trade Commission v. A1 Docprep Inc., et al.		

Present: The Honorable	Jacqueline Chooljian, United States Magistrate Judge		
Kerri Hays	None	None	
Deputy Clerk	Court Reporter / Recorder	Tape No.	
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:		
None	None		

**Proceedings:** (In Chambers)

**ORDER (1) SUBMITTING AND VACATING HEARING ON PLAINTIFF’S MOTION/AMENDED MOTION TO COMPEL DISCOVERY RESPONSES AND DEPOSITION OF DEFENDANT ARDALAN (“PLAINTIFF’S MOTION”); (2) GRANTING PLAINTIFF’S MOTION AND DIRECTING REMAINING DEFENDANTS TO PRODUCE DISCOVERY AND DEFENDANT ARDALAN TO APPEAR FOR DEPOSITION IN WASHINGTON, D.C. (DOCKET NOS. 68, 72); AND (3) ADVISING REMAINING DEFENDANTS OF CONSEQUENCES OF FAILURE TO COMPLY WITH DISCOVERY OBLIGATIONS AND ORDERS**

**I. SUMMARY**

On May 31, 2018, plaintiff Federal Trade Commission (“plaintiff” or “FTC”) filed Plaintiff’s Motion with a supporting declaration of K. Michelle Grajales (“Grajales Decl.”) with exhibits (“Grajales Ex.”).<sup>1</sup> Plaintiff’s Motion seeks an order compelling (1) remaining defendants A1 DocPrep, Inc. (“A1”), Stream Lined Marketing (“Stream Lined”) and Homan Ardalan (“Ardalan”), an officer of A1 and Stream Lined (collectively “remaining defendants”) to (a) provide responses to outstanding document requests and interrogatories; (b) produce documents responsive to the outstanding document requests; and (c) supplement their Fed. R. Civ. P. 26(a)(1) initial disclosures; and (2) defendant Ardalan to appear for deposition in Washington, D.C. Plaintiff’s Motion is currently noticed for hearing before this Court on July 10, 2018 at 9:30 a.m.

Pursuant to Local Rules 7-9 and 37-2.4, the remaining defendants’ opposition to Plaintiff’s Motion was due on June 19, 2018. Although such deadline passed nearly two weeks ago, the remaining defendants have not filed an opposition to Plaintiff’s Motion.

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<sup>1</sup>Plaintiff subsequently filed an amended version of Plaintiff’s Motion to correct the hearing location.

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The Court finds Plaintiff’s Motion appropriate for resolution without oral argument, vacates the July 10, 2018 hearing date, and grants plaintiff’s Motion. See Fed. R. Civ. P. 78; Local Rule 7-15.

**II. PERTINENT FACTS**

On September 25, 2017, the FTC filed a Complaint alleging that multiple defendants, including the remaining defendants, engaged in deceptive and unlawful student loan and mortgage assistance relief scams in violation of federal law. (Docket No. 1; Grajales Decl. ¶ 2). On December 11, 2017, the remaining defendants – who were then represented by attorney Richard B. Newman (“attorney Newman”) – filed an Answer. (Docket No. 44). On December 14, 2017, the District Judge issued an Order Setting Scheduling Conference, directing counsel to comply with Fed. R. Civ. P. 26(f) and to file a Joint Rule 26(f) Report by February 20, 2018, and setting the Scheduling Conference for March 5, 2018. (Docket No. 46). On November 30, 2017, counsel for the parties – including remaining defendants’ attorney Newman – filed a Joint Rule 26(f) Report. (Docket No. 43).

On January 11, 2018, plaintiff served a deposition notice for defendant Ardalan, setting such deposition for March 6, 2018 in Los Angeles. (Grajales Decl. ¶ 10; Grajales Ex. B). On January 18, 2018, plaintiff served its first set of requests for the production of documents on Stream Lined via email to attorney Newman. (Grajales Decl. ¶ 11; Grajales Ex. C). On February 14, 2018, attorney Newman filed a motion to withdraw as counsel for the remaining defendants. (Docket No. 55; Grajales Decl. ¶ 6). On February 16, 2018, plaintiff served its first sets of interrogatories on all remaining defendants via email to attorney Newman. (Grajales Decl. ¶ 12; Grajales Ex. D). On February 20, 2018, the District Judge granted attorney Newman’s motion to withdraw as counsel for the remaining defendants. (Docket No. 59; Grajales Decl. ¶ 6). A1 and Stream Lined have remained unrepresented in this action since that time. (Grajales Decl. ¶ 6; see Docket No. 63 [District Judge Scheduling Notice notifying A1 and Stream Lined that they must file substitution of attorney forms by no later than March 30, 2018 and that failure to do so may result in judgment being entered against them]). On February 22, 2018, plaintiff emailed defendant Ardalan a courtesy copy of the aforementioned deposition notice, with a reminder regarding the same, and a reminder that Stream Lined’s responses to the document requests were overdue. (Grajales Decl. ¶ 12; Grajales Ex. E).

In late February/early March 2018, attorneys Joseph M. Roberts and Patrick McLaughlin (respectively “attorney Roberts” and “attorney McLaughlin”) apparently began representing defendant Ardalan.<sup>2</sup> (Grajales Decl. ¶¶ 7, 14, 23). Between February 27, 2018 and March 2, 2018, counsel conferred regarding the date and location of defendant Ardalan’s deposition and ultimately agreed that it would occur on March 23, 2018, in Washington, D.C. (Grajales ¶ 14; Grajales Exs. F, G). On March 2, 2018, plaintiff emailed attorney Roberts a revised deposition notice consistent with the foregoing agreement and a set of requests for production directed to defendant Ardalan. (Grajales ¶ 14; Grajales Exs. H, I).

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<sup>2</sup>Neither attorney Roberts nor attorney McLaughlin appear to have formally substituted into the action. Their names and addresses are not reflected on the docket.

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On March 5, 2018, the District Judge held a Scheduling Conference at which counsel for plaintiff and attorney Roberts appeared. (Docket No. 60; Grajales Decl. ¶ 4). The District Judge set September 18, 2018 as the discovery cutoff. (Docket No. 60; Grajales Decl. ¶ 4).

On March 6, 2018, attorney Roberts advised plaintiff's counsel via email that he was working on discovery responses. (Grajales ¶ 16; Grajales Ex. J). On March 7 & 9, 2018, plaintiff's counsel emailed attorney Roberts inquiring whether the interrogatory and document responses would be served prior to defendant Ardalan's deposition. (Grajales ¶ 16; Grajales Ex. K). On March 9, 2018, attorney Roberts indicated that the responses could be produced by March 15, 2018, and plaintiff's counsel agreed to such deadline. (Grajales ¶ 17; Grajales Ex. L). On March 12, 2018, attorney Roberts emailed plaintiff's counsel, indicating that defendant Ardalan could not afford to travel to Washington, D.C., and that plaintiff's counsel would have to reschedule his deposition in Los Angeles. (Grajales ¶ 19; Grajales Ex. M). Plaintiff's counsel conferred with attorney Roberts and ultimately agreed to postpone the deposition one final time and to hold it in Los Angeles, assuming defendant Ardalan would still produce the outstanding written discovery. (Grajales ¶ 19). Plaintiff's counsel accordingly sent attorney Roberts another revised deposition notice setting defendant Ardalan's deposition for April 24, 2018, in Los Angeles. (Grajales ¶ 19; Grajales Ex. N). On March 15, 2018, attorney Roberts advised plaintiff's counsel that he was then working on the discovery responses and would send them whenever he managed to get them done. (Grajales ¶ 20; Grajales Ex. O). No discovery responses were produced on that date. (Grajales ¶ 20). On March 20, 2018, plaintiff's counsel again requested production of the outstanding discovery responses and received no response. (Grajales ¶ 21; Grajales Ex. P).

On March 26, 2018, plaintiff's counsel emailed attorney Roberts a Local Rule 37-1 meet and confer letter. (Grajales Decl. ¶ 22; Grajales Ex. Q). On April 13, 2018, plaintiff's counsel telephonically conferred with attorneys Roberts and McLaughlin who were unable to specify a date by which defendant Ardalan would produce interrogatory or document responses and who identified no technological or other reason why defendant Ardalan was unable to respond to discovery. (Grajales Decl. ¶ 23). Later that day, plaintiff's counsel emailed attorney Roberts a draft joint discovery stipulation with attachments in accordance with Local Rule 37-2. (Grajales Decl. ¶ 23; Grajales Ex. R).

On April 24, 2018, defendant Ardalan appeared for his deposition with attorneys Roberts and McLaughlin. (Grajales Decl. ¶ 24; Grajales Ex. S). Defendant Ardalan testified that there was no reason he was unable to testify that day and represented that he was not on any medications or substances that would impact his ability to testify. (Grajales Decl. ¶ 24; Grajales Ex. S). During the deposition, defendant Ardalan asked plaintiff's counsel to repeat or rephrase many questions, testified that he did not know his own address, identified Hector Urquizu – his best friend – as a person central to Stream Lined's activities, and represented that he would supply the FTC with Urquizu's contact information. (Grajales Decl. ¶ 25; Grajales Ex. S). After the lunch break, more than thirty minutes late, defendant Ardalan returned to the deposition room. (Grajales Decl. ¶ 26). Attorney McLaughlin was present, but attorney Roberts was not. (Grajales Decl. ¶ 27). Defendant Aldaran appeared physically well and indicated his readiness to proceed, but stated that attorney Roberts was downstairs smoking a cigarette. (Grajales Decl. ¶ 27). After a few minutes, defendant Ardalan indicated that he would go get attorney

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Roberts so the deposition could proceed. (Grajales Decl. ¶ 27). However, defendant Ardalan did not reappear for the deposition that day. (Grajales Decl. ¶ 27). Instead, attorney Roberts returned and stated that defendant Ardalan believed he was too ill to continue the deposition and was not going to continue, but declined to state the nature of defendant Ardalan's illness. (Grajales Decl. ¶ 27; Grajales Ex. S). Counsel then conferred pursuant to Local Rule 37-1 and plaintiff's counsel indicated that defendant Ardalan's failure to appear for a full deposition and potentially a motion for costs or relief related to the retaking of such deposition would be included in the FTC's proposed motion to compel. (Grajales Decl. ¶ 28).

On May 1, 2018, attorney Roberts advised plaintiff's counsel that he and attorney McLaughlin no longer represented defendant Ardalan. (Grajales Decl. ¶¶ 7, 29). On May 17, 2018, plaintiff's counsel served defendant Ardalan with a draft of plaintiff's portion of a joint discovery stipulation, the Grajales Declaration, and attachments and advised that defendant Ardalan's portions were due back to the FTC by May 24, 2018. (Grajales Decl. ¶ 30; Grajales Ex. T). Approximately five hours later, attorney Roberts informed plaintiff's counsel that he and attorney McLaughlin had been rehired by defendant Ardalan to represent him in this matter. (Grajales Decl. ¶¶ 8, 31). Plaintiff's counsel then emailed the aforementioned draft portion of the joint discovery stipulation and Grajales declaration to attorney Roberts. (Grajales Decl. ¶ 31). Plaintiff's counsel rejected attorney Roberts' request to complete defendant Ardalan's deposition via videoconference. (Grajales Decl. ¶ 31).

As of May 31, 2018 – the filing date of Plaintiff's Motion – plaintiff had not received defendant Ardalan's portion of the joint stipulation or other response thereto, any responses/objections to the interrogatories or document requests, or the address for Hector Urquizu. (Grajales Decl. ¶ 32).

In light of the foregoing, plaintiff's counsel filed Plaintiff's Motion without a Joint Stipulation pursuant to Local Rule 37-2.4.

### III. ORDERS

IT IS HEREBY ORDERED:

1. The Court grants Plaintiff's Motion (a) on the merits for the reasons argued in Plaintiff's Motion; and (b) because it deems the remaining defendants' failure timely to file an opposition thereto consent to the granting of Plaintiff's Motion. See Local Rule 7-12.
2. Any objections the remaining defendants may have had to the outstanding interrogatories and document requests (*i.e.*, the three sets of interrogatories directed to Ardalan, Stream Lined, and A1 on February 16, 2018, the requests for production directed to Stream Lined on January 18, 2018, and the requests for production directed to Ardalan on March 2, 2018) have been waived by the remaining defendants' failure timely to raise them. See Fed. R. Civ. P. 33(b)(4); Richmark Corp. v. Timber Falling Consultants, 959 F.2d 1468, 1473 (9th Cir. 1992). The remaining defendants have failed to demonstrate good cause (or any cause) to excuse such waiver.

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3. Within fourteen (14) days, the remaining defendants shall provide plaintiff's counsel with full and complete responses, without objection, to the outstanding interrogatories and document requests (*i.e.*, the three sets of interrogatories directed to Ardalan, Stream Lined, and A1 on February 16, 2018, the requests for production directed to Stream Lined on January 18, 2018, and the requests for production directed to Ardalan on March 2, 2018).

4. Within fourteen (14) days, the remaining defendants shall provide plaintiff's counsel with the name, address and telephone number of each individual likely to have discoverable information not previously provided, including Hector Urquizu, also known as Ryan Alexander Urquizu.

5. Defendant Ardalan shall appear, at his expense, and be deposed for a period of up to seven (7) hours of testimony, excluding breaks, at plaintiff's offices in Washington, D.C., upon ten (10) days' notice from plaintiff's counsel.

**The remaining defendants are cautioned that any failure to comply with this Order will subject them to potential monetary and non-monetary sanctions, as provided in Fed. R. Civ. P. 37(b)(2) and/or Fed. R. Civ. P. 37(d), including the issuance of a recommendation or order (a) prohibiting the remaining defendants from opposing plaintiff's claims, supporting their defenses or introducing evidence; (b) striking the remaining defendants' pleadings in whole or in part; (c) rendering a default judgment against the remaining defendants; (d) deeming the failure to obey the Order a contempt of court; and/or (e) directing the remaining defendants to pay plaintiff's reasonable expenses, including attorney's fees caused by the remaining defendants' failure to obey the instant Order.**

IT IS SO ORDERED.