

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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MATTHEW J. CASEY,

Plaintiff,

v.

CUNA MUTUAL GROUP,

Defendant.

ORDER

12-cv-261-slc

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On January 16, 2014, this court held a telephonic hearing on defendant's second motion to compel discovery, *dkt.* 28, as narrowed by defendant's December 28, 2012 letter to the court, *dkt.* 30. Both sides were represented by counsel.

After discussing matters with counsel and for reasons stated at the hearing, I concluded that plaintiff again has failed to meet his discovery obligations in this lawsuit, this time in violation of the court's December 14, 2013 order, *see dkt.* 21. Specifically, plaintiff has not produced the relevant American Express Records responsive to defendant's RFP 22; apparently, he now possesses three monthly statements (from November 2009 through January 2010) but does not have any subsequent statements; the reasons for this are not clear, and in any event the timing of this production does not accord with the time line promised back in December, 2012. Plaintiff has not produced all information summarizing, referring to or concerning his income from 2009 to 2011 responsive to RFP 30; plaintiff's attorney has provided some IRS Schedule K-1s from 2009 to 2011, but he is aware that plaintiff claims to have other responsive documents that plaintiff has not yet provided to counsel for disclosure to defendant.<sup>1</sup>

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<sup>1</sup> As for plaintiff's notes, emails calendars and other personal documents sought by RFPs 23-25, plaintiff provided sworn testimony at his December 27, 2012 deposition that although he had these documents at the time of his September 2011 deposition, he has since lost them. Defendant no longer seeks production of the lost documents; instead, it is weighing claims of spoliation.

In light of this, I granted defendant's motion to compel discovery. I am providing plaintiff with one more week, until January 23, 2013, to produce all documents responsive to defendant's outstanding requests for production. If plaintiff fails to comply with this order, then this court shall dismiss plaintiff's case with prejudice as a sanction under F.R. Civ. Pro. 37(b)(2)(A). Apart from this, I am imposing sanctions under Rule 37(b)(2)(A) for the discovery failures that already have occurred; I am allowing the parties to brief this issue. Finally, I am shifting expenses pursuant to Rule 37(a)(5).

#### ORDER

It is ORDERED that:

- (1) Defendant's second motion to compel discovery, dks. 28 & 30, is GRANTED. Not later than January 23, 2013, plaintiff must produce all documents responsive to defendant's discovery requests.
- (2) If this court determines that plaintiff has failed to obey Paragraph (1) of this order, then this court shall dismiss plaintiff's lawsuit with prejudice.
- (3) Not later than February 1, 2013, defendant may file its specific request for sanctions under Rule 37(b)(2)(A) and all support, along with its itemized request for expenses pursuant to Rule 37(a)(5)(A). Plaintiff's response to both is due February 8, 2013, with any defense reply due by February 15, 2013.

Entered this 16<sup>th</sup> day of January, 2013.

BY THE COURT:

/s/

STEPHEN L. CROCKER  
Magistrate Judge