

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge

Sacramento, California

March 24, 2016 at 1:30 p.m.

1. [13-23119](#)-E-13 CYNTHIA MCDONALD CONTINUED STATUS CONFERENCE RE:
[14-2210](#) Peter Cianchetta COMPLAINT
MCDONALD V. JPMORGAN CHASE 7-21-14 [[1](#)]
BANK, N.A. ET AL

ADV CASE DISMISSED:

02/25/2016

Final Ruling: No appearance at the March 24, 2016 Status Conference is required.

Plaintiff's Atty: Peter L. Cianchetta

Defendant's Atty: Amy M. Spicer

Adv. Filed: 7/21/14

Answer: 10/30/15

Nature of Action:

Recovery of money/property - other

Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)

The Adversary Proceeding having been dismissed, the Status Conference is removed from the Calendar.

Notes:

Continued from 2/25/16

Notice of Stipulated Dismissal of Adversary Proceeding filed 2/25/16 [Dckt 42]

March 24, 2016 at 1:30 p.m.

- Page 1 of 15 -

2. [13-23119](#)-E-13 CYNTHIA MCDONALD
[14-2210](#) RWE-1
MCDONALD V. JPMORGAN CHASE
BANK, N.A. ET AL

MOTION FOR SUMMARY JUDGMENT
AND/OR MOTION FOR AN ORDER
DETERMINING THAT MATERIAL FACTS
ARE NOT IN DISPUTE
2-22-16 [[35](#)]

ADV CASE DISMISSED:
02/25/2016

Final Ruling: No appearance at the March 24, 2016 hearing is required.

The Adversary Proceeding No. 14-02210 having previously been dismissed by stipulation (Dckt. 42), the Motion is dismissed as moot.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Summary Judgment having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is dismissed as moot, the adversary proceeding having been dismissed.

3. [13-23621](#)-D-7 RMW-2 PACIFIC ASSET MANAGEMENT, INC.
Stephen Johnson
- MOTION FOR RELIEF FROM THE JANUARY 14, 2014 SANCTION ORDER AND/OR MOTION FOR REQUEST FOR AN ORDER LIFTING THE SUSPENSION OF STEPHEN JOHNSON FROM PRACTICING BEFORE THE BANKRUPTCY COURT , MOTION FOR AN ORDER REINSTATING HIS EFILING STATUS
2-18-16 [[102](#)]

DEBTOR DISMISSED: 04/18/2013

No Tentative Posted:

4. [11-26466](#)-D-13 RMW-2 STEVE JOHNSON
- MOTION FOR RELIEF FROM THE JANUARY 14, 2014 SANCTION ORDER AND/OR MOTION TO LIFT THE SUSPENSION OF STEPHEN JOHNSON FROM PRACTICING BEFORE THE BANKRUPTCY COURT , MOTION TO REINSTATE STEPHEN JOHNSON'S E-FILING STATUS
2-18-16 [[108](#)]

DEBTOR DISMISSED: 05/03/2011

No Tentative Posted:

5. [11-27845-E-11](#) IVAN/MARETTA LEE
[15-2194](#) TGC-2
LEE ET AL V. CITY OF
SACRAMENTO COMMUNITY

MOTION TO DISMISS ADVERSARY
PROCEEDING
2-9-16 [[56](#)]

Final Ruling: No appearance at the March 24, 2016 hearing is required.

The court having previously entered an order dismissing without prejudice the Motion to Dismiss (Dckt. 77), **this matter is removed from calendar.**

6. [09-43956-E-13](#) RAFAEL/ELSA MARTINEZ
[15-2131](#)
MARTINEZ, JR. ET AL V. LITTON
LOAN SERVICING

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
6-18-15 [[1](#)]

Plaintiff's Atty: Douglas B. Jacobs
Defendant's Atty: Phillip Barilovits

Adv. Filed: 6/18/15
Answer: none

Nature of Action:
Validity, priority or extent of lien or other interest in property
Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)

The Status Conference is XXXXXXXXXXXXXXXXXXXXXXXXXXXX.
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Notes:
Continued from 2/4/16

SUMMARY OF PLEADINGS

The Complaint, filed on June 18, 2015, seeks to quiet title to the Plaintiff-Debtor's real property following completion of the Chapter 13 Plan in Plaintiff-Debtor's bankruptcy case. The court determined pursuant to 11 U.S.C. § 506(a) in the bankruptcy case that the secured claim of Litton Loan Servicing has a value of \$0.00. Plaintiff-Debtor asserts that upon completion of the plan, there remains no value to be secured by the Deed of Trust securing Litton Loan Servicing secured claim, the Deed of Trust is void. Plaintiff-Debtor also seeks statutory damages of \$500.00 pursuant to California Civil Code § 2941(d) and attorneys' fees.

Litton Loan Servicing has filed an Answer, admitting and denying specific allegations in the Complaint (most based on a lack of information or belief). Defendant also asserts seven affirmative defenses.

Jurisdiction and Core Proceeding

The Plaintiff-Debtor alleges that jurisdiction exists pursuant to 28 U.S.C. § 157 and 1337 [which appears to be a typographical error for 28 U.S.C. § 1334 - the federal bankruptcy and related to jurisdiction). Further, that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(K) and (L). Complaint ¶ 3, Dckt. 1.

In the Answer, Debtor admits the allegations of jurisdiction and that this is a core matter, responding to paragraph 3 of the Complaint, stating, "3. Litton admits that this Court has jurisdiction." Answer ¶ 3, Dckt. 17.

MARCH 24, 2016 CONTINUED STATUS CONFERENCE

Neither party to this Adversary Proceeding has filed a Status Report for the continued Status Conference. No settlement documents have been filed.

FEBRUARY 4, 2016 CONTINUED STATUS CONFERENCE

Defendant Litton Loan Servicing filed a Status Conference Statement on January 28, 2016. Dckt. 30. Litton states that is only "recently" received a "detailed settlement proposal" from Plaintiff-Debtor. The date the settlement proposal was received is not stated. Litton requests an additional twenty days to consider and respond to the proposal.

The Adversary Proceeding was filed on June 18, 2015, and seeks relatively simple relief - reconveyance of a deed of trust after Plaintiff-Debtor completed the Chapter 13 Plan and the claim secured thereby (as determined pursuant to 11 U.S.C. § 506(a)) paid in full.

Plaintiff filed a Status Report stating that there is not now, eight months into this Adversary Proceeding, any settlement. Plaintiff projects that it will be at least 60 days before any settlement can be documented.

Though the court has previously continued the Status Conference several times based on representations that the Parties were actively working on the case: September 9, 2015 Status Conference, November 4, 2015 Status Conference, and January 20, 2016 Status Conference.

Notwithstanding the multiple continuances and eight months having passed without the parties either settling this simple Adversary Proceeding or actively prosecuting it, the Parties explained to the court that they in good faith believe that the matter will be settled, if possible, in the next 60 to 90 days: The Plaintiff's settlement offer was not received, and only recently was re-sent to Defendant.

To the extent that any issues in the existing Complaint as of the March 24, 2016 Status Conference in this is Adversary Proceeding are **related to proceedings, the parties consented on the record to this bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all claims and issues in this Adversary Proceeding referred to the bankruptcy court.**

JANUARY 20, 2016 CONTINUED STATUS CONFERENCE

Defendant's counsel did not appear at the Status Conference.

The court issued an order continuing the Status Conference and ordering Defendant to explain why this matter has not been resolved or being actively prosecuted.

The Continued Status Conference in this Adversary Proceeding was conducted by the court. Counsel for Plaintiff-Debtors appeared at the Status Conference. No appearance was made by counsel for Defendant.

Counsel for Plaintiff-Debtors reported that the Parties are working on a settlement and requested that the Status Conference be continued 60 days. Status Report, Dckt. 23.

On October 22, 2015, Plaintiff-Debtors filed a Status Report stating that the Parties have discussed settlement and "are waiting the filing of

documents to effectuate the settlement." Status Report, Dckt. 20. Relying on that Status Report, the court continued the Status Conference from November 4, 2015, to January 20, 2016. That allowed the party three months for "filing the documents to effectuate the settlement."

The Complaint in this Adversary Proceeding seeks to have the court quiet title to Plaintiff-Debtors' property and determine that the lien of Defendant is void - it's value as determined pursuant to 11 U.S.C. § 506(a) having been paid through the Chapter 13 Plan, which Plan has now been fully performed. The Complaint also seeks the recovery of \$500 in statutory damages for the failure of Defendant to reconvey the deed of trust after completion of the plan resulted in the obligation secured by the deed of trust having been paid in full. Finally, the Complaint requests an award of attorneys' fees and costs.

Defendant failed to respond to the Complaint (which was filed June 18, 2015) and its default was entered by the Clerk of the Court. Dckt. 9. On August 11, 2015, a stipulation was filed for vacating the Defendant's default. Dckt. 12. An order vacating the default was issued by the court. Dckt. 13. Defendant filed its Answer on September 9, 2015. Dckt. 17.

No explanation has been provided by Defendant or Plaintiff-Debtors why the purported settlement has not been effectuated. No affirmative representation has been provided to the court that there is an executed settlement agreement between the parties. Rather, the court has now been requested on three occasions to continue the Status Conference 60 days and not set discovery or other deadlines necessary for the effective, good faith prosecution of this Adversary Proceeding. August 24, 2015 filed Status Report, Dckt. 14; October 22, 2015 filed Status Report, Dckt. 20; and January 11, 2016 filed Status Report, Dckt. 23.

This Adversary Proceeding has been pending 216 days without the court setting deadlines for discovery and the good faith prosecution of this Adversary Proceeding. For more than 180 days it is clear that Defendant has been aware of this Adversary Proceeding, the allegations in the Complaint, and its rights and obligations in connection with the deed of trust, California law, the confirmed Chapter 13 Plan, and the Bankruptcy Code.

7. [15-25168-E-13](#) DEBRA MCCLAIN
[15-2152](#) KSR-1
MCCLAIN V. SULLIVAN ET AL

MOTION TO COMPEL RESPONSES TO
DEMAND TO PRODUCE DOCUMENTS,
COMPEL ANSWERS TO
INTERROGATORIES, COMPEL
DISCLOSURES, AND FOR MONETARY
SANCTIONS
2-9-16 [[31](#)]

No Tentative Ruling: The Motion to Compel has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's attorney on February 9, 2016. By the court's calculation, 44 days' notice was provided. 28 days' notice is required.

The Motion to Compel has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Compel Discovery is ~~XXXXXXXXXXXXXXXXXX~~.

Dusty Sullivan, one of the Defendants, ("Defendant") filed this Motion to Compel responses to Demand to Produce Documents, Compel Answers to Interrogatories, Compel Fed. R. Civ. P. 26(a) Disclosures, and for Monetary Sanctions on February 9, 2016. Dckt. 31.

On February 16, 2016, the Plaintiff-Debtor filed her Federal Rule of Civil Procedure 26(a)(1) disclosures. FN.1.

FN.1. References to "Rule" are a reference to the Federal Rules of Civil Procedure and references to "Bankruptcy Rule" are to the Federal Rules of Bankruptcy Procedure.

REVIEW OF MOTION

The Motion states the following grounds with particularity pursuant to Federal Rule of Bankruptcy Procedure 7007, upon which the request for relief is based:

PLEASE TAKE NOTICE, that on March 15, 2016, at 3:00 p.m. in Courtroom 33 in the United States Bankruptcy Court Eastern District of California located at 501 I Street, Sacramento, California, Defendant Dusty Sullivan will move this Court for an order compelling Plaintiff Debra K. McClain to answer and respond to the demand for production of documents, interrogatories, and for monetary sanctions in a sum equal to \$1,200.00 against Plaintiff Debra K. McClain, and to compel Plaintiff Debra K. McClain to file her disclosures pursuant to Fed. R. Civ. P. 26(a)

This motion will be based upon this notice of motion and motion, and concurrently filed exhibits, memorandum of points and authorities and declaration of Kirk Rimmer.

The Motion does not comply with the requirements of Federal Rule of Civil Procedure 7 because it does not state with particularity the grounds upon which the requested relief is based. The motion merely states that the grounds are located elsewhere in the pleadings. This is not sufficient.

The *Twombly* pleading standards were restated by the Supreme Court in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), to apply to all civil actions in considering whether a plaintiff had met the minimum basic pleading requirements in federal court.

In discussing the minimum pleading requirement for a complaint (which only requires a "short and plain statement of the claim showing that the pleader is entitled to relief," Fed. R. Civ. P. 7(a)(2), the Supreme Court reaffirmed that more than "an unadorned, the-defendant-unlawfully-harmed-me accusation" is required. *Iqbal*, 556 U.S. at 678-679. Further, a pleading which offers mere "labels and conclusions" of a "formulaic recitations of the elements of a cause of action" are insufficient. *Id.* A complaint must contain sufficient factual matter, if accepted as true, "to state a claim to relief that is plausible on its face." *Id.* It need not be probable that the plaintiff (or movant) will prevail, but there are sufficient grounds that a plausible claim has been pled.

Federal Rule of Civil Procedure 7(b) is incorporated into adversary proceedings by Federal Rule of Bankruptcy Procedure 7007. Interestingly, in adopting the Federal Rules and Civil Procedure and Bankruptcy Procedure, the Supreme Court stated a stricter, state-with-particularity-the-grounds-upon-which-the-relief-is-based standard for motions rather than the "short and plain statement" standard for a complaint.

The Tenth Circuit Court of Appeals rejected an objection filed by a party to the form of a proposed order as being a motion. *St Paul Fire & Marine Ins. Co. v. Continental Casualty Co.*, 684 F.2d 691, 693 (10th Cir. 1982). The Seventh Circuit Court of Appeals refused to allow a party to use a memorandum to fulfill the particularity of pleading requirement in a motion, stating:

March 24, 2016 at 1:30 p.m.

Rule 7(b)(1) of the Federal Rules of Civil Procedure provides that all applications to the court for orders shall be by motion, which unless made during a hearing or trial, "shall be made in writing, [and] shall state with particularity the grounds therefor, and shall set forth the relief or order sought." (Emphasis added). The standard for "particularity" has been determined to mean "reasonable specification." 2-A Moore's *Federal Practice*, para. 7.05, at 1543 (3d ed. 1975).

Martinez v. Trainor, 556 F.2d 818, 819-820 (7th Cir. 1977).

Not pleading with particularity the grounds in the motion can be used as a tool to abuse the other parties to the proceeding, hiding from those parties the grounds upon which the motion is based in densely drafted points and authorities - buried between extensive citations, quotations, legal arguments and factual arguments. Noncompliance with Bankruptcy Rule 9013 may be a further abusive practice in an attempt to circumvent the provisions of Bankruptcy Rule 9011 to try and float baseless contentions in an effort to mislead the other parties and the court. By hiding the possible grounds in the citations, quotations, legal arguments, and factual arguments, a movant bent on mischief could contend that what the court and other parties took to be claims or factual contentions in the points and authorities were "mere academic postulations" not intended to be representations to the court concerning the actual claims and contentions in the specific motion or an assertion that evidentiary support exists for such "postulations."

REVIEW OF MOTHORITIES

Dusty Sullivan, one of the Defendants in this Adversary Proceeding, ("Defendant") filed this Motion to Compel responses to Demand to Produce Documents, Compel Answers to Interrogatories, Compel Fed. R. Civ. P. 26(a) Disclosures, and for Monetary Sanctions on February 9, 2016. Dckt.31. The Motion to Compel does not set forth with particularity the grounds for the relief requested as required by Federal Rule of Civil Procedure 7(b) and Federal Rule of Bankruptcy Procedure 7007.

Defendant has filed a three page "Points and Authorities" which appears to state facts and grounds, rather than legal points, authorities, and citations in support of the motion, upon which the relief is based. For this motion only, the court treats the Mothorities (the combined motion and points and authorities) as the "motion" stating such grounds. The legal "authorities" and "points" stated in the Points and Authorities consists of: (1) referencing Federal Rule of Civil Procedure 26(a) for required initial disclosures, (2) referencing Federal Rule of Civil Procedure 37(d)(1) as authorizing Defendant to file a motion to comply discovery and Rule 26(a) disclosures, and (3) referencing that Rule 26(a) allows Defendant to receive attorneys' fees for having to prosecute a motion to compel.

Review of "Grounds" Stated in Mothorities

On November 17, 2015, Defendant served on Debra McClain ("Debtor-Plaintiff") and Debtor-Plaintiff's counsel: (1) Demand to produce documents; and (3) Interrogatories. Responses were due September 15, 2014.

More than thirty days have elapsed from the date responses were due.

March 24, 2016 at 1:30 p.m.

- Page 10 of 15 -

On January 11, 2016, Defendant alleges that his counsel sent an email to Debtor-Plaintiff's counsel, noting that the responses to the demand of documents and interrogatories were overdue and that the responses were needed by January 22, 2016.

On January 20, 2016, after a status conference, the Defendant's counsel allegedly met personally with Debtor-Plaintiff's counsel. At this meeting, Defendant's counsel allegedly noted that they still had not received the discovery responses.

Based on the stipulation of the parties, the court issued a scheduling order that required initial disclosures to be made by December 21, 2015. Dckt. 16.

The court's scheduling order required that initial disclosures be due by August 4, 2014 and discovery, including the hearing of all discovery motions, to close on December 31, 2014. Dckt. 14.

Defendant requests that the court order Debtor-Plaintiff to deliver, without objections, her responses to the interrogatories, and the demand to produce documents, and to deliver her Fed. R. Civ. P. 26(1) disclosures. Defendant also requests that the court order Debtor-Plaintiff to pay Defendant \$1,200.00 as and for attorney's fees in making this Motion.

APPLICABLE LAW

Federal Rule of Civil Procedure 37(a)(1), made applicable in bankruptcy adversary proceedings by Federal Rule of Bankruptcy Procedure 7037, requires that a motion to compel discovery "include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make . . . discovery in an effort to obtain it without court action."

The certification requirement of Federal Rule of Civil Procedure 37(a)(1) was described in *Shuffle Master v. Progressive Games*, 170 F.R.D. 166 (D. Nev. 1996) as comprising two elements:

[T]wo components are necessary to constitute a facially valid motion to compel. First is the actual certification document. The certification must accurately and specifically convey to the court who, where, how, and when the respective parties attempted to personally resolve the discovery dispute. Second is the performance, which also has two elements. The moving party performs, according to the federal rule, by certifying that he or she has (1) in good faith (2)conferred or attempted to confer. Each of these two sub components must be manifested by the facts of a particular case in order for a certification to have efficacy and for the discovery motion to be considered.

Shuffle Master, 170 F.R.D. at 170. The court went further, stating that "[A] moving party must include more than a cursory recitation that counsel have been 'unable to resolve the matter.'" 170 F.R.D. at 171.

Fed. R. Civ. P. 37 also requires that the moving party must have in

good faith conferred or attempted to confer with the opposing party regarding the discovery dispute. Id. The court in *Shuffle Master* noted that good faith "cannot be shown merely through the perfunctory parroting of statutory language ... to secure intervention; rather[,] it mandates a genuine attempt to resolve the discovery dispute through non-judicial means." Id. The movant must show good faith and the party need actually attempt a meeting or conference. Id. Courts have found that "conferment" requirement entails "two-way communication, communication which is necessary to genuinely discuss any discovery issues and to avoid judicial recourse." *Compass Bank v. Shamgochian*, 287 F.R.D. 397, 398-99 (S.D. Tex. 2012).

Initial Disclosures

The Federal Rules of Civil Procedure relating to discovery during litigation, Rules 26 and 28 to 37, apply in bankruptcy cases, in both contested matters and adversary proceedings, by virtue of incorporation by reference. Fed. R. Bankr. P. 7026 to 7037 and 9014.

Subdivision (a)(1) of Civil Rule 26 narrows the required disclosures to that information that the disclosing party intends to use to support its position. The use may include support of a claim or a defense. It includes any stage of the litigation from discovery, to motion, to trial. Although the required disclosures are narrowed, the court retains the authority to order the discovery of matters relevant to the subject of the action. F. R. Civ. P. 26(b). The initial disclosures must be made within 14 days after the parties have conferred pursuant to Rule 26(f). F. R. Civ. P. 26(a)(1).

Sanctions

In the Defendant's "Mothorities," Defendant cites to Federal Rule of Civil Procedure 37(d) for "sanctions." However, the motion is a motion to compel, and Defendant has asked for the court to award attorneys' fees for bringing the Motion. The relief requested is that provided in Federal Rule of Civil Procedure 37(a)(3)(A) and (B), and (5). This provisions also include compelling a party to provide the Rule 26(a) disclosures, an issue which is not included in the Federal Rule of Civil Procedure 37(d) sanctions. The court considers the Motion under Rule 37(a).

Federal Rule of Civil Procedure 37(a)(5) (emphasis added) provides for the payment of expenses if a movant successfully has the court grant a Motion to Compel. Specifically, the Rule states:

"(5) Payment of Expenses; Protective Orders.

(A) If the Motion Is Granted (or Disclosure or Discovery Is Provided After Filing). If the motion is granted--or if the disclosure or requested discovery is provided after the motion was filed--**the court must**, after giving an opportunity to be heard, **require the party or deponent whose conduct necessitated the motion**, the party or attorney advising that conduct, or both to **pay the movant's reasonable expenses incurred in making the motion, including attorney's fees**. But the court **must not order** this payment if:

(I) the **movant filed** the motion **before attempting in good faith to obtain** the disclosure or discovery **without court action;**

(ii) the opposing party's **nondisclosure**, response, or objection was **substantially justified;** or

(iii) **other circumstances** make an award of expenses unjust.

(B) If the Motion Is Denied. If the motion is denied, the court may issue any protective order authorized under Rule 26(c) and must, after giving an opportunity to be heard, require the movant, the attorney filing the motion, or both to pay the party or deponent who opposed the motion its reasonable expenses incurred in opposing the motion, including attorney's fees. But the court must not order this payment if the motion was substantially justified or other circumstances make an award of expenses unjust.

(C) If the Motion Is Granted in Part and Denied in Part. If the motion is granted in part and denied in part, the court may issue any protective order authorized under Rule 26(c) and may, after giving an opportunity to be heard, apportion the reasonable expenses for the motion."

DISCUSSION

On February 16, 2016, the Plaintiff-Debtor filed her Fed. R. Civ. P. 26(1) disclosures. This is after the Motion now before the court was filed.

Plaintiff-Debtor has not filed an opposition to the present Motion. The Plaintiff-Debtor has not presented to the court any objections to the discovery propounded by Defendant.

Beginning with the Interrogatories, Defendant has propounded 44 individual interrogatories. Exhibit B, Dckt. 33. From the court's review, each interrogatory is directed to a specific paragraph of the Amended Complaint and requests facts or other information relating to the allegations in those paragraphs. The Defendant has also requested production of writings which support the interrogatory responses. Exhibit A, *Id.*

Meet and Confer Requirement

The court first considers Movant's satisfaction of the "meeting and confer" requirement of Rule 37(a). In the *Mothorities*, Movant states that on January 11, 2016, he sent an email to Plaintiff-Debtor's counsel reminding said counsel that the responses were overdue. The email specifically stated:

Peter: See the attached demand to produce documents, interrogatories and proof of service. The discovery was mailed to you on November 17, 2015 and is now about a month overdue. As you know, the last date for discovery is April 30, 2016 pursuant to the Court's October 21, 2015 order, so time is of

the essence for your client's responses. I need the responses by January 22, 2016 Also, on December 1, 2015 I sent you an e-mail (attached) requesting a deposition date for your client. Having heard no response, I am setting her deposition for February 17, 2016 at 10:00 a.m. in my office. See the attached notice of taking deposition which I am mailing today.

Dckt. 33, Exhibit D.

Additionally, Defendant's counsel met with Plaintiff-Debtor's counsel on January 20, 2016 (the day of the Status Conference in this Adversary Proceeding), at which time Plaintiff-Debtor's counsel stated that the discovery would be provided within a week. The Discovery was due the middle of December 2015, having been served on November 17, 2015.

The certification does not include an identification of the reasons for the non-production and how the parties attempted to address it. Conversely, Plaintiff-Debtor has not asserted any reason for the inability to timely, or untimely by the end of January 2016, to provide the discovery.

In light of there being no opposition and the testimony of counsel for Defendant that there was a stated later date by which Plaintiff-Debtor's counsel stated the discovery would be produced, there is certification of an adequate "meet and confer" by the attorneys.

At the hearing, **xxxx**

Sanctions

The court, having found that the Defendant had properly attempted to meet-and-confer without judicial interference to settle the discovery dispute, finds that the instant Motion is appropriate.

On February 16, 2016, the Plaintiff-Debtor filed the Rule 26(a) initial disclosures. This is partial satisfaction of the Defendant's Motion to Compel. However, there is no evidence that the Plaintiff-Debtor have provided the requested documents nor the responses to the interrogatories.

Fed. R. Civ. P. 37(a)(5)(A) contemplates the exact situation where a Motion to Compel is granted and the disclosure has been provided after the Motion was filed. In this situation, the court "must, after giving an opportunity to be heard, require the party or deponent whose conduct necessitated the motion, the party or attorney advising that conduct, or both to pay the movant's reasonable expenses incurred in making the motion, including attorney's fees." A court may, in its discretion, award costs and expenses of the Motion against the unsuccessful party or deponent, which expenses can include attorney's fees. 10 COLLIER ON BANKRUPTCY ¶ 7037.02 (Alan N. Resnick & Henry J. Sommer eds. 16th ed.) .

In the Defendant's "Mothorities," the Defendant requests \$1,200.00 in attorney's fees "as a result of Defendant Sullivan's experienced litigation attorney Kirk Rimmer preparing this motion and accompanying documents, and attending the hearing in this matter." Dckt. 32. In his declaration, Mr. Rimmer states that he has been a member of the State Bar for 33 years and charges \$300.00 per hour for litigated matters. Mr. Rimmer states that

It will take me four hours to prepare this declaration, the notice of motion and motion to compel discovery, the exhibits, the memorandum of points and authorities and to attend the hearing on this motion.

Dckt. 34.

At the hearing, **xxxxxx**

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Compel filed by Defendant having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is **xxxxxx**.